Islamic Land Law in Afghanistan: Innovative Land Tools & Strategies

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Approaching Islamic Afghanistan

- Does Islamic law matter, can it offer tools?
- Ideological/practical issues - complex, inscrutable?
- 2003: OPERATIONAL - Afghanistan Study on Land
- 2004-5: CONCEPTUAL - Research on Islamic Land
- 2005: STRATEGIC - part of UN-HABITAT campaigns
The Kabul Workshop Dilemma

June 2004 – Kabul Workshop on Urban Law Management

Participation, Consultation… but success ???

No go areas? Religious land (waqf), women etc.

Alternative Debate on customary, Islamic…

But it be demystified? costs? risks? Innovative, pro-poor?
2003 Afghan Land Study

Preliminary Study of Land Tenure Related Issues in Urban Afghanistan (March 2003) [www.unhabitat.org]

Researchers: Nouchine d’Hellencourt, Shuhrat Rajabov, Prof. Nasrollah Stanikzai and Abdul Salam, UN-HABITAT

Methodology: thru in situ customary processes, ADR etc.

Findings: Shar’ia pervasive in tenures, Constitution, civil law, custom (urf), inheritance, endowments (waqf)

Possibilities: Hanafi school, Ejtohad (Islamic reasoning) recommendation.
Islamic Land Law Research

Research: UNHABITAT Siraj Sait & Hilary Lim, University of East London- 8 papers, database - www.unhabitat.org

Findings: Islam contested, range of sources, strengths

Reasoning (ijtihad): pluralism, evolving/continuum

Role: intersects customary, informal, State laws

Strategy: contemporary uses, ‘authenticated’ land tools
Negotiating Islamic Land Afghanistan

2003 Afghan Study Issues

- Laws & Dispute Resolution - Crisis in formal system –
- *Waqf* (endowments) unaccounted - Min. of Pilgrimage
- Women’s rights, particularly inheritance

Working with Islamic law methodologies

- Unlocking land for squatters through the *waqf* model
- Integrated property rights for Muslim women
Islamic Land Tenure concepts

Islamic/Ottoman land tenure concepts still persist
- Milk (private), Miri (State), Metruke (common land)
- Waqf (endowments)- Key Islamic institution, revival
- Mewat (dead land) claimed by one who ‘enlivens’
- Musha collective, customary land types
Waqf model for land regularisation

State, waqf and Mewat lands can be regularised for users.

1. State retains ownership of property, creates waqf
2. “Modern” Waqf provides interface and management
3. Squatters or settlers regularised, ownership later?

Authenticated, influential and accommodative arrangement
Women get half of male inheritance, inferior status?

Since fixed by Qur’an, no ijtihad (reasoning)?

Compensatory argument integrated scheme see also other property flows gift, endowment, dower, maintenance etc.

Enforcement: using Islam to trump patriarchal/customary resistance

Facilitate reasoning, policy reform and institutions.