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NOTE ON: THE LAND TENURE SYSTEM IN THE NIGER CUSTOMARY RIGHTS PUBLIC AND PRIVATE DOMAIN

(Presented by the Government of the Republic of the Niger)

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1. INTRODUCTION

At the Second United Nations Regional Cartographic Conference for Africa, held at Tunis in September 1966, the Niger, in association with Madagascar, presented a resolution recommending that the ECA organize a seminar on cadastre. It was hoped that such a seminar would enable the Niger to become acquainted with and compare the latest methods used by certain African countries and possibly to benefit from their experience in establishing a cadastre in the Niger.

In effect, in spite of its official title, the "Service Topographique et du Cadastre", is not a true cadastre, but more precisely a land registry.

2. BACKGROUND

In the French-speaking States of West Africa, land is subject either to the customary system, or to private ownership.

Prior to the promulgation of the decrees relating to land registration, private ownership (as understood under the civil code) did not exist; all that mattered was the use of the land surface, since it gave the occupant a right recognized by custom, and that was sufficient.

Land was worked by family units, and was "owned" by the village; it was difficult to conceive of appropriating land that had been acquired under this customary system.

A magistrate of the time emphasized that: "from the African point of view, the land belongs to no one because it belongs to itself, it is a force (like air, water, or fire) which manifests itself in the production of crops. Man is merely usufructuary".

Consequently, contemporary contracts made implicit references to the regulations of the Civil Code, article 2182 of which stipulates: "the seller passes on to the buyer only that ownership and those rights which he himself exercised over the thing sold".

Consequently, since no one in West Africa enjoyed the right of ownership over the land, how could these rights be passed on from one individual to another?.

It was realized that rather than try to find a non-existent owner, it would be better to create the right of ownership by conferring it on those who already exercised unquestionable rights over the land.

The purpose, and often the result, of the legislation which has been gradually introduced over the last fifty years has been to replace a system of unwritten customary rights which varied from region to region with a relatively simple system of land ownership based on written and published texts, familiar to all and applicable to the territory as a whole.

Land registration procures a title together with a plan. Thus it is possible to place ownership on a solid legal footing and to have a means of identifying precisely the property in question.

Africans then began to realise that the land can be subject to ownership and that therefore they could own not only the harvests produced by the land, but the land itself.

This development, although a natural one, is, particularly in the Niger, still in its infancy, and legislators have been concerned with promoting a harmonious and ordered transition from customary land tenure to the establishment of a truly African land ownership system - a significant factor in a country's economic and social development.

3. DEVELOPMENT

3.1. Legislation

- Decree of 1 April 1906 - relating to public and private land authorities
- Decree of 8 October 1925 - instituting a method of establishing handed property rights according to custom
- Decree of 29 September 1928 - containing regulations governing public domain
- Decree of 25 November 1930 - containing regulations governing expropriation for public purposes
- Decree of 26 July 1932 - reorganizing the private land ownership system
- Decree of 15 November 1935 - containing regulations governing private domain
- Decree of 18 June 1946 - establishing the conditions for drafting and approval of town-planning projects
- Decrees of 20 May 1955 and 10 July 1956 relating to the reorganization of private and public lands
- In Niger ordinances 59/113, 59/114, 59/115 of 11 July 1959 - containing regulations governing private landed property and law 61-30 of 19 July 1961 establishing the procedure for confirming or expropriating customary property rights.

3.2. Titles

Title no.1 established 23 December 1907

Title no.2 established end 1938

Title no.2040 established end 1957

(2040 titles in 50 years)

Title no.2328 established end 1958

Title no.5891 established end October 1970

(3563 titles in 12 years - average of 300 titles per annum)

4. CUSTOMARY RIGHTS

Origin of land ownership

In the Niger, only chattels may be subject to private or collective ownership.

Land, which is an immovable asset, is to a certain extent, family property which is held by virtue of hereditary, traditional or collective rights, but without title.

Referring to the Djerma custom, President Boubou Hama wrote: "the origin of land ownership can be traced to the founding ancestor, the individual who first cleared the ground". This conception of work gives rights to the man who was the first to work the virgin land.

The first customary rights

right to make a fire
right to cut

right to farm
right of revenue

The nature of customary rights

Customary landed property rights are not based on any title; they constitute part of the family inheritance as established by a common ancestor.

The head of the family cannot dispose of this land either for payment or free of charge, he may only administer it. If the land is abandoned for 10 years, it is considered vacant and ownership lapses.

Consolidation of the right to farm

With regard to customary rights, the Government of the Niger has attacked the problems of the right to revenue and the abuses of this right, with a view to strengthening the right to farm.

- Law 60-29 of 27 May 1960 prohibiting tithes and "achoura!"
- Law 62-07 of 27 March 1962 abolishing privileges acquired over public lands.
- Decree 62-128 of 20 May 1962 establishing land commissions whose task is to enlighten heads of districts.

Confirmation and expropriation of customary rights

Law 61-30 of 19 July 1961 established the procedure for confirming and expropriating customary landed property rights.

Confirmation

Customary rights are established by public legal proceedings, following which a title deed is issued,

a collective appropriation is made by the Community land officer

an individual appropriation is dependent on development of rural land over a consecutive ten-year period.

The area allocated = area under cultivation + fallow land from previous years.

Expropriation for public purposes

Customary rights may be expropriated after a public inquiry has been held. If no right is established, the land may be occupied immediately and registered in the name of the State. If the inquiry establishes the existence of customary rights, they may be expropriated in accordance with the procedure of expropriation for public purposes.

A general inventory of customary property throughout the country is impossible, particularly since such property has still to be defined.

In many cases, they represent a major obstacle to the full efficiency of agricultural operations and to economic development in general.

In this respect, the situation can only become worse with time, with claims to customary rights becoming more bitter as population density and land values increase.

5. PUBLIC DOMAIN

Definition

Public domain includes all things which, by their nature or their intended purpose, are for public use and consequently are not subject to private ownership.

Division

Public domain may be national or communal, and these two types may in turn be sub-divided into natural public domain: water courses (including 25 metres from high-water mark) springs, lakes, air space etc., and artificial public domain: harbours, airports, highways, railways, canals, water channels, power and telephone lines, etc.

Extent

The public domain not only includes the surface of a property, but extends above and below (overhead lines, underground pipes). Demarcation is governed by strict regulations laid down in decrees.

Character

The public domain is: inalienable, inalienable and not distrainable.

Texts

The public domain is governed by: decree of 29 September 1928, and general decree no.28-95 of 24 November 1928.

6. PRIVATE DOMAIN

The responsibility for administering private domain is delegated by the President of the Republic to the Ministry of Finance (Department of Domains).

Prior to 1955, in implementation of the landed property decree of 26 July 1932, lands which were vacant or those without owners belonged to the State, as did lands which were unexploited or were left unoccupied for more than ten years.

Since the decree of 20 May 1955, no individual or community can be obliged to relinquish customary property rights except for public purposes and on condition of fair compensation.

The regulations governing public and private property in the Niger include:

- Investigation and classification of customary property rights on behalf of the holder;
- The confirmation of the private property right through the process of registration, which consists of making a topographical definition of a property in the land register.

Registration is optional, but irrevocable.

- In practice in the Niger, the registration procedure is always conducted in the name of the State (even if the procedure is initiated by other holders) law 61-30 of 19 July 1961 notwithstanding.

The purpose of registration is to reveal and define customary or other rights, to permit settlement of possible lawsuits either in or out of court, to define and demarcate the boundaries of the land in question. The property plan is an important part of the title, it bears the nomenclature of each boundary marker, the distances between markers, their numerical co-ordinates and the exact surface area of the parcel.

Registration becomes complete with the issuing of the title to the State itself, and transfer to the name of the applicant is carried out only when the conditions of development are fulfilled.

This method enables the authorities to initiate the procedure which is undertaken on the civil, penal and financial responsibility of the land registrar.

Once the legal phase is completed, each title is allocated a number in chronological order upon being entered in the land register.

A title may be sub-divided or combined with others to form a new title. In this case, the procedure is simplified, the customary rights having been cancelled upon registration.

Upon registration of the new title, the decrease in surface area is noted on the original title and the property plans are updated.

A title is conclusive, unquestionable and demurrable to third parties.

Any attempt to claim a real right not revealed during the registration procedure and calling into question the right of ownership over a registered property is inadmissible.

Conversely, individual property rights may, after being established, be encumbered with new rights (mortgage) or alienated whole or in part (sale or rental) to any third parties.

Regulations governing private domain

The regulations governing private domain in the Niger are laid down by ordinance 59-113 of 11 July 1959 which fixes the conditions of exploitation, leasing and alienation of land concessions.

7. TECHNICAL IMPLEMENTATION

7.1. Basic framework

For any rural or urban survey of an area greater than 200 hectares, the topography service requires a basic framework consisting of a local independent but oriented triangulation.

For areas of less than 200 hectares a polygonation is carried out.

In all cases, a trigonometric levelling of all the first order and sometimes secondary traverse.

The whole of this basic framework is always sufficiently homogeneous and accurate to be used for all future topographical operations.

7.2. Schedule of condition

A schedule of condition on a scale of 1/2000 will show up all planimetric and altimetric details, together with contour lines at intervals of 1 metre and, where necessary, with intermediate contours every 50 cm.

These dimensioned plans, which can be made either directly in the field, or from aerial photographs, serve as the basis for all civil engineering surveys (sanitation, utilities and services, town-planning, etc.). They will subsequently be reduced to scales of 1/5,000 or 1/10,000.

7.3. Development plan

On this basis of this schedule of condition, the development planners draw up a general plan, showing the main highways and access roads, together with the different types of area to be developed (commercial, residential, industrial, traditional housing, etc.).

This master plan is submitted for consideration by the National Town-Planning Commission and approved by an order of the Minister of Public Works and Town-Planning.

7.4. Subdivision plan

Each area is then surveyed in detail in the form of a subdivision plan.

This plan is examined from the technical and administrative points of view before being approved by order of the Minister of Finance.

A number of specially selected plots are set aside by the authorities for buildings of a social, cultural or religious nature.

The topographical department then calculates the co-ordinates of all plot boundaries and demarcates them using the prescribed boundary markers.

7.5. Registration of subdivisions

All plots making up the subdivision of each area are registered in the name of the State according to normal procedure as laid down in the relevant regulations.

In this way, the private domain of an entire town can be registered and the public domain although not registered, can be clearly defined both on the plan and on the land itself.

Each block consequently constitutes a "parent" title which will be subsequently broken up into lots or parcels before these are allocated to individuals.

7.6. Land grants

It is only after approval and registration of the subdivision plans that the authorities (prefect, sub-prefect, mayor) may issue an urban permit to reside in the traditional housing areas, or that the department of domains may issue a provisional grant order in the other areas.

Both are governed by resolatory conditions of development and it is only after development has been established, that a permanent title may be issued.

Any occupant of a plot who is not eligible for one of the titles listed above must relinquish the said plot at the first demand by the administrative authority.

7.6.1. Urban grants

Any provisional concession gives entitlement, during the provisional stage, to an annual rental in proportion to the estimated price of permanent alienation.

The permanent title holder is obliged, under penalty of forfeiture, to pay within thirty days of the notification of the order:

- registration and stamp duty
- land registration fees
- topographical fees
- the price of the land.

7.6.2. Suburban grants

In un-subdivided centres and suburban areas, permission to occupy may be granted on an individual, precarious and revocable basis for a one year period renewable by tacit agreement.

7.6.3. Rural grants

An applicant for a provisional grant must first of all remove all customary rights in the eyes of the authorities, or, if necessary, through the courts.

He may then request registration of the land in the name of the State with the department of domains by depositing with the department all necessary documents which must be drawn up according to the procedure laid down by ordinance 59/113.

The land will be registered in the name of the State and will only be finally turned over to the applicant when it has been established that the land has been developed (crops, plantations, etc.) and upon payment of all cost and taxes.

8. ORGANIZATIONAL CHART

of the Departments of Topography and Cadastre

MANAGEMENT

Secretariat, Accounts,
Personnel, Archives
External relations

TOPOGRAPHICAL SERVICE

- General work, geodesy
levelling, triangulation,
urban and rural surveys
- Division into lots, surveys
boundary marking plan revisions
- Checking, supervision and
inspection of work assigned to
private enterprise
- Survey and draughting
+ training of personnel

CADASTRE SERVICE

- demarcation, boundaries,
registrations, subdivisions,
amalgamations.
- Niamey - Dosso property section
- Maradi - Tahoua property section
- Zinder - Agadez - Diffa property section.

9. CONCLUSION

As a result of the existing property legislation, the regulations governing private domain and the technical articles and conditions relating to division into lots, the land register in the Niger is well-established and kept meticulously up-to-date.

Almost all the principal towns, administrative centres of départements and arrondissements have registered subdivisions.

Consequently, the establishment of an urban cadastre should not present many difficulties.

In rural areas on the other hand, because of the small number of registrations at present, and the creation of irrigated perimeters for crops as a result of hydro-agricultural developments, it will be necessary to carry out a complete cadastral survey.
