Research Note
NGOs as Alternatives to Nationalization, Leasing, and Other Forms of Utilization of Public Assets in Developing Countries: A Case and Commentary

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A common problem in developing and transitioning countries is how to transform natural resources or other existing assets into productive ones when there is a lack of domestic real and financial resources to do so. Traditionally, this has been dealt with through a variety of policies including the licensing of foreign firms (e.g., in mining and other extractive industries), giving easements especially to international nonprofit corporations (the development of the rainforest), by the charging of user fees (waterways and airways) and by privatizing the assets and auctioning stocks in them to citizens as was common in the transition of former Soviet States.

Nationalization, especially in communication, transportation, utilities, and extractive industries, has been a policy frequently adopted, but unless it is sufficiently income producing, generally through export earnings, nationalization often does not diminish the original problem—the lack of sufficient domestic resources to manage the asset adequately. Nevertheless, nationalization, or the threat of it, may substantially increase the risk perceived by foreign private investment; and, therefore, diminishes the availability of such capital. However, nationalization is often adopted to "preserve" the national identity, control, and management and to share the benefits from the asset among the country's citizens. Does a domestic nongovernmental organization (NGO) offer another way?

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This essay presents a case of a developing country within the terms of the World Bank (2008), the Republic of Panama, entering into a formal contract with a domestic nonprofit (NGO) to marshal, develop, and manage a virtual city—not for the purpose of welfare or housing, but for the creation of a community dedicated to technological development through global transfer. Its scope is therefore broader than that described by Sharkansky (1984) and Kollak of the Jerusalem Foundation—the principal purpose of which was to identify projects of benefit to the City of Jerusalem and seek funding for them. It is also broader than the scope of community development corporations such as in America (1995) and others.

Current literature offers various theories about the role of nonprofits in society (Ben-Ner and Gui 1993; Salamon 1995; Weisbrod 1988; Young 1998) and about contracting with NGOs (Fernandez 2009; Fernandez, Ryu, and Brudney 2008; Lipsky and Smith 1989/90; Smith and Lipsky 1993; Van Slyke 2007; Witesman and Fernandez 2007) describe various theories with empirical evidence of contracting with nonprofits within the context of United States and mostly from a welfare or economic perspective. But the principal theoretical backdrop of this note is Bryce (2005a, 2005b, 2006). In that theoretical construct, the nonprofit is seen specifically within a principal–agent contractual relationship with the state or the community and this contractual relationship is based on five confidence factors influencing the decision of the government.

This note begins with the presentation of the problem in its case-specific form. It then asks what are the five factors of confidence upon which a government may be induced to enter into a contract with an NGO for the solution to this type of problem. Next, it looks at the specific contract for reflection not only of these five factors, but for certain common problems a state may encounter when public assets are being transferred (other than by a fair-market value sale) to its agent. The issues go beyond moral hazards to problems of public accountability, sovereign rights, and non-delegability of powers. A better understanding of these other issues may induce more consideration of the choice of the NGO as an alternative to the policy options presented in the opening of the paper (particularly of nationalization—that is—the substantive control and management by government even indirectly through a third party agent-operator).

The Specific Problem

The general problem stated earlier takes the following form in this case: the national resource is a geographic well-developed area operated as and described by the United States Southern Command Headquarters (1997), Fort Clayton. Clayton, as described by the Inter-Oceanic Region Authority (1998), was an area of 2,180 acres and over 1,734 homes and accommodated over 20,000 military and civilian personnel. This well-groomed fort had a hospital, schools, commissaries, and a well-advanced road and other infrastructure systems that made it an independent functioning city with its own radio and television systems. Also attached to the base, were advanced ecological testing systems taking advantage of the rainfall, temperature, humidity, rugged jungles, fungi, solar radiation, and soil type to test the efficiency of troops and of weapon systems (see Enscore *et al.* 2002, for a thorough engineering value description). On December 31, 1999 as a result of a treaty between Panama and the United States, this complex was reverted to Panama by the United States. Thus, the problem: how to utilize this national asset within the operating budget constraints of the Republic of Panama? The most obvious answers are to turn it into a residential suburb or keep as a military asset. Neither was done.

The State was *persuaded* to transfer 120 acres of this area with all of its infrastructure to a domestic private operating foundation called the City of Knowledge Foundation (CKF) with the mandate to attract foreign experts, educational entities, and businesses and for them to engage on site in technological, such as information technology, scientific (especially ecology and biodiversity), development and transfer, and in that connection as a laboratory for Panamanians for learning and being employed in related skills. Its mandate also included the attracting of international NGOs. According to City of Knowledge (2009) it has attracted over 33 international NGOs including the World Wild Life Fund, the U.S. Peace Corps, Nature Conservancy of Panama, and various agencies of the UN. It has attracted over 60 firms to its technology park and over 40 educational institutions. It has also developed a worldwide network of affiliates—those to whom it has some attachment other than their location on the grounds.

What are the theoretically acclaimed factors that would give confidence to a state to transfer a public asset (the geographical area and its functioning infrastructure) to an NGO? Are these reflected in the contract (Republic of Panama 1998) as evidence of their importance? Does theory meet reality so that theory may provide an operating paradigm?

Choosing a Nonprofit as an Operating Agent

Bryce (2005a, 2005b, 2006) describes the following five factors that give the state confidence when entering into contracts with NGOs and described how trust attendant to these factors may be impaired and restored (Bryce 2007). These factors are deduced from the theory of nonprofit as agents in a principal-agent paradigm (Bryce 2005a). Specific reference is shown to these points in the signed contract between the CKF as agent, and the state (The Republic of Panama) as principal, referred to as the State.

1. *There is confidence derived from a shared orientation and congruence of interest in the outcome. Both the state and the NGO operate principally to provide public rather than private benefits and to promote the public interest. This congruence is*

reinforced when the public benefits or interests of the specific project that motivates the state are consistent with the mission of the NGO and therefore also motivates it.

Thus, the contract between CKF and the State says in its preamble that "the Foundation, given its character of nonprofit organization, hereby undertakes to develop a project, which the parties recognize as of public interest named City of Knowledge for the promotion and establishment of research and innovation centers, in the scientific, technological, humanistic, and cultural fields, for the transfer of knowledge to be used in the productive activities (technological parks)" (Republic of Panama 1998, 1).

2. *There is confidence derived from constraints on the NGO's undertakings. The charter and mission describe a specific class of tasks the NGO may undertake and therefore they restrain the NGO in addition to the stipulations of constraints in the contract between the state and the NGO.*

Section M of the contract between the State and CKF directs the latter to use the public properties that were transferred solely for the purpose of operating the City of Knowledge. Any other use is a listed cause for the termination of the contract. Moreover, the exclusive mission of the CKF is operating the City of Knowledge and that is the purpose for which it is chartered. An NGO is bounded by expectations derived from its mission (Oster 1995), the contractual implications of its mission (Bryce 2000, 2005a, 2005b) and the specific terms of a contract—minimizing the risk of diversion that could be conducive to project failure or abandonment.

3. *There is the capacity that the amount invested by the state will be leveraged upward. This leverage comes from the prohibition of dividend payments by nonprofits (*Hansmann 1980*) reducing the probability of outflow of earnings, but also from private donations and earned income that must be reinvested in the organization and therefore benefit the project directly or indirectly by increasing the organization's capacity to perform and to self-finance the contract.*

Sections A and E direct CKF to undertake plans to become self-financing. Section D of the contract directs the CKF to seek support from domestic as well as international sources. Further, leverage is ensured in Section E of the contract between the CKF and the state. It requires CKF to use all of its income either to reinvest in the project and any net to be invested in the higher education program of the State. This obviously could not be done with a firm for it amounts to a 100-percent tax on profits not to mention a state determination of how the firm allocates its investments about various business segments; i.e., businesses that it operates.

4. *The nonprofit has embedded social capital—specific sociological attributes of a community that are nonexclusionary to any member of that community as in (*Coleman 1990a, 1990b*). Members of the community ascribe to and have access*

to a common set of sociological attributes (including identity, goals, values, purposes, methods, and modes of interaction).

In the case of national assets, social capital in the form of "identity" satisfies a principal purpose of nationalization while transferring the management responsibilities and, at most, sharing the responsibilities for financing the project. This process itself helps to build social capital—the City of Knowledge as an interacting community and the socio-political skills reflected in the international character of the projects and their transference to the country itself. At the same time, transferring the asset to an NGO also overcomes a principal objection to licensing to foreign companies (and subsequent political claims of exploitation and calls for ex-appropriation or nationalization). The identity of the asset as public property (owned, controlled, and managed) is preserved.

5. *The government may have confidence in the NGO to perform if the NGO has or can cultivate the desired goodwill. This term is used in the business and legal sense connoting intangible nonbehavioral assets of the NGO. These may include its location, its brand and brand reputation, its copyrights and patents, and its connections or networks that may be brought to bear on the success of the project.*

Sections I through K of the contract direct CKF to conduct itself in a manner that would enhance its international prestige and reputation as a center and forum for scientific, technological, and human-related research and training especially in such fields as ecology and biodiversity; thus, building on the tropical environment of Panama and the diversity of both its flora and fauna. For decades the Smithsonian Institution and the U.S. military operated large and internationally well-known ecological operations in Panama. Panama has a brand as an ecological site. But it also has a brand as an international transfer point—not only because of the Panama Canal, but because it is a known world-class banking center, and that after Hong Kong, it contains the second largest free zone in the world. But the ultimate brand concept attached to CKF is "nonprofit" which connotes a community goodwill or purpose.

Accountability and Delegability of Powers

A common concern with governments contracting whether with firms or with nonprofits is accountability. This is a solvable problem—at least technically. With a nonprofit—especially one specifically created to manage a public asset—the state may also stipulate in the contract that certain public representatives be on the board of trustees specifically to safeguard the public interest but it also has the effect of increasing collaboration and communication between the government agencies related to the project and the NGO. Thus, Section O of the contract directs CKF to include among its board the leadership of specific government agencies. They include foreign affairs, education, planning and economic policy, the presidency, national science, technology and innovation, and the interoceanic authority. Section F directs CKF to submit an annual audited financial statement to the Comptroller of Panama. Section P requires that annually the statistics on performance and accomplishments be also submitted to the Comptroller.

Another commonly perceived problem is the delegation of certain sovereign powers over the asset especially when it is in the form of a definable geographical estate. In Section G of the government responsibilities in this contract, this takes two unusual forms because of the intent to the state. First, the State wishes the NGO to attract foreigners specifically to lend their expertise; therefore, it has designed special visas for that purpose; but these visas are not issued by the NGO but by the State although application is made through the NGO. This is also true of exemption of firms and other entities located in the City of Knowledge from taxes on remittances, real estate, tools, equipment, licenses, and patents. Firms and other entities meeting the terms of scientific and technological development, transferring and education that locate in the City of Knowledge apply to the CKF and it in its sole discretion accepts or denies them. But it is the state that set the terms, gives, or takes away the tax exemption.

Conclusion

Developing and transitioning countries often find that they have insufficient real or financial resources to allow them to make good use of national assets. Over the years several methods including licensing of foreign operators, privatization with the auctioning of shares to citizens, and nationalization have been used. The intent of this research note is to promote consideration of domestic NGOs as

Table 1. Domestic NGO Compared with Nationalization and Foreign Firm Control of Public Asset

1. *Mission Dedication to Objective*: Public benefit commitment similar to state and unlike firm.
2. *Mission Focus*: Removes activity from public-sector bureaucracy and competing demands of state or firms (stockholders, other products, and other markets).
3. *Financial Leverage*: Provides opportunity for attracting additional resources internally through no leakage of earnings (i.e., dividends), externally through domestic and external donations of resources not available to state or firm.
4. *Social Capital*: Maintains national identity and provides opportunity for voluntary citizen involvement.
5. *Goodwill*: Able to attract and operate with others especially external entities not attractive to state control.
6. *Accountability*: Potentially greater than firm or state. Nonprofit must solicit public support, state may require representation on board of trustees and terms of periodic reporting. Unless a stockholder in firm, government cannot impose itself as board member. No corporate authority can impose accountability on state.
7. *Inherent State Powers*: Both the NGO and the firm have as much power to represent the state as it is given by the state. Some inherent powers are not delegable to either, some specifically tax exemption and policing powers are retainable by state.

alternative agents to manage and operate such resources for public benefit. It does so by matching certain benefits of using NGOs with a specific contract signed and in operation in a developing country. In essence, it argues that it is not only doable, but that some of the common objections are easily met.

Table 1 summarizes the arguments for considering a domestic NGO relative to nationalization or foreign firm licensing. Clearly, there are situations where these factors may not prevail or be sufficiently persuasive. For example, where the domestic organizational expertise does not exist or cannot be created within a reasonable time—given the size and complexity of the task or where the demand for its output has grown so much that capital otherwise unavailable to the NGO may be required. On the other hand, there are occasions where a domestic NGO strategy is particularly indicated. These include those situations where, for political or other reasons, foreign investment interests are unmotivated or where, as in this case, a public interest represents a better use of the assets in building the social capital and economic capital employable in the country's development.

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