

Islamic Land Law in Afghanistan: Innovative Land Tools & Strategies

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Approaching Islamic Afghanistan

- ۳ Does Islamic law matter, can it offer tools?
- ۳ Ideological/practical issues- complex, inscrutable?
- ۳ 2003: OPERATIONAL- Afghanistan Study on Land
- ۳ 2004-5: CONCEPTUAL- Research on Islamic Land
- ۳ 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

- ت *Preliminary Study of Land Tenure Related Issues in Urban Afghanistan* (March 2003) www.unhabitat.org
- ت Researchers: Nouchine d'Hellencourt, Shuhrat Rajabov, Prof. Nasrollah Stanikzai and Abdul Salam, UN-HABITAT
- ت Methodology: thru in situ customary processes, ADR etc.
- ت Findings: *Shar'ia* pervasive in tenures, Constitution, civil law, custom (*urf*), inheritance, endowments (*waqf*)
- ت 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

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

Working with Islamic law methodologies

- ث Unlocking land for squatters through the *waqf* model
- ث Integrated property rights for Muslim women



Islamic Land Tenure concepts

- گ Islamic/Ottoman land tenure concepts still persist
- گ *Milk* (private), *Miri* (State), *Metruke* (common land)
- گ *Waqf* (endowments)- Key Islamic institution, revival
- گ *Mewat* (dead land) claimed by one who 'enlivens'
- گ *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



Compensatory Property Scheme for Muslim Women

- ي Women get half of male inheritance, inferior status?
- ي Since fixed by *Qur'an*, no *ijtihad* (reasoning)?
- ي Compensatory argument integrated scheme see also other property flows gift, endowment, dower, maintenance etc.
- ي Enforcement: using Islam to trump patriarchal/customary resistance
- ي Facilitate reasoning, policy reform and institutions.

