Land Tenure Security and the Administration: Evidence from Middle Eastern Cases

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Summary

The topic of this paper is trying to answer the LTA objectives, by studying a comprehensive reviewing of the practical aspects and critical factors regarding the LTA, identifying the Crisis in developing countries. In this context, it provided the characteristics, the policies, rights and traditional conceptions and legal structures of the LTA systems in nominated countries in the Middle Eastern region; the non-Arab and Muslim samples; Turkey, Iran, and Afghanistan, and these Arabic countries of; Iraq, Syria, Lebanon, Jordan, Palestine and Egypt. In this paper, all LTA systems of samples were organized around the efficiency of the authorities, Constraints and interventions of LTA in which the security of tenures settings are implemented.

1. Introduction

The English term '*Tenure*' is derived from the Latin term which means 'the holding' or 'the possessing' (Basset and Crummey, 1993:12). This definition usually uses this term with "*Land*" to refer to the objects to which ownership and other rights are to be connected. In practice, the land tenure term can incorporate various basic objects or units, land parcels being the most common.

As a result of specific historical, political, cultural and even religious influences, the tenure term has been varying widely between countries, and even cities. In this context, the concept, language and practices of the term 'Tenure' have long and varied elements. Regarding the end-users' rights, there is however a number of factors (external and internal) that affect the flow of the administration of the land tenure. External factors include political, social and economic stability, land market size, administrative conditions, etc. Internal factors are mainly related to the quality and stability situation of the supervision institutions of the host country which are reflected by their level of transparency, bureaucracy and corruption. In fact, many of these factors are influenced by the concept and elements of tenure such as types, and its administrations local scopes in the host country.

Focused on this triangular relationship of people, land and policy; the Global Land Tool Network at UN-Habitat (2008) has defined land tenure as a legal or customarily relationship among peoples with respect to land-related objectives. In this context, the UN-Habitat report (2008: p.5) also defines this relationship as: *"The way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land".* In other words, the tenure as the individuals and group rights is protected by the set of legal authorities against the multiple claims

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from others. These legal authorities have to administrate tenure rights by a clear policy which can be defined as the adopted formulation of guidelines, norms, standards, rules, and facilitation, in a brief word; all the setting of a mechanism for shaping and implementing these rights.

Based on these definitions, the land tenure is defined within the context of this paper as a as a **set of historically and culturally complex relationships that enable the land users, as individuals or groups, to use and benefit from the land resources within specific managements which are governed by determining authorities.** Essentially, what is being considered under this definition in this research is a variety of arrangement names, such as community, customary, communal, and collective forms, and these related forms of rights established through a range of processes: statutory, customary, religious and even informal. It could say that this definition is more relevant to the promise of achieving this human beneficial right officially under defined rules and managements with which the end-users' rights are safeguarded.

In practice, the role of LTA as the engine of the security of tenure is promoted throughout. The LTA sets the framework for implementation of security policy and protects the user's rights. Also, the reviewed literature reveals that the land administrative key measures are the security level of land tenure, by managing users' prospects and solving their problems, enabling an effective management and monitoring of LTS and thereby reducing poverty.

2. The Study Structure: Questions and Objectives

This paper has been motivated by the continued impact of Islam and traditional regulations in these Middle Eastern societies. Also, the paper aims to identify the influence level of the current insecurity situation and the weakness of the lands government's role on the user's rights in land and property issues. From a theoretical background, this paper developed and proposed its scope in the context of urban land development. The following questions emerge as being essential to achieving the article aim:

- What are the main factors affecting the efficiency of LTA in term of LTS?
- How do these factors affect the current LTA in these Middle Eastern societies?

Based on the associated literature, these questions can be achieved via the following objectives;
- To develop an understanding of the Islamic and traditional systems and their classifications in these Middle eastern societies;
- To explore the critical factors influencing LTA & LTS identifying its current settings.

2.1. The Nominated Samples

This paper presents the existed practice and experience in relation to LTA in developing countries from the Middle Eastern region. In order to obtain their experience in terms of LTA systems and related institutional frameworks, and then how their historical and cultural complex relationships were managing and implementing the LTS and enabling their end-users' rights; the nominated samples were targeted within two groups; the Muslim, and these samples from the Arab countries (Fig. 1).
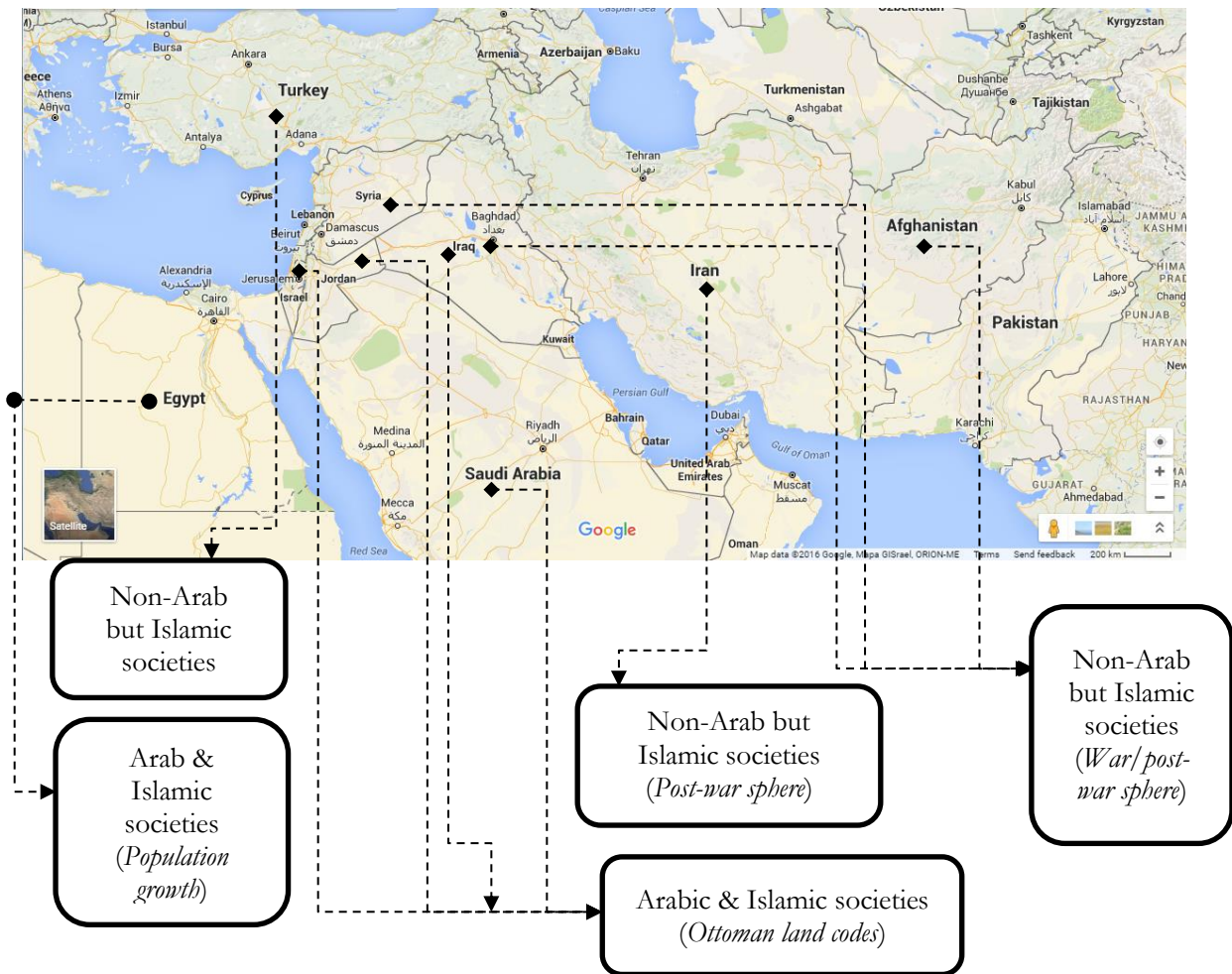
Figure 1: the Nominated experiences of the study in relation to LTA in developing countries.

As it is seen in figure 1, the nominated experiences of these samples from the Middle Eastern region were selected to obtain their experience in term of LTA policy, and to gain a best picture about the influence of critical factors on their authority roles in meeting the end-users' rights , and regarding the efficiency/ deficiency of adopted systems. The nominated samples in the Middle Eastern region were divided into two main groups; these country with the majority Muslim society, and these of Arab majority society. For more specified issues, the countries were geographically grouped and listed according to their main references of system and the current influence sphere:

1- ***Non-Arab but Islamic societies***; Afghanistan and Iran were nominated as samples of these non -Arab but majority Muslim countries, and they both identify the crises of LTA under the influence of factors such as War/post- war sphere. However, Turkey sample was listed within this group to gain a close understanding to its historical influence regarding Arab countries and its current experience too;

2- ***Arab and majority Islamic societies***; the Arabian countries in this region (see Figure 1) were selected as good samples to identify the LTA under the influence of Ottoman land codes and local crisis of unstable situations, Syria and Iraq were counted within this group and listed also under the influence of factors War/post-war spheres and also the population growth influence as in Egypt sample;

3- In general, Iraq was counted within both of the previous groups due to these linked elements that are controlling its current situations.

The role of the land authorities and their programmes in LTA and LTS, the extent of suitability and efficiency of these strategies in meeting the end-users' satisfaction, and dealing with the critical situations that they faced to implement them, are subsumed within the next discussion. Table (1) and figure (2) illustrated the essential features of LTA Experiences in the Islamic and Arabic countries, discussed systems and constraints in which governance of land tenure is administered in relevant countries.

5. Summary and Targets

This paper is aiming to explore the LTA development within close groups of developing countries in the Middle Eastern region. The nominated samples were selected as examples of close regions under the similar demonstration systems, practice, social conditions and these administrative crises in terms of LTA implementation and delivering LTS. Focusing on LTA objectives and development in developing countries, the paper provides the local characteristics, the policies, rights and traditional conceptions and legal structures of the LTA systems in those countries involved in the non-Arab and Muslim samples; Turkey, Iran, and Afghanistan, and these Arabic countries in the Mashreq area; Iraq, Syria, Lebanon, Jourdan, Palestine and Egypt. These samples, therefore, valuable in helping to understand their recent experience regarding to the policy, systems and institutional structures, the local success/ failure factors, thus, to identify where improvements should be made.

This task is achieved by providing a depth understanding regarding the LTA exciting systems resources and practices in this region, and embarked on a mission of how did authorities managed their systems and how did the administrative structure of the key institutional bodies of LTA achieve the national development, in which the LTA systems are shaped and implemented.

Based on respectable evident, authority hierarchies are a fundamental driver and enabler of LTA strategy; regarding the instable and insecurity factors, the exciting system is offering significant levels of the management and monitoring support. It is seen in this paper how there is an interconnected matrix of institutional hierarchies among these agencies, which has successfully linked with the land aspects particularly in field of investment and development in land/housing markets. It can note how the LTA's legislation structure was developed in this region to promote tenure security working between national development in the urban sectors and land users' rights to ensure that individual and community rights are documented and protected.

On the other hand, wars and instable authority have been devastated in this region. In fact, the current influence of informal occupancy and illegal activities still need more innovation from LTA strategy to ensure more effective security of tenures. Although the current strategy of LTA in ILAs showed an ambitious goals, there still a need to do more in field of the legal and economic feasibilities for further encouragement to the native and foreign developers in the non-government sectors to invest in the housing market.

From the previous discussion, it can be seen from this chapter that the both Arab and non-Arab Islamic countries in region have experienced a rapid upgrading of skills and practices through their LTA systems. Also the foundational base of legal systems and tenure policies in the Arab/Islamic region were included with focused view on local controlled practices and principles of the LTA, and the available user's rights as an engine of LTS issues in general, and then the challenges ahead. Within this chapter, the relevant literature showed that the essential part of the Islamic-Ottoman land law was initially adopted by the religious leadership and later the institutional structure during the independent era, and was therefore in dynamism in the land authority institutions ,legislation of land that govern and monitoring the land policy.

Table 1: Keys objectives and Constraints of LTA in nominated sample of countries in the Middle East region (author)

Case	Systems and Objectives	Main Constraints
Turkish	• *Turkey system of tenure administration is designed within a long experience in land laws which have based on top of customary Ottoman traditions under the Ottoman land cods.* • *In general, the new Turkey's system of LTA adopted Roman laws, which endorsed modern attitudes. However, to understand Turkey's LTA, it's important to understand the Islamic role in shaping the land system in this Islamic majority community, which have its local roots different than exists in Europe and North America.* • *Although the Turkish system of tenure is redesigned to deal successful with modern requirements of tenures, Turkey LTA is reliable with local community's an old-fashioned tradition and is driven directly from the Islamic-Ottoman land cods and carried out under central administrative mechanism, which still shows clear influences in most attitudes of rights distribution in this system.* • *Turkey LTA have been extended from Islamic-Ottoman land codes to modern land administration systems and re-engineered over time to meet the change, and to provide an appropriate legal foundation for well-functioning land administration system, which is also applicable for applications of title deeds.* • *Currently, the Ottoman land administration is still one of the most experienced codes in land management which had dominated and shaped the LTA during the close period of the Arab world, almost all land registry and Cadastre records of Arab country are linked to this Ottoman era.*	• *Even now, literature found that in many of Turkey's cities, that the two sets of conflicting laws coexist uneasily and may be an administrative problem.* • *Turkey's lands still remain under control or owned through an ancient outmoded tradition regulations and more rooted in the legal rights of communities than in the apparatus of title registration.* • *Such case is also proposed to the other countries that were controlled by ottoman land laws where there are needs for reengineering or improvement in the land administration system.*
	Inquired actions: • *Turkey's land administration agents have organised themselves to establish the definition and for reengineering or improvement an old-fashioned tradition in the system of LTA, which needs a full associations with the regional modern systems.*	

Iran, Islamic republic	• Similarly, the Iranian system of LTA is shared the same background that it had been rooted and developed during a long period to produce the application of tenures. Legislatively, Iran is an Islamic republic and governed under the Islamic rules of tenures, • The land in Iran is either owned and operated by the farmer or owned by landowners but cultivated under some other sort of a contract or agreement. The Iranian land registry office deals with the deeds via the Notary, and the public Notary works to manage and save the legal form of the deed, while the role of the land institution is to response on behalf of the administration in law. • Since the collapse of the Shah regime in 1979, Islamic principles are re-emerging. In this case, the Iranian land authorities, legal institutions and national state were re-established according to Islamic rules of ownership and inheritance. • There is a clear mechanism under the Islamic rules for monitoring compliance with the Constitution and the Land Law to ensure that women's statutory rights are upheld. Under the Islamic Constitution, the Iranian system of LTA succeeded to provide legal rules to connect the statutory and customary justice systems. • The Iranian Islamic Government's application of tenures is concerning the various rights which save the users rights since the owner has unlimited rights of possession. The system also helped to ensure women's participation. In general, Iranian Islamic principles stipulate women's rights to land and property and provided some degree of tenure security for women.	• However, these institutional principles are not always entirely applied: • Iranian Islamic system is still suffering under the economic crisis that influenced its administration. •Under the social and family influences, Islamic principles are not always entirely applied: for instance, men may prefer to marry in the Muslim way - without registration, where women's share is translated to their male brother- with registration, and damage further especially during divorce. •Although national laws recognize women's rights to land, women still obtain land rights through their husbands or fathers. • Women, therefore, may be unable to claim any property in cases of divorce or when their husbands die or abandon them.
	Inquired actions: •State responsibility of land tenure thus requires that land and family laws are reformed together. •A recent successful example comes from Muslim laws, which offered legal protection and have had some successful gender outcomes, increasing institutional principles and legal tools for enforcing it in the Iranian Islamic Constitution will be more effective.	

Table 1: (Continued)

Case	Systems and Objectives	Main Constraints
Afghanistan	•*In this case, a set of Islamic religious and local society tribal forms were formed the local statutory and customary law of land tenure.* •*Under the unstable situations, the links between land and property laws and the Islamic - society tribal laws that relate to ownerships and inheritance have particularly re-emerged to tenure systems.* • *In general, Tenure types are governed by customary laws and divided into types of private and collective purposes in accordance of Islamic religious and local society tribal forms regarding land end-users rights.* •*Dual system is linking between land administration and the end user's rights in accordance to local traditional conceptions and modern system of state.* •*The current government is addressed the split between statutory and customary law in the Constitution, which provides for equality between women and men, and upholds equality between spouses at all stages of marriage.*	•*Old-rigid systems of tenure are essential for imbalanced development. In general, the land registration system is stained by the rigid and old laws and regulations; a lot of bureaucracy procedures take too long and the complexity of procedures add other barriers. Afghanistan, for example, does not have an adverse possession law.* •*Sphere of wars, ethnic disputes and contentious unstable states are the main influence on national development strategies. In general, land administration and tenure rights tend to be highly insecure.* •*Usually, State has not established a mechanism for monitoring compliance with the Constitution and the land customary law to ensure that women's statutory rights are upheld. In addition, customary law in this case is often misused, and most rural people do not know that statutory land law is obtainable and can protect their rights officially.* •*Although the land Act provides for equality between women and men, under religious / customary law, however, women obtain land rights through their husbands or fathers; people married under customary law are not protected.*
	Inquired actions: • *Land authorities, legal institutions and national states should be held responsible for rigid and old laws and regulations in order to do better responses for their current mistakes.* • *Obtaining ownership has to be simply through Land institutions within documented forms.* • *concerning on the quality and efficiency in land administration and strong employability skills in this system.* •*Linking between the Islamic heritage experiences of land rules and the international experience included adequate quality corporative forms.*	

Table 1: (Continued)

Case	Systems and Objectives	Main Constraints
Arabian **Region** **samples**; (Syria, Lebanon, Jourdan, ,Palestine Iraq & Egypt).	•*All forms of tenure: public, private, communal, indigenous, and customary are Governed by customary laws and divided into types of private and collective purposes in accordance of land end-users rights.* •*The Constitutional Law on managing land affairs authorized the state to govern and protect directly the public and private right in accordance with the law.* •*In these countries, people have always had a very strong spiritual attachment to the land. Traditionally, customary laws relating to land still exist, especially under the tribal and family conceptions.* •*There are slow but continues changes involved in land management. These changes to law and custom have strengthened women's claim to the right to be involved in land management.*	•*In these countries, administrative failure to develop accepted principles governing refugee's problems rights has folded the problem. This tendency is aggravated by land scarcity, the State's weak capacity, land restructuring programmes, and fast growth of urbanization.* •*Wars and post-war spheres folded Refugees crisis and led to increased tenure insecurity for widows and orphans, who suffer more incidences of property grabbing.* •*As long as the conflict in the most of these countries persists, it is not likely that the government will address tenure issues; the complex land transactions and monitoring of formal land registration are influenced.* •*In most cases, there were avoidances of a set of multiple unresolved interests over the land rights, including rights of women, and with indigenous and minority rights.* •*Communities are influenced by the traditional system, rigid and old laws and regulations, and the complexity of property bureaucratic procedures.* •*The inequity view of local conceptions in regarding the women and vulnerable groups is still triggering the discrimination rights.* •*Insecurity of tenure can potentially hinder the successful engagement of land tenure and property rights in LTA implementation. As a result of weakness of governments, most people in the rural or semi-nomadic areas transfer land by oral agreements as informal deeds.* •*One of the greatest needs is awareness raising about how the land administration system functions, most people in the rural or semi-nomadic areas often do not know their rights and registration procedures.*

• *Obtaining ownership has to be simply through Land institutions procedures within documented forms.*
• *Concerning on the quality and efficiency in land administration and strong employability skills in this system.*
• *Diversity of pathways which are available in Islamic rules that have developed a wide range of regulations in relation to ownership and inheritance rights.*
•*Linking between the Islamic heritage experiences of land rules and the international experience included adequate quality corporative forms.*
• *Changes to law and custom have strengthened women's claim to the right, therefore to ensure women tenure security, it is important that they obtain titles in their own names.*
• *Developing the local data registration systems and providing high technical systems regarding the land tenure and users' rights.*
•*Registrars at land registries should be progressed and trained on modern approaches, and registration procedures should be specifically designed to enable fast and effective process.*
•*Specific strategies and mechanisms may therefore be needed to support the land inheritance rights of women/widows, including financial support, legislative reviews and land registration procedures.*
• *Refugees crisis is still influence on national systems; dispute resolution/mediation mechanisms can play a vital role in protecting displaced people rights.*
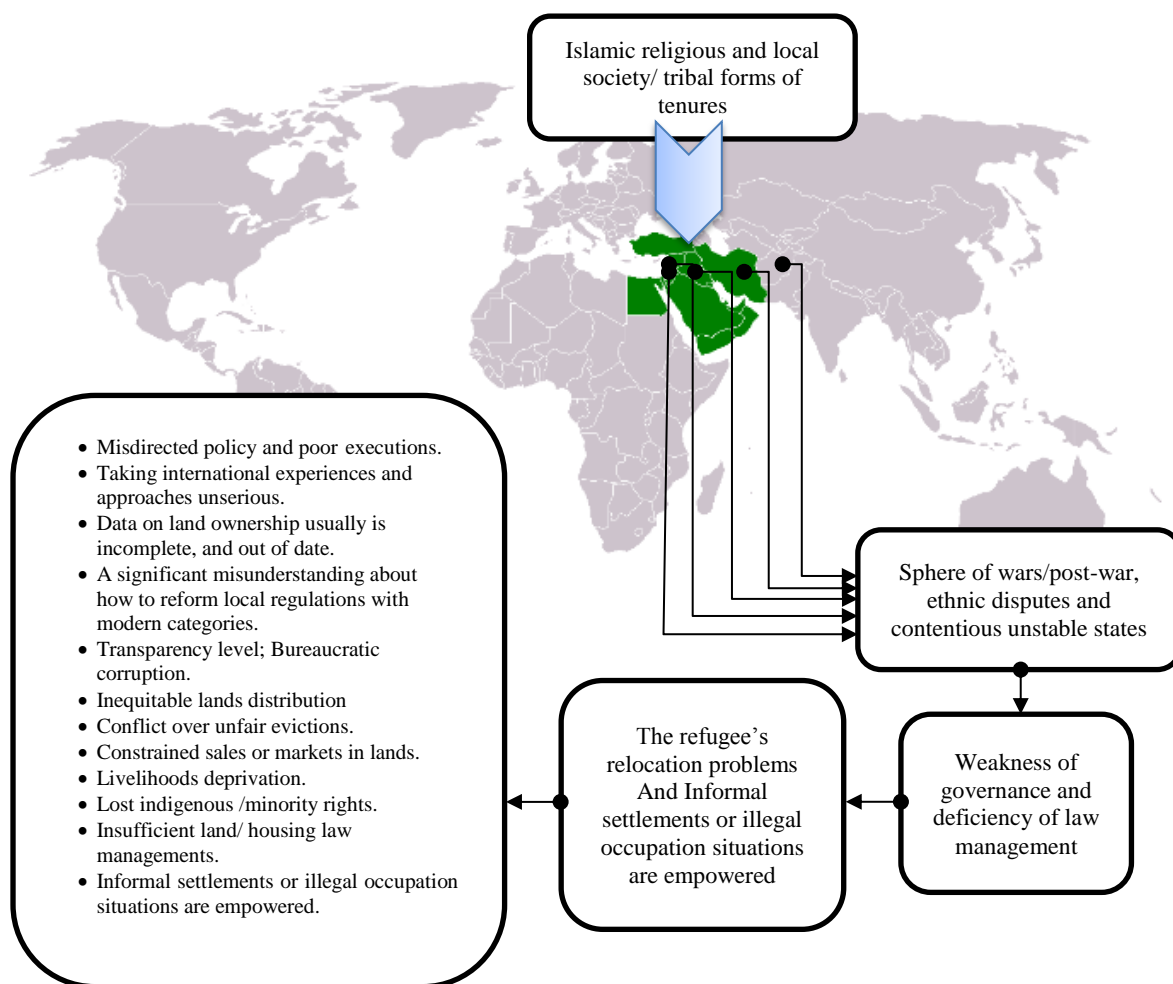
Fig. 2: the essential features of LTA Experiences in the Islamic and Arabic countries (Author).

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