

Outline of presentation on:

Land Registry: Free the spirits and the Assets of the Poor –
through participatory, accurate registries.

Applying lessons learned in Latin America in Africa

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Land is sacred, Water is vital

The presentation aims to demonstrate that the establishment of land registries (rural and/ or urban), if properly done, can achieve true miracles:

- (1) give people hitherto known only as an amorphous problem - “the poor” - an identity, a purpose and a new life;
- (2) release billions of dollars of assets' worth for productive use in the formal economy, and
- (3) empower creative grassroots economic initiatives which have the potential to grow from the local into the national economy.

This is achieved by freeing the rights holder from having to physically defend his rights (by his presence) himself. If his right is protected through a system (public good), he may concentrate his energy elsewhere.

The proposal is to achieve this through :

- (1) identification of the use and access rights to land and water resources as known/agreed upon by the right holders;
- (2) fixation of such rights on a map which originates in the drawing of the villagers / urban dwellers themselves and is perfected through itinerant feed-back processes until the final product is incorporated into a (satellite based, GIS anchored) multi-layered country map;
- (3) respect during such processes previously agreed standards, notably the principle of transparency;
- (4) transformation of such geographically defined access and use rights into a register, comprehensible to the right holders, corresponding to the formal legal system in force (or reformed) of the country; and
- (5) establishment of an institutional feed-back link between the registry and the right-holders (via the internet).

That this concept is operational will be illustrated by:

- 1) The demonstration of experience in Columbia – the registering of land in the mountainous Pacific coast Afro-Columbia settled areas (Bettina Ng'weno);
- 2) The demonstration of experience in Lima, Peru, with the registration of urban properties of poor squatters (Helen Panaritis);
- 3) The proposition of how to run registers professionally, demonstrating current pitfalls and shortcomings in many places (Cecilia Sciac); and
- 4) A summary outline of a possible project for establishing rural registries in Niger (hww).

Goal / Purpose:

* Accurate and reliable registration of access and use rights to land (and water); use of indigenous description of rights, including common property resource uses; open internet access.

Problem to address:

* “Mort d’homme” - people die fighting about access to land and water (farmers and herders) - while at the same time neither is used efficiently. Access to land & water may well be the real reason for the voiced priority by people when asking for "access to justice". It may well be the hidden reason behind claims for independence, autonomy, confederation (Niger).

* Confusion and insecurity about rights; lack of certainty.

* Balance of the interests of herders, farmers and urbanites - allow for a variety of user and property rights. Reconciliation of variable use rights - shifting in time, areas and beneficiaries - with permanent on-site use by riparian's.

Current attempts to solve the problem (in Niger) and why they fail:

A. Institutions:

Three uncoordinated simultaneous proceedings – provided for by the current laws:

(1) traditional, customary arbitration by traditional chiefs (administrative appointees); (2) *Commission Foncières (CoFos)* recently set up (and donor financed) under the Rural Code, delivering so-called “*titres fonciers*”, and the courts, which are authorized to hear land conflict cases (and are swamped by them). These three choices allow for "forum shopping" and none therefore settles the issue definitely.

B. Lack of crucial tool:

Absence of formal rural land registers. Urban registers not used. Point of excellence in Niamey – but “abandoned”. Despite application of the “Torres” system, where registration of a right primes the true, but unregistered right of ownership, for example.

C. Paradox:

The situation persists in niger, despite “best practice legislation” on the books for the transformation of traditional rights into modern rights (Decree "Colomba" of 1932) allowing for the recordation of, inter alia, common property rights, such as corridors for “transhumance”, the seasonal herder’s movements – but remains ignored.

Proposed solution (rural areas):

(1) Establishment of the "Mental Map of the Locals" (including common property resource access rights) through an itinerant process of recording the knowledge of who has which rights in ever more technically perfected electronic maps with constant correction and review by the villagers, the right holders, and their neighbors (potential opponetns);

(2) Digitalization and refinement of this map via technologies like the "Saskatchevan" , the "ELISA" or other processes (giving the areas definite borders the most cost efficient way, idealy using all already existing maps);

(3) Transition of the "map" into a formal register in compliance with the laws of the territory concerned via the procedures outlined in the "Decree Colomba" (AOF 1932, which may need some updating);

(4) Control against falsification & fraud through feedback into "the village" via the internet (fool-proof transmission required).

What’s different in this approach:

* starting the register with real life information of the right holders through their inclusion and initiative; include the terminology of the indigenous user rights (simultaneously establishing a table relating the rights to *French* notions, and language (Niger))

* constant involvement (itinerant) of rights’ holders assuring accuracy, ownership and adherence, translating into interest and participation of the parties and will lead, gradually, to total coverage of the country. People would be able to relate.

* Integration of traditional and modern processes and institutions assures administration, efficiency and manageability.

* Transparency of registry through feed-back in comprehensible form

and content guarantees control by the right holders (avoidance of fraud and corruption by registrar).

* Absolute accuracy of typographic situation of places, terrain, maps. Multiple uses encouraged.

* Availability to the world at large – searchable by various methods / keywords (to be defined).

Issues / problems

Is this overkill ? a Rolls Royce on a dirt road ?

There is dire need for accurate, working, sustainable registers: might as well do it right.

Costs affordable ?

Currently there is a waste of resources through parallel but not coordinated project financing of land rights identification attempts, mapping for specific project purposes, never available to “all”, soon forgotten.

Community involvement possible, training required ?

Depending upon sensitivity first contact, usefulness and benefits immediately transpire to villagers and right holders (example Maghama, Mauritania, and Burkina); training needed relatively simple, and local trainers of trainers could be easily formed.

Institutional Capacity – available ?

This is a problem.

The three institutions currently involved (in Niger) in mediating / deciding land rights conflicts would need to be brought into a coherent structure, where an increasing hierarchy would be established, and a return “down” excluded.

“Normal” top of the hierarchy should be the tribunal.

All donors would have to subscribe to the concept to avoid countervailing influences through project financing.

Technical Capacity ?

This is also a valid issue.

There are three experts in the Niamey urban register who understand what a register is. They could act as trainers/catalysts.

The first question to be solved would be: who are to be the registrars ? Where is the registry to be placed ? The tribunals of first instance (clerks) would be a choice.

Internet availability is an issue – but it should be solved over time (WB & Australian financing, donors projects; community common access to internet hosts).

The establishment of a table of local use rights and their relation to “Roman Law type ownership rights” as enacted in the *French* inspired formal law is an issue (Niger). Possibly some reform of the system of legal rights might be required. Harmonization of law and registry – and possibly abandon of the Torres system might be an issue.

Process reliable ?

This is a crucial issue.

Only open and transparent fact gathering at the very beginning assures the accuracy and reliability of and adherence to the system. The proposal aims at securing such process through (1) the “Map in the Villager’s head” approach (“Lazarev method”); (2) respect of the detailed and excellent procedures of the Decree “Colomba”; (3) awareness that the overall process from first contact to actual registration should take at least twelve months.

This is the reason why the current systems(s) in Niger do not work – (parties not long enough on the ground)

Actual implementation ?

Generic problem.

Success of the concept depends on country wide implementation and permanent maintenance.

Once set up, the system represents a public good, a cornerstone for all other development initiatives and projects, a planning tool for government action, decentralization, environmental policies, zoning enterprises et alia. It should be a welcome setting for all donors, saving costs.

These multiple uses and interests, notably those of the right holders, should be a strong incentive for professional upkeep

LOGISTICS of the FORUM Presentation – proposed-

First:

Presentation of speakers, and succinct Goal/Purpose and aspired Results (**H-WW.**)

Second:

The Colombia experience (focusing on the importance of convincing, exchange, local direct and active participation - particularly in a initially hostile environment) (**B.N.**)

Third:

The Peruvian experience (focusing on the need to dare to challenge established systems, institutions, including laws on the books but do it together with the beneficiaries, understanding and using their own, “working” institutions and procedures) **(H.P.)**

Fourth:

The touchstone of reliable and permanent registers: technical requirements, professional competence, understanding, support, and notably control by right-holders, common dysfunctions currently happening in various parts of the world. **(C.S.)**

Fifth:

Outline how this might be incorporated into a project design (Niger) **(H-WW.)**

My understanding of :

Bettina Ng’WENO contribution

Establishing rural and urban property rights at the Pacific coast of Columbia

Problem: strife and assault on the Pacific coast among and against the African community over land, access and use rights. Insecurity and violence.

An accepted, credible and maintained registry system would bring peace, free economic resources, protect the environment and foster investment.

How to get there: explanation, communication, divestment of management and initiative to the communities to engage beneficiaries and disarm opponents by persuading them of their benefits also.

Changes in processes, institutions and laws required: - but convincing to participate key to success. Transition of traditional customary understanding of rights into so-called modern rights.

Result: win - win outcome

Helen PANARITIS contribution:

Establishing Urban Property Rights for Urban Poor in Peru

De Soto's initiative in the end 80's in Peru: transfer hidden traditional assets of the urban poor (squatter positions) into valid property rights, recognized under modern law.

Impediments: established process to record real estate cumbersome; expensive; registers unreliable: ownership situations complex ;

Changes required and instituted: set-up of entirely new registration law & process; direct involvement and interest by beneficiaries (bypassing the old system). What was done ? Why did it work ?

Advantages: security for asset; bankability; participation in the economy (vitalization of billions \$); improve life for the beneficiaries dramatically: be recognized, get health, get schooling – become a person.

Win – win result

Cecilia SIAC contribution:

Importance of registries : key ingredient, cornerstone for modern asset recognition and essential tool to free said assets for trade, de-materialization, basis for derivatives and entry door into national and international markets.

Same basic principles for establishing and administering a register are valid for all legal systems and all types of registries – mining, land, commercial and also civil- and share-holders' registries.

Differences in legal basics of recognition of land tenure (civil-, common-law, Torres-system) can only become functional if records work.

Reality overview: registries do not function in most developing countries and those existing are liable to fraud and corruption. Practical damage to the interests of the parties and the economy; risk of disregard of the law in general; threat to stability..

Common standards to be respected for the system to work:

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statutes on the book need to reflect the realities of the (good) registry system;

transparency: the right-holders understand and can relate to the entry;

accessibility: control through the beneficiary.

end/hww