DOES ETHICAL AND PARTICIPATIVE LAND BASED FINANCING SUPPORT BETTER LAND GOVERNANCE

M. Siraj Sait\textsuperscript{1}, Jean Du Plessis\textsuperscript{2}, Nuha Eltinay\textsuperscript{3}, David Mitchell\textsuperscript{4}

\textsuperscript{1}: University of East London, United Kingdom; s.sait@uel.ac.uk; 
\textsuperscript{2}: Urban Legislation, Land and Governance Branch, UN-Habitat, Kenya; 
\textsuperscript{3}: Arab Urban Development Institute, Saudi Arabia; 
\textsuperscript{4}: School of Science, RMIT University, Australia.

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ABSTRACT

The use of land to generate resources for its development and the reverse process of external investments into land development are well known. Not sufficiently explored is how or whether choices of financial arrangements affect individual relationship with land, and land governance. The objective of the paper is to consider the possible correlation between participative/ethical finance models and improved land governance prospects. Ethical finance features of such closer reliance on land (asset based), profit and loss models and value imperatives promoting real or abstract notions that contribute to land governance are studied. The paper interrogates the construction of land financing as a limited question of availability without exploring the possible benefits of participative finance for land governance. The paper explores examples of facilitating alternative, ethical and Islamic finance and outcomes for land governance.

Keywords: land, finance, governance, ethical
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LAND GOVERNANCE AND FINANCE

Land governance is broadly understood to be facilitated by a multi-dimensional framework whereby land, property and natural resources are managed through legal, policy, financial and institutional processes within their social, political and economic context (FAO 2006). Rather than technical or administrative functions aimed at optimising resources or pursuing efficient management, land governance seeks a range of developmental and sustainable outcomes for a range of stakeholders. Managing land involves augmenting access to land, promoting land rights, balancing land uses, and optimising land development (Palmer 2007). Policy and planning interventions are not enough, their sustainability depends on understanding the changing dynamics of land markets, different land investment sources and strategies, investment preferences of private and public land users and developers, public private partnerships, value capturing mechanisms and smart land investment plans. While land governance studies and programmes have significantly improved procedures and protections to improve inclusive and efficient land management techniques, they often fall short of recognising the significance of the financial aspects of land governance. In any case, most do not sufficiently pay attention to the implications of land financing arrangements on sound land governance.

Using land to generate resources and using resources to develop land, sometimes simultaneously, is well known. What is sparse is the understanding of how land users relationship to finance affects their relationship with land. The paper interrogates the modest premise in land financing models that the availability of conventional finance is the primary question without sufficiently exploring the possible benefits of participative finance for land governance. However, this essay will explore how diversity in financial products through and alternative and ethical finance mechanisms possibly affect other relationships in relation to land and land governance itself. This pragmatic approach toward land governance generally renders that all money is legitimate as far as it supports the objective of efficient land development. Yet financing is not always a moral neutral issue and there are anxieties for some relating to source and use of funding. In several alternate finance models such as green finance, responsible finance, collective finance and Islamic finance, the endeavour is to integrate market-based financing principles with non-market ethical principles derived from equitable or sustainable economic principles. Several economists, not just Henry George, have emphasised the relevance of morality in financial
implications in taxation, as well as sources and destination of money. Several revenue generation methods and taxing improvements, such as land value capture, could raise ethical questions, particularly its fairness and regressiveness. Thus, a hypothesis is that ethical benchmarking of financing models could increase engagement and stakes in land governance.

Most land administration aspects such as land tenure and rights (within a continuum of land rights), land markets including sale or lease of public land, land titling, cadastres, land value and taxation, servicing of land or regularisation and upgrading involve budgeting and investment decisions directly (Grover 2012). This acknowledgement has led to inclusion of financial players among stakeholders and the factoring in money equations into land decisions. Yet, correlating land planning with real market considerations prompts policy makers and all land actors to increase their engagement with the functioning of not merely the urban land markets but the volatile land price mechanisms and value capture models, emerging investment behavior and public private partnerships and learn from land market failures (Barr 2008). The privatisation or commodification of land the world over has unraveled the state financing of even institutions such as land registry or land dispute resolution mechanisms. In effect, land governance choices are dictated more by financing capacity than developmental imperatives. This is not disputed, but the land governance experts remain closeted within their comfort zone of land discourse without venturing much into the rapidly transforming fields of land financing as seen by the rest of the world.

The land and financial sectors have long been locked into a symbiotic relationship. Financiers and investors rely on clear property rights, some price stability and certainty during transaction, and estimation of land utilisation to manage risks and fund land development. Policy makers recognise specific groups, such as women, landless groups or renters need financial support with proactive approaches. High interest and tough collaterals for land loans, for example due to scarcity of credit or land, have prompted exclusive credit subsidies that have only temporarily provided relief mostly for a limited number but having a negative effect on credit allocation in the long run. Land professionals have instead demanded finance sector reforms concomitant to land reforms, with emphasis on market transparency, corporate social responsibility and governance to improve access to finance and financial information. Availability of finance was only part of the problem, for example where land regularisation led to spiralling land prices and “aggravating the problem it is supposed to remedy” for informal slum dwellers (Smolka 2003). Urban land managers, funders and residents were all forced to think through land values and estimation of opportunity costs before deciding between policy option of upgrading, land sharing, readjustment or relocation, all of which often
involved with valuation and compensation. Thus, sound land management and resource utilisation, particularly at the municipal level, requires creating a good case for substantial returns for local communities in social as well as monetary terms (Lall 2009).

Pro-market land policies have oriented land governance to prioritise business cases for land development, economically efficient allocation of resources, administrative efficiency and transparency, as well as austerity and fiscal discipline to maximise benefits for investors or owners or to limit public expenditure. De Soto (2000) argued for commodifying land that once property was titled it came alive for attracting financial transactions. Land seen primarily through formal tenure or a financial lens misses the social meaning of land especially for the poor, fails to recognise the political economy of land and its socio-political perspectives contributing to wider empowerment and democratisation. Some of the prompts for global land agenda are admirable, such as reducing land conflicts or confronting land grabbing, increasing agricultural productivity, mitigating environmental change or supporting marginalised groups. Yet, improving access to land, promoting individual property rights or making land administration and markets efficient is a neo-liberal approach based primarily on capitalist accumulation based on trickle down economics approach (Borras 2010). Thus, conventional finance industry globally and the land sector are mutually dependant partners in the common goal of supporting efficient land governance for the twin objectives of managing land and profits with the supplemental goal of supporting land rights and sustainability for all.

Conventional land markets have been struggling to work for all stakeholders not merely due to rapid economic changes but also internal structural defects in the conventional land based financing system. First, in many contexts, land rights are not a tradable form when encased in informal tenures such as customary, faith based, alodial or other lands. For example, conventional finance sputters in nascent customary land markets where collaterals are irregular with the community often owning land and the head allocating customary land. Thus, using a ‘continuum of land rights’ approach helps recognise multiple manifestations of land tenure, *al biet* at a sliding scale of acceptance and access to finance. Second, there are socio-political and economic obstacles that reduce land market participation for disadvantaged sections of society such as the urban poor, minorities, women and the displaced and push the marginalised toward long term rentals or informal status. While financial markets mostly turn away those with wage earnings without substantial deposits or credit facilities, it helps perpetuate and expands the stranglehold of powerful elites over land ownership. Finally, conventional finance is far cry from providing a prefect land market since information on land is often distorted or unavailable to all, corruption and
lack of transparency permeates, and complex and ineffective regulation fails to provide an even playing field. Thus, the objective of land governance projects to deliver simple, affordable, equitable and efficient land transactions and administration services is predicated on the efficient functioning of land markets, for example through the World Bank ‘Doing Business Reports’ at country level.

**ALTERNATE AND ETHICAL FINANCE**

Conventional finance or bank loans based on interest were seen as the mainstay for land financing until at least the global financial crisis of 2008 (Turner 2012). Excessive risks for subprime mortgages brought about by limited information and engagement between the lenders, borrowers and policy-makers caused economic dislocations and impede sustained economic growth, with banks and non-bank financial institutions requiring periodic bailouts. This led to the greater regulation of banking practices (Stiglitz 2003), as well as the growth of ethical and alternative finance. ‘Alternative Finance’ simply refers to broad range of finance products that come from external sources other than the conventional banks, stocks or bond markets. Alternative finance also tends to foster direct connection between fundraisers and funders, often via online platforms. Though there are expanding forms of alternate finance, they include Peer-to-Peer (P2P) Business and Consumer Lending, Equity-Based or Donation-Based or Reward-Based Crowdfunding, Invoice Trading, Community Shares, Pension led Funding and Debt based funding. A description or evaluation of these diverse lending platforms is beyond the scope of this discussion, but this pooling, crowdsourcing or peer to peer lending -with its strong participative -are attractive to real estate and capable of raising large amounts in short time. Their flexibility - for example as a hybrid of P2P and crowdfunding – is drawing investors and borrowers away from traditional banking products. For example, in the United Kingdom, alternate funding has not only grown in size to £700 million in 2015, but also in complexity and diversity, particularly in the real estate market (Zhang 2016).

Alternative, mutual or ‘critical’ finance approaches are markedly more inclusive, participative and responsive to the needs of diverse fundraisers and funders (Gangi and Trotta 2013). Among these, many have a more pronounced focus on ‘ethical’ considerations being at the centre of the transactions. In contrast to the interest rate driven ‘time value of money’ conventional model, ethical investing seeks socially responsible investment that support positive social outcomes and relationships and avoids negative externalities, such as pure speculation or hoarding for land pricing. For example, solidarity finance and green finance invest in development or environmental projects that strive to make a difference in areas of social exclusion or high risk. The dual objectives of ethical finance are fair returns and bringing back social relations back to the center of economic
An increasing number of such socially responsible investments involve third-party agencies evaluating ethical and sustainability impacts. Thus, ethical finance is a contemporary, evolving and expanding economic model that treats money and finance as a means and not the end of a transaction and contributing toward the realisation of identifiable development goals, social outcomes or common good. The significance and sustainability of ethical finance as at least a powerful supplemental financial system is well acknowledged among the economists, though not yet the land professionals.

The literature shows the emergence of new types of finance players, for example Social Finance organisations (SFO), but many banks themselves are moving towards innovative lending operations in financial markets (Baranes 2009). Ethical finance is no longer considered to be a rag tag endeavour and multi-product outlet for morally inspired investors but a significant alternate or parallel industry that is well publicised. It is also well regulated in order to engage with risks, provide transparency and deliver significant financial returns (Buttle 2008). They have already promoted access to credit without discrimination based on wealth, gender, or ethnicity; and demonstrated preference for personal forms of guarantees, transparency and participation, with often a strong identity of community and sharing of risks and guarantees. These are not new ideas, for example they are widely used in microfinance, but the scale and sophistication of alternative finance is staggering.

Evaluation of the performance of myriad ethical finance platforms is beyond the scope of this paper, but there are common principles and values driving this movement. In 2012 the European Federation of Ethical and Alternative Banks (FEBEA) sought to raise awareness and promote education in finance to recognise banking as a tool for community’s common good. The criteria for ethical finance are the origins of money (rejecting dirty’ money being illegal, speculative or highly polluting activities), the destinations of money (promoting activities for social, economic and environmental impacts in disadvantaged areas); the transparency of loan management (non-discrimination and symmetric information between lenders and customers including how money is being used) and ethics in objectives (fair profit and reinvesting where possible in the social objectives). Ethical investing, similar to critical consumption, is a tool aimed at improving the economic system, to generate choice and alternative mechanisms for sustainable development and social justice.

Ethical finance products are not homogeneous in focus, structure or size as their manifestation depends on individual or group initiatives, as well as philosophical, geographical and cultural background. As such there is no single history or narrative of ethical finance. One interesting example is that of Islamic finance, often referred to as ethical or participative finance. Though derived from
same broad religious principles of other Abrahamic religions, it is more modern than medieval economics (Wilson 1997). Serious literature challenging the unethical and interest-based conventional finance in Muslim majority countries began in the 1950s, and by the mid 1970s Islamic banking system began to be set up (Chapra 2008). Today, Islamic finance is outpacing conventional finance in most Muslim countries, according to Khalid Howladar of Moody’s Rating Agency in January 2016. The size of the Islamic Finance Market is estimated to be between USD 1.66 Trillion to USD 2.1 Trillion with expectations of market size to be USD 3.4 Trillion by end of 2018. The Islamic capital markets, banking and insurance sectors and services that include leasing, equity markets, investment funds and microfinance. Islamic finance is actively expanding in the land and real estate arena as Islamic finance as notably the ‘asset-based’ mechanism with innovative products and financial relations (Krammer et al 2015). As part of the financing the Sustainable Development Goals, G20 countries and African countries considered the contribution of Islamic finance in long term-infrastructure funding1. Islamic bonds or sukuk have been a remarkable success in diversifying funding and expanding its base.

Islamic finance lays claim to the ethical finance brand because apart from the contract specifics, the finance must be the Sharia compliant or not contrary to the broad stipulations of Islamic law (Naqvi 1981). Thus, a range of profit-making activities is prohibited because they are exploitative, speculative, hoarding and immoral. Investing in haram or prohibited activities includes gambling, drugs and prostitution or banned foods (see Khan and Mirakhor 1987). Though the concept of 'ethical' under religious dogma is different from secular modern conceptions, there is considerable overlap. More broadly, there are Islamic injunctions banning speculation, waste or hoarding. Thus, under the restriction on speculation (gharar), certain types of derivatives such as foreign exchange forwards and futures are prohibited and instead worked out on the formula of profitability. More than the technical limitations, the ethical spirit of Islamic Halal economy drives decision making, with frequent references to both the historical jurisprudence on objectives of Islamic law (maqasid al sharia) as well as the Sustainable Development Goals (SDGs). Therefore in developing the participative basis of land and finance governance, well-established concepts such as consultations (shura) as well as public interest (maslaha) are frequently invoked.

1 As part of events held around the G20 Summit, the World Bank Group with the Turkish Capital Market Board and Borsa Istanbul organized a conference on “Mobilizing Islamic Finance for Long-Term Investment Financing” which took place on November 18-19, 2015 in Istanbul.
The religious branding of ‘Islamic’ finance, however, is sensitive even within Muslim majority countries, leading to several countries preferring to use ‘ethical’ or ‘participative’ finance. For example, Turkey labels Islamic finance system as participative finance, and so do others including Morocco which launched its Islamic finance as participative finance in 2017. Several countries that had long resisted Islamic banking due to concerns about being seen as appeasing Islamist movements are now pragmatically diversifying its financial market to bring greater liquidity and foreign investors through Islamic finance. This stream is attractive to many Muslims given its cultural basis, but Islamic finance clientele has expanded to include a significant proportion of non-Muslims who are persuaded by its profitability, governance and responsible investing aspects. Islamic finance is global with the top 3 countries being Iran, Saudi Arabia and Malaysia but with expanding investment all over and innovation in world’s leading financial centers, such as London, Dubai, Hong Kong and Luxembourg. Legislation and high level of regulation and standardisation has been achieved. Though there are several contrasts between conventional and Islamic finance particularly the use of interest (riba), they share common structures in what are mostly ‘dual’ economies. In fact, in most jurisdictions conventional banks are active providers of ‘Islamic finance’ windows, or through a fully segregated entity, such as a subsidiary. This has prompted questions over whether Islamic finance is ‘alternative’ finance or a variation of the same (Causse 2012). A minority of Muslim scholars do not consider the interest-bearing instruments as prohibited, mainly on the grounds of necessity.

The features distinguishing Islamic finance from conventional finance are the prohibition on interest or usury (riba), ban on uncertainty (gharar), requirement of asset backing and the emphasis of risk and profit sharing aimed at providing a fairer and more resilient financial system. Interest is prohibited, as exploitative money cannot make money but has to be linked to a real economic activity. Islamic banks work through noninterest-bearing current accounts (benevolent loans or safe-keeping contracts), as well as profit-sharing investment accounts where investors and borrowers agree on a return amount through estimation of the profitability of the assets or the pool of assets financed by these accounts. Thus a bank does not lend provides in profit-and-loss-sharing financing, sales, lease and other fee-based services. The Islamic financial system is characterised by a two-tier banking system with 100% reserve deposit system and risk-sharing equity or investment banking akin to a mutual fund, and the prohibition of interest and interest-based transactions.

Under Sharia principles, each financial transaction must be tied to a “tangible, identifiable underlying asset”, which is often land. Thus, most Islamic finance transactions are land based financing, though there are innovations in this requirement owing to limited unencumbered land. The requirement of asset-
base serves as a self-protecting mechanism that limits speculative trading that have led to risky credit extensions and over-exposure jeopardising the investors. Islamic finance products provide contractual certainty and transparency through clearer roles and outcomes with the support of dispute resolution mechanisms. All these aspects serve to address concerns about the irresponsive or speculative conventional financial system and pitfalls for land governance.

Islamic finance works well with private property rights as well as collective land rights. Thus, Islamic finance is a driving force between much of the rapid urbanisation and private public partnerships in land developments in parts of Asia and the gulf region. Moreover, it is easily adaptable to more traditional land tenure principles and practices. Islamic land tenure is highly developed with a web of tenures including private (milk), state (miri), endowments (waqf) and empty land (mewat) that can be 'enlivened’ by using it, with recognition of sharecropping and pre-emption (shufa) (Sait and Lim 2006). It outlines extensive rights not only for owners but users, with productive use often overturning absentee ownership. Choudhury writes that in Islamic land financing arrangements non-capital actors are recognised as partners because ‘property rights and hence ownership, entitlement and the resulting empowerment, have always been given higher status in Islam than wage payment, despite the fact that a concept of just wages always existed’ (Choudhury 2001; see also Taleqani 1983). The ethical and participative ethos in Islamic finance is reinforced by the principles of Islamic land tenure, which still resonate in contemporary land practices in the Muslim world.

Islamic finance is not merely an example of faith-based communities exercising their traditional choices but the phenomenon of faith neutral land investors choosing competitive financial products, partly driven by their ethical appeal. Corporate actors, local governments or individuals look for further revenue streams which lead to increased opportunities to engage with land, however these products often come with caveats some enforceable. The extent to which these alternate financial products, for example Islamic bonds (sukuk) can or will improve land governance is addressed as well as the varying experience with other Islamic financial contracts. The central question is whether the choices made in financial products also affect attitudes toward land and stake or responsibility in land, not just fully owned land but more broadly in access to land.

**ISLAMIC FINANCE AS PARTICIPATIVE LAND FINANCING**

The labelling of Islamic finance as Participative finance is owed to its principles and structures. There are several types of Islamic finance products based on contracts relating to lease (ijara), agency (wakala), sales such as cost plus
(murabaha), future contract (salam), construction financing (istasna), cultivation agreement (muzara) among others. However, this paper focuses on two popular financing mechanisms particularly founded on partnership arrangements, mudaraba and musharaka. Far from merely being partnership or joint venture arrangements, they stipulate profit and loss terms, ethical principles, management roles and outcomes. Under a musharaka contract the parties work out a method of equity financing and sharing profits and losses in a joint business in proportion to their respective capital contributions. In a mudaraba agreement, the investor (rab al mal) and the project manager or entrepreneur (mudarib) agree to profits in a predetermined ratio but losses are borne by the provider of capital. This financing mode is suitable for working capital financing: fixed asset purchased or project financing where ordinarily one partner provides capital and the other labour.

These instruments potentially expand both the nature of participants and character of partnership. In contrast to a wage contract based on fixed payment in relation to land development, the Islamic ‘joint venture’ type model coverts the labour into partnership in land and share of profits, as agreed. There is flexibility, however, to combine wage payments and profit shares for land developers, though protected from losses that are attributed to the capital provider. Thus, recognition as partners creates entitlement for labour thereby introducing distributive equity as well as access to land. Furthermore, by expanding the range of partners – capital provider, labour, borrower and other interests – it sets up a co-operative land management model which facilitates stake-holding and contributes to improving land governance. The profit and loss arrangement also extinguishes the concept of a disengaged silent partner in the form of a single dimension capitalist, as the investor rather than the labour absorbs the loss. Thus the passive bond holding is transformed into shareholding and stakeholding through specified capital-labour participatory relations geared toward the successful outcomes of the project.

An Islamic finance instrument is designed to achieve two simultaneous outcomes. One, it must generate the projected financial returns or benefits thereby serving to meet the contractual obligations (Aggarwal 2000). Two, it must satisfy the ethical rules and developmental outcomes mandated through the Sharia framework. In order to do so, the instrument provides for extensive partnership and co-management of the asset. Thus, in the context of land development, it is not merely about ownership but management and use by a range of direct and indirect partners. The requirement that the transaction be based or backed by an asset, often land, leads to a participatory transactions in the real economy based on continual information on valuation of real assets and facilitates real economic relations through this participatory instrument. All parties are therefore involved in increasing the productivity of capital as well as
the development objectives. Such inclusive models promote maximum productivity of capital and transparent risk diversification, and thus build investor confidence. It contributes to good land governance through co-ordinated interrelationships among agents, systems and variables in land transactions.

CONCLUSIONS

As with all ethical and participative products, there are likely gaps between aspiration and reality. The rules of decision-making and management of land have to be negotiated into the participatory contracts. The opportunity exists to invoke the morals and jurisprudence inspired by the broader objectives of Islamic law (maqasid al sharia). Fair distribution of inputs, risk and profits relate to the priorities of justice, fairness and certainty, with the negotiation of contracts intended to achieve consensus out of competing interests. Yet, the contract need to not merely record an understanding but set out clear rules and their operational features. From the perspective of land governance, the ethical and participative nature of Islamic finance represents potentially greater inputs and engagement into the processes through increased number of partners as well as increased social responsibility toward better land governance. A study of Malaysia, Saudi Arabia, Iran and the United Kingdom where Islamic finance has been evidence would point to the extent of the correlation between Islamic finance as a choice of financial stream and augmented land governance. However, there is limited study so far.

A range of tools relating to financing is at an advanced stage of development. These include Land based financing (LBF), Costing And Financing Of Land Administration Services (COFLAS), Participatory and Inclusive Land Readjustment (PILaR), Voluntary Guidelines (VGGT), Responsible Land Administration (RLA) and Land Governance Assessment Framework (LGAF). The effectiveness of these mechanisms is predicated on not only budget allocations for their implementation but governance as participative rights through access to alternative finance. For example, PILaR embraces financial institutions as well as public and private sector developers or community actors who agree to operate under appropriate governance, legislative and regulatory framework where most if not all parties seek to benefit. Yet, the preliminary assumption is that these tools weighted heaving on land issues, do not consider whether choice or availability of a range of financial arrangements relating to land is itself a component of good land governance or whether these choices or diverse financial models impact the various dimensions of land governance. Though further research is required, none of these tools explicitly recognise alternative finance or ethical dimensions of finance.
While improving land governance implies rules, processes and structures for accessing and managing land there is often insufficient reference to processes and practices of funding. While budget management is implicit in governance discourse, this is not problematised unless transparency or misuse of funds is prompted. Land based financing (LBF) as an instrument for mobilising additional financial resources for development or the tools of Costing And Financing Of Land Administration Services (COFLAS) for prioritizing service delivery options on a cost basis are at a relatively advanced stage of development. However, the strategies of revenue generation relating to land and the processes of land rights and governance are rarely viewed in tandem.

In conventional finance the relationship of stakeholders to land is through contracted interest rates, while in ethical finance systems there is a more intensive profit and risk sharing partnerships where land rights and financial responsibilities intersect for increased management. Moreover, ethical finance does not work for land but with land, as a closer entanglement with land emerges with real transactions through asset based or asset back real transactions. In conventional land based financing, mostly debt based, a range of products and practices focus primarily on interest paying loans. Thus, the land governance frameworks are often constrained by ambivalent or restricting financial instruments. Looking beyond conventional finance for land administration will not only diversify the much needed investor base but also qualitatively improve stakeholding through participative land governance. This paper finds that there is limited literature and insufficient casestudies practice relating to financial aspects of improving land governance. There is a greater need to interrogate the relationship between land and finance recognising the impressive growth and potential of ethical finance and to consider its potential impact on land governance.

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