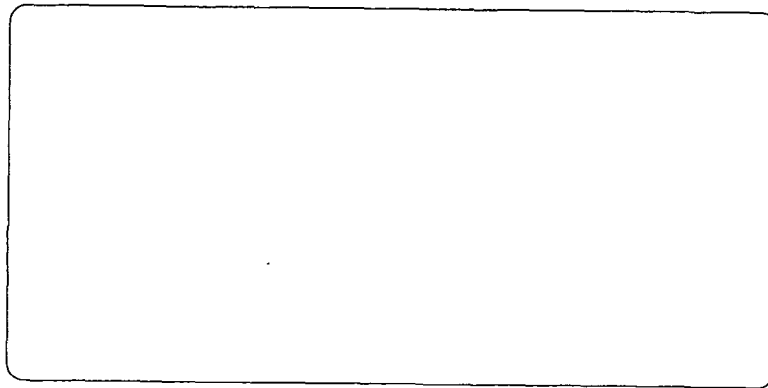


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**Traditional Land Tenures and Land Use Systems
in the Design of Agricultural Projects**

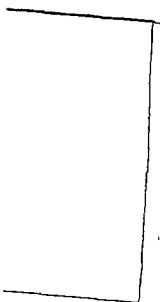
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Traditional Land Tenures and Land Use Systems in the Design of Agricultural Projects

Raymond Noronha
Francis J. Lethem



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Washington, D.C., U.S.A.

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ABSTRACT

This paper provides agricultural project designers with an analytical basis and rationale for examining traditional land tenure and land use systems, and suggests how to make operational use of such information for key project decisions.

The feasibility of agricultural projects implementation and their intended impact depend on farmer behavior, which often is determined by traditional tenurial and land use patterns, whether or not they are reflected in formal legislation. In particular, understanding of such patterns helps project designers to answer such questions as whether land would be available for the project; what impact the proposed inputs are likely to have and whether they would be accepted; how these inputs should be introduced and who are likely to adopt them and receive benefits; whether labor for project works would be forthcoming; and whether traditional forms of organization would be viable for project organizations.

With such knowledge, project designers would be better able to suggest where a project should be located, how security of tenure may be improved, what changes in traditional tenure and land use practices may be needed and complementary organizational measures introduced, and whether legislative amendments or other arrangements should be considered to resolve potential conflicts between traditional systems and formal legislation.

The paper's summary is self-contained and intended for senior staff and decision-makers in member countries, the World Bank and other international or national aid agencies, and consulting firms. The main text has been written for the benefit of agriculturists leading a national or expatriate design team, as well as for lawyers and anthropologists not specialized in land tenure questions who might advise such teams. The information used in this paper is drawn primarily (though not exclusively) from projects supported by the World Bank.

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TRADITIONAL LAND TENURES AND LAND USE SYSTEMS IN THE DESIGN OF

AGRICULTURAL PROJECTS

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TRADITIONAL LAND TENURES, LAND USE SYSTEMS IN THE DESIGN OF
AGRICULTURAL PROJECTS

SUMMARY

i. This report builds on the continuing effort of the World Bank to identify significant variables in project design. It aims at providing project designers (in the Bank, the Food and Agriculture Organization (FAO), administrators in developing countries, and consulting firms) with the justification and framework for examining traditional land tenure systems and taking them into account in agricultural project design.

ii. For the purpose of this paper, traditional land tenure systems are defined as "the rules accepted by a group of the ways in which land is held, used, transferred, and transmitted." These rules may have the "force of law", that is, they may be enforced by the courts of a country even though they may be unwritten and not incorporated, or specifically set out, in any statutes.

iii. The need for this paper lies in that:

- (a) despite numerous cases where formal legislation ignores, or even attempts to eliminate, traditional systems, such systems do persist in practice;
- (b) project design and implementation depend on actual patterns of behavior which are often not reflected in formal legislation;
- (c) recommendations for legislative amendment or enactment often ignore traditional land use rights of some sections of the population, particularly women and children;
- (d) the introduction of new technologies and new crops affect traditional systems and therefore project designers should gauge their feasibility and potential impact during project implementation before finalizing project design;
- (e) Bank staff increasingly encounter traditional systems in the course of their work (whether as "problems" or as "social facts") but do not have a forum to exchange views on their mutual experiences.

iv. Clearly, dealing with traditional tenurial systems is not an easy matter since these systems appear to be so different from property concepts with which Bank staff, consultants, and even administrators in developing countries are most familiar. Terms such as "communal ownership" and "usufruct" are common, "ownership" does not seem to vest in an individual (who may be the actual cultivator) but in an amorphous, fluctuating body of individuals. All too often, though understandably, the project designer's response has been either to try to mould traditional systems into forms familiar to the designer (for instance, by insisting on individual tenure) or to ignore the traditional system. Either approach has resulted in delays in project implementation and failure to attain project goals.

v. But, if "western" property concepts were more closely scrutinized, it would be realized that the most important test of "ownership" of property is the right to possession -- who has possession, and who is entitled to possession. For project purposes, the same test can also be applied to traditional systems of tenure and land use. Further, even in "western" systems, originally founded on Roman law, concurrent rights in different persons over the same parcel of land are quite common (such as tenancy together with rights of way) and the project designer, therefore, should not be deterred from recognizing and incorporating similar practices in a project solely because they occur in traditional systems. Like any other behavioral pattern, traditional systems can be (and have been) studied, and can be incorporated (or adapted) in project design.

vi. To facilitate the project designer's task this paper is divided into two parts. The first part presents an analytical basis and rationale for examining and interpreting the actual land tenure situation where no formal system exists, or where formal and informal systems co-exist. What needs to be determined are the patterns of land ownership and related decision-making procedures regarding agriculture and pastoralism: Are lands really "vacant"? Who allocates lands for cultivation or grazing? How secure is the farmer's tenure? Are there prescribed uses of the land that the individual, or family, cannot change? Are land, crops, and trees treated in the same way? Can the farmer appropriate the entire produce of the land farmed or do other individuals share in, and make decisions regarding consumption and investment? Do patterns of inheritance affect the size of land holdings?

vii. The second part suggests how to make operational use of information on traditional tenure for key project decisions. For instance,

- (a) where to locate a project, given existing land use patterns, whether land has to and can be acquired, and whether there are obstacles in achieving project objectives resulting from local uses of land;
- (b) how to improve security of tenure, or protect rights existing under traditional land tenure and use;

- (c) what kinds of changes in traditional tenure and land use practices may be required to achieve project objectives, whether these are feasible, and how their feasibility can be improved;
- (d) what complementary organizational measures may be needed; and
- (e) whether to propose legislative amendments, new legislation, or contractual arrangements.

PART I DETERMINING THE ACTUAL LAND TENURE AND LAND USE

viii. Why is it necessary to understand traditional tenurial and land use systems? Because the understanding would permit project designers to answer whether land would be available for the project; what impact proposed inputs are likely to have and whether they would be accepted; how proposed inputs should be introduced (extension, scheduling, training) and who are likely to receive benefits and adopt the inputs; whether labor for project works would be forthcoming, or whether mechanization should be considered; whether traditional forms of organization could be viable forms for project organizations and how they could be linked with the existing governmental organizational blueprint. The key questions about which information is needed are the following:

- ix. (a) Availability of land. Many projects (particularly settlement and plantation projects) require land to be available as a condition of project implementation. But, whether or not land would in fact be available for the project, is dependent on two factors: whether the land is being used, and who has title to the land. Land use depends on a number of factors including soil resources, climatic conditions, the level of technology, and the sociocultural organization of the community. Shifting cultivators or transhumants may use land seasonally, or once in several years. The land may, thus, be apparently "vacant". Again, land may be used by one group of persons although title to the land may vest in another group and the users may be deemed to be using the land illegally. Despite apparent illegality, the use of land must be taken into account by the project designer. The project designer must assess whether the way in which land is currently used would impede project implementation.

- x. (b) Possession of the land. When land is being used (whether seasonally or not, or even illegally) there must be a determination of how the person using the land came into possession of the land and who gave the user possession. Although in many instances enquiries would suggest that the land is "owned" by a group of persons -- a tribe, or lineage (a group of persons claiming descent from a common ancestor) -- in practice it is only a small body of persons who have the right to allocate land.

- xi. (c) Right of allocation. The right of allocation extends both to the type of lands and to the type of crop grown. Where lands are more fertile, the observance of traditional rules is more strictly enforced. Where, for instance, coffee or palm is cultivated, there is gradual conversion of tenurial rules: from lineage to family ownership. Lands on which subsistence crops are cultivated are more regularly governed by traditional rules. Further, cultivation of subsistence crops is linked with both local priorities and the traditional division of labor.

- xii. (d) Security of tenure. What is the effect of an allotment? Once an allotment is made, the right to a plot is not lost, and is usually heritable and, quite often, transferable (except, generally, in the case of transhumants). There is, therefore, security of tenure except in the case of traditional allotments to wives, sons, and where there are tenants or sharecroppers.

- xiii. (e) Rigidities in land use. Allotments are related to specific uses. It is difficult to convert land allotted for subsistence crops, or used for grazing, to the cultivation of cash crops or for growing trees. Therefore, it is necessary to examine how the land is presently used. This would mean several enquiries:
 - (i) what types of crops are grown on the land -- are they subsistence or cash crops?
 - (ii) is there a traditional division of labor, and does this extend to the type of crops grown?
 - (iii) is the land used concurrently (for instance, does one group or person cultivate crops on the land, while another has rights to trees) and, therefore, can there be disputes regarding the use of the land which might affect project design?

- (iv) is the land used sequentially for different purposes (for agricultural crops in the main agricultural season; for grazing, or other purposes, in the off-season) or by different groups (for instance, settled cultivators in the main cropping season, transhumants in the off-season) and, if so, could double-cropping be introduced without making alternative arrangements or what incentives would be necessary to introduce double-cropping?
 - (v) what are the migration patterns, are they linked to the traditional division of labor, and would this, therefore, mean that labor would not be available for part of the year or that there would be no decision makers left in the project area for part of the year thus affecting the introduction and adoption of project inputs? Or should mechanization be considered?
 - (vi) are there any traditional labor-sharing, or common cultivation, practices, and do these practices only apply to certain types of crops?
 - (vii) do traditional rules require that the harvest be shared among a wider group than those who cultivate the land and, if this be the case, would the farmer actually want to produce more, or will he sell the surplus, and how is the "surplus" calculated if the cultivator has to maintain a reserve for social distribution or against climatic variability?
- xiv. (f) Related questions. The answers to the above questions must be related to four other project considerations before project design can be finalized:
- (i) Would the proposed project benefits actually reach the target beneficiaries? An answer to this question requires an understanding of social structure and patterns of social stratification. What forms of leadership exist? Would the leaders provide a vehicle for the dissemination of project concepts and project implementation; or, conversely, would traditional leaders hinder dissemination or convert project inputs to their own benefit?

- (ii) Is the target population multi-ethnic or homogenous? If it is multi-ethnic, what are the relationships between the different ethnic groups? How would their relationships affect project design (for example, must the project provide different extension techniques aimed at different groups or separate organizational arrangements)?

- (iii) What are the laws of inheritance? Do these laws promote land fragmentation? If they do, would this mean that in the long run project inputs would cease to be used because they are no longer economic? Is there a difference between traditional arrangements with regard to land division and formal legislation?

- (iv) Land carrying capacity. There should also be an assessment whether there would be enough land for continued use by the population given likely population and climatic trends, the level of technology currently used, the technology which the project proposes to introduce, and the time within which change might take place. Also, would project incentives lead, perhaps unintentionally, to overcropping and mining of soil fertility or accumulation of larger herds and consequent overgrazing?

PART II. USING INFORMATION ON TRADITIONAL LAND TENURE AND LAND USE SYSTEMS IN PROJECT DESIGN

xv. This part deals with the how and when of project design: how to use the information collected about traditional tenurial systems, and at what stage in the project cycle the information can best be used for project design and implementation.

Identification

xvi. This is the most appropriate stage for setting in motion all enquiries essential to project design. Clearly, however, the depth and range of these enquiries would depend on the type of project and the existence of relevant data. But there are certain crucial questions that should be decided at this stage. They are:

- (a) Where should the project be located? This would require an examination of the actual use of project lands and of various alternatives.

- (i) Land use capability. This is a technical question requiring an assessment of the natural resource endowment. But an accurate assessment often requires enquiries with local cultivators/graziers who know soil potential and can provide information why land is put to its present uses. The assessment would also be linked to land carrying capacity estimates.
- (ii) Is the land being used? Who uses the land -- cultivators, transhumants, both? Is the land used throughout the year or only for part of a year? Why? What is the status of the person using the land (tenants, sharecroppers, wives, owners)? Is this status and use of land recognized by formal law?
- (iii) Would land have to be acquired for the project? If so,
- a. are there any procedures for land acquisition;
 - b. what time frame must be provided for implementation of these procedures;
 - c. how successful have previous acquisition proceedings been and does the traditional social organization have greater influence than government departments; and
 - d. would the project have to make provision for compensation in addition to that provided under the legal procedures?

If the answer is that there are no procedures for acquisition (and that they would have, therefore, to be enacted) or that previous acquisition proceedings have dragged on for years, or that traditional uses of land have prevented land from being available for project purposes, or that there can be no definite schedule for land acquisition or nobody competent to ensure that a proposed land acquisition schedule can be adhered to, then serious consideration should be given to relocating the project. Alternatively, the Identification team should ask itself whether the project should include persons actually using the land.

- (iv) What are the alternative uses to which the project lands can be put? First, if the land has two or more potential uses (say, agriculture, minerals) can the user proceed concurrently, sequentially, or are the uses mutually exclusive? Second, there may be a conflict between different government departments regarding use of proposed project lands. For instance, the Department of Agriculture may want the lands for agricultural purposes while the Department of Tourism may want the lands to be converted into a national park. This dispute must be resolved. Third, there may be a question of the social costs of using the lands for a project: if there are equally suitable sites (in terms of technical viability, economic returns, national utility) where a proposed project (say, a dam) would cause less social disruption, then the Identification team should relocate the project to the alternative sites. If this is not possible the costs of social disruption and the costs of, for instance, relocating families should be assessed against economic gains. Fourth, local priorities have to be considered. If there is resistance to project components because they are not consonant with local priorities, what incentives are necessary to obtain local participation, how should extension be organized? Would these incentives, or extension, induce participation? It is, however, rare to find any data about local priorities at project identification. What the Identification team should, therefore, do is to note the absence of data about local priorities and to flag this for attention of the Preparation team.
- (b) Target population. Often at the stage of Identification there are inadequate, or unreliable, data regarding the socioeconomic and cultural profile of the target population. This is the stage at which there is sufficient lead time to collect relevant base data, which should not be left for collection during project implementation. The main types of data would include: population characteristics, heterogeneity and social stratification, cultural practices, social organization, local priorities, and previous history with regard to similar projects.

- (c) Project goals. Only the bare outlines of proposed project goals are formulated at this stage. More detailed design would need adequate base data, an assessment of local priorities, and the potential for local participation in project implementation.

- (d) Institutions.
 - (i) What organizational format would best attain project goals? Any decision relating to land tenure and land use for project purposes must be linked with an appropriate organizational format. This means that the Identification team should assess whether the project would be implemented by a government department (or autonomous body) alone, or that project implementation would take place through the combined efforts of government, or autonomous body, linked with traditional groups. In every case, the relative strengths of each institution must be assessed in the light of their capacity to attain project goals. For instance, the Identification team may decide that individual tenure is to be implemented; in that event, the team should also determine institutional capacity to implement the project particularly in the light of previous history. Again, if group tenure is to be continued, the team should assess whether this would result in strengthening the leadership (and, for instance, allow the leaders to convert communal lands to their own benefit) to the detriment of the project. There should also be an assessment of the tasks to be delegated to each level in the project organization (who, for instance, should decide about herd size and who about access to grazing lands?).

 - (ii) Training and technical assistance. Determination of the need for training and technical assistance is linked with an assessment of the project organization and the formulation of project goals. If, for example, the project aims at increasing subsistence cultivation through the introduction of better inputs and it is found that women cultivate subsistence crops, the Identification team should plan how to introduce these inputs, who can introduce them, what resistance might be encountered,

and whether there is a need for training both the beneficiaries and women workers. Again, if change is to be introduced through using the traditional structure, who are the leaders who can be motivated to change? Do they need training? Would technical assistance be necessary?

Preparation

xvii. At this stage the base data should be available to the Preparation team. The data may show that the traditional system in the project area is too complex, or that there is a great deal of individual variability. In this event, it may be preferable not to attempt to deal directly with each case, but to design the project so that local organizations which may play an intermediary role in project design and implementation are fully aware of these differences and are given the means to adopt appropriate operational approaches to promote achievement of project goals.

xviii. Notwithstanding the complexity of the traditional system, or of a decision to leave implementation to local organizations, it is necessary for the Preparation team to compare the existing system with formal legislation. This comparison may result in either of two conclusions:

- (a) that there is no conflict between traditional practices and the formal system. In this situation, the major issues left for the Preparation team are design issues, the shape of the project organization, and an assessment of the social feasibility of the project. Alternatively,
- (b) there may be a conflict (express or implicit) which should be resolved in principle at the Preparation stage.

xix. How can the conflict be resolved? There are two main alternatives: regularization of the status of the users of land in the project area; and legislative amendment.

- (a) Regularization of users of land in the project area. Can the status of land users in the project area be regularized through, for instance, the grant in the initial stages of "certificates of occupancy" or the recognition of traditional patterns? If this is possible, it may also be necessary to determine whether land transactions in the project area can be "frozen" so as to prevent the elite from taking advantage of the situation or newcomers entering the project area. But even this may not suffice, since rarely do government notifications reach rural areas, or those who are most likely to be affected. Therefore, two other

actions may be required: a quick census of those in actual use of the land, and a rough demarcation of the areas used. This is a comparatively simple exercise where there is a reliable cadastral survey. Where, however, the cadastral survey is not reliable, or there is no cadastral survey, a census and demarcation are essential. The goal must be to provide the same security, or security better than, project beneficiaries enjoyed before project implementation. This stabilization and security are essential whether the project aims at land reform, or proposes (in the long run) to make provision for cadastral surveys.

(b) Legislative amendment. The second alternative is to amend existing legislation so that it takes into account traditional systems, or at least the prevailing pattern of land use in the project area. Before, however, this is recommended, project designers should determine whether:

- (i) the needs of the project area are unique and better served by the formulation of rules or procedures, which do not have the "force of law", applicable only within the project area;
- (ii) amendments would retain flexibility to respond to changing situations in the project area;
- (iii) the time within which amendments can be enacted will be short enough to allow for the amendments to be operative when the project is to be implemented; and
- (iv) the existing social structures are resilient enough to adjust to the changes in social relations that the amendments will bring.

There are two further issues that must be considered whether there is a proposal for regularization of the status of land users, or for legislative amendment. They are the time-frame within which regularization and amendment can take place, and, second, whether the proposed changes are enforceable.

If it is possible to regularize status, or amend legislation, then the procedures for doing so must be set in motion at the Preparation stage.

Innovative organizational design or novel methods of implementing project components, a review of relevant legislation, or proposals to amend legislation ought to be decided well before a project has been approved. Again, if there are contracts to be entered into between project beneficiaries and project management or a government body, the Preparation team must identify the nature of the contracts and assess the capacity of the parties to the contract to fulfill its terms.

A more important question is whether the proposed changes will be enforceable. If an examination of the base data, and an assessment of institutional capacities in the light of previous experience shows that the proposed changes would not be accepted, or that they cannot be enforced, it would be necessary for the Preparation team to re-examine organizational design and re-assess the techniques of reaching project beneficiaries. This may show, for example, that previous failures could be attributed to institutional weaknesses, inadequate consultation with beneficiaries, or the need for closer linkages with and devolution of authority to traditional groups, or the need to change incentives.

(c) Alternatives when the conflict cannot be resolved.

There are two alternatives open to the project designer when the conflict between the traditional and the formal-legal systems cannot be resolved, or where amendments to legislation or regularization would take too long or cannot be enforced. First, it is open to the Preparation team to redesign the project so as to omit land issues fundamental to project success, or to leave out those components of the project that are vitally dependent on land use. But an assessment would also have to be made whether the omission results in a totally different, and non-bankable project. Also, the Preparation team would have to weigh the costs of omission against project goals. The second alternative is to postpone or drop the project (or a project area) entirely or to design a pilot project which could gather more information while testing out several alternative project designs.

xx. There are two other issues which the Preparation team should address: (a) organizational design; and (b) social feasibility.

- (a) Organizational design. This component is crucial to a determination of how effective, and how successful, a project would be. The choice of the organization to implement the project must be based on its capacity to achieve project goals. With regard to land tenure, this would involve an assessment of linkages between project management and project beneficiaries; the examination of levels of decision making and the distribution of power at each level; the design of a management information system; and an examination of the techniques of reaching project beneficiaries (communications and extension). The Preparation team and the government should also decide the type of tenure (for instance, group or individual) which would be implemented under the project. A decision such as this influences the shape of the organization and its capacity to attain project goals.
- (b) Social feasibility. The basic question is whether the target population will actually receive the benefits, whether they will participate, and what the outcome of their participation would be. Answers to these questions can only be valid if they are based on an understanding of existing socioeconomic organization and local priorities. Would the transition, say, from group to individual tenure meet with resistance, how should this resistance be reduced or even eliminated? Can cash crops be introduced without affecting subsistence cultivation and/or the rights of women? Would labor be available for a forestry project? Can the project achieve its goals, with incentives that cater to local priorities? What incentives are required to motivate the target population? All these questions can be resolved if the base data are reliable and valid, for they provide clues as to the how, and when project components can be implemented, and by whom.

Appraisal

xxi. The final iteration in the examination of project design occurs at Appraisal. The Appraisal team is concerned with project design -- technical and institutional -- and launching of implementation, and must re-assess project assumptions (for example, that cash cropping will be

adopted in the project area, or that land acquisition will fail), and the basic data on which these assumptions are founded. The major issues concerning land tenure for an Appraisal team to check are:

- (a) The organizational capacity of the proposed institutions to attain project goals. What are the bases for the Preparation team's choice of institutions, are they valid? Are there alternative methods by which the project goals can be achieved with recognition of traditional land tenure systems? Are the linkages between traditional groups and project organization adequate, will they work? What decisions should be left to project management?
- (b) Whether procedures for the regularization of land use systems, or amendment of legislation, have commenced, how long would these take, how effective would they be?
- (c) What types of training, communications, and extension activities/facilities are necessary, are they available, would the required facilities be in place when project implementation starts?
- (d) The flexibility of project design. Where base data are inadequate, or there is too great individual variability, a pilot project may be more effective and also allow for the collection of data. Should provision be made for a mid-term review?
- (e) Project replicability. To what extent are the proposed tenurial and organizational arrangements replicable in similar projects within the country? Would the project be a unique experiment because of its cost, its location, its dependence on expatriate personnel? Would there be a transfer of technical and institutional capability during the life of the project?
- (f) Contractual arrangements. Where the project involves the drawing up of contracts, the Appraisal team should be convinced that the broad outlines of the contracts can be entered into, understood, and enforced. This would require an assessment of extension techniques,

and the capability of extension personnel to communicate the terms of the contracts and to gain acceptance of the contracts without a "take-it-or-leave-it" attitude.

CONCLUSIONS

xxii. An understanding of traditional systems of land tenure and land use is essential in agricultural projects. But this understanding requires cooperation and teamwork among three disciplines: the agriculturist, lawyer, and anthropologist. This would mean:

- (a) regarding the Aid Agency, early involvement of its Legal Department in the project cycle to ensure that the terms of reference of project designers would consider the legal aspects of land tenure and to assist their colleagues in providing advice to the Borrowers in this regard;
- (b) regarding the Borrower, equally, or even more importantly, the necessity for early involvement of lawyers and institutional specialists from the Borrowing country: to serve as information sources, interpreters of legislation, and advisors; and
- (c) the regular use of anthropologists who, given budgetary constraints, would be involved (right from the stages of identification and preparation where their impact on project design would be the greatest) mainly as consultants.

xxiii. Areas for further work. Though this paper deals with traditional land tenure systems relating to agricultural project design, there are further areas where these systems have an impact, or are affected by development projects. Two areas appear to have priority: irrigation projects, and transportation projects (particularly where the construction of feeder roads, or highway maintenance is envisaged).

TRADITIONAL LAND TENURES AND LAND USE SYSTEMS IN THE DESIGN OF
AGRICULTURAL PROJECTS

I. INTRODUCTION

This report continues the work of the Bank's Projects Advisory Staff (in the Operational Policy Staff) in identifying significant social and behavioral factors related to project design. While Human Factors in Project Work¹ was a general paper designed both to summarize the state of the art relating to the incorporation of social and behavioral factors in project design and indicate areas deserving of further analysis, this paper focusses on a crucial component in one sector: traditional land tenure and land use systems in agriculture.²

There are several reasons why traditional systems of land tenure and land use should be identified and incorporated in project design, the most important are that when traditional systems continue to exist they may influence the attainment of project objectives, the distribution of benefits, and the pace of project implementation.

A. Traditional land tenure systems continue to exist despite formal legislation.

In Lesotho the traditional laws (the laws of Lethoroli) do not have legal status but are widely accepted as binding.³ In the rural areas of Ethiopia, the impact of the formal legal codes is "scarcely felt". Everyday control is maintained under traditional law; recourse to "government law" is rare and only resorted to for tax disputes, penal problems, and failures in dispute mediation.⁴ In the Society Islands (Pacific),

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- 1/ Perrett, H. and F. Lethem, 1980. Human factors in project work. World Bank Staff Working Paper No. 397. Washington, D.C.: The World Bank.
 - 2/ It is realized that some of the issues raised in this paper could also be useful in other sectors, e.g., Urban, Population, Health and Nutrition, and Transportation. For the sake of convenience, however, the scope of this paper has been limited to the agricultural sector.
 - 3/ Eckert, J., 1980. Lesotho's land tenure: An analysis and annotated bibliography. Ministry of Agriculture, Kingdom of Lesotho and Department of Economics, Colorado State University.
 - 4/ Brietzke, P. 1975. Law and rural development in Ethiopia. African Studies Review, XVIII, 45-62.

despite theoretical application of French law, land remains "a native affair" and "local customs still resist the Civil Code rules despite 120 years' pressures and all the troubles that derive from this permanent incompatibility".⁵

B. There is often no relationship between formal legislation and what actually takes place "on the ground".

Project designers are concerned more with actual patterns of behavior than with theory. For example, in Haiti although under the Napoleonic Code all heirs inherit land equally, in practice, given land and demographic pressures, sons are given pre-inheritance access to land; daughters are not. The result is that daughters only derive minimal benefits as heirs for, when they do inherit the land, it is usually occupied by tenants and sharecroppers; they cannot obtain possession and can only claim their share of the crop as landlords.⁶ Again, in Syria although in theory a female is entitled, under Islamic law, to half the share which a male is entitled to on inheritance, "this provision is not frequently adhered to in practice. Instead, male family members take over the inheritance as compensation for the support of a sister".⁷ This practice is fairly common in areas where the Islamic code applies. Among the Shona of Zimbabwe, the Land Husbandry Act was passed to prevent fragmentation and govern inheritance. But, given the considerable kinship obligations among the Shona, where one piece of land "might belong in the eyes of the Administration to one man, several families were found living on it, each working a plot. Where in law, one man has the right to inherit the land from his father, in practice the disinherited sons are allowed to continue living on the land as though there had never been a will."⁸ When registration of titles is made compulsory, as in Desmay (Trinidad), many settlers did not obtain legal titles. In fact, "even when they had obtained such titles, their descendants did not register subsequent changes in ownership. Even in 1972, many land taxes were paid in the name of the original owner".⁹ Registration by itself is, therefore, no conclusive indication of what is actually taking place on the land for a project designer who must investigate the situation. Again, in

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- 5/ Panoff, M., 1971. The Society Islands. Confusion from compulsive logic. In R. G. Crocombe (ed.), Land Tenure in the Pacific. Melbourne: Oxford University Press, 53, 54.
- 6/ Murray, G. F., 1977. The evolution of Haitian peasant land tenure: A case study in agrarian adaptation to population growth. Ph.D. dissertation, Columbia University, New York.
- 7/ UNDP, 1980. Rural women's participation in development. Evaluation Study No. 3. New York: UNDP, 102.
- 8/ Garbett, G. K., 1963. The Land Husbandry Act of southern Rhodesia. In D. Biebuyck (ed.), African agrarian systems. London: Oxford University Press for the International African Institute.
- 9/ Harrison, D., 1979. The changing fortunes of a Trinidad peasantry: A case study. In Cross, M. and A. Marks (eds.), Peasants, plantations and rural communities in the Caribbean. Guilford: Department of Sociology, University of Surrey and Department of Anthropology, Leiden, Netherlands. 60.

Mubi (Gongola State, Nigeria), although one of the aims of the Local Government Reform Act, 1976, was to destroy the power of traditional governments and strip the Fulani ardo (chief) of his power, in the eyes of most of the local population the traditional system continues to retain its power and exists as a de facto political authority.¹⁰

C. Recommendations for changes in law, or the adoption of new legislation, can affect persons who had "rights" under traditional systems.

In the first instance, legislation which provides for registration of title to land in the name of "the head of the family" may have the laudable purpose of introducing certainty. On the other hand, such legislation could deprive persons of rights that they had under the former system. This is particularly the case with women. For example, among the Joluo of Kenya, under the traditional system women received land for their own use from an ancestor or their husbands. In the former case, they held the land for life; in the latter, during the continuance of the marriage. But, in both cases, the fruits of the land were theirs. Further, they could exchange lands with others. Registration in the names of individuals, mainly men, both increases control over distribution of land, and the dependency of women who now have no legal rights of access to land.¹¹

This loss of rights also occurs quite often in settlement projects. For, influenced by Anglo-American systems of law, development planners often tend to choose the monogamous nuclear family as not only their main but their only model. For example, before the Kariba Dam Resettlement Program, among the Valley Tonga of Zimbabwe, land belonged to the individual who cleared and cultivated the land. If he was married, he was bound by custom to allocate one or more fields to his wife (or wives); in addition, women also held land belonging to their lineage. A woman was not bound to share the produce of her fields with any members of her family -- even if they starved as a result. The Resettlement Program allocated lands to families on the basis of the number of wives, but not to women as owners. Further, since women were unlikely to clear land, it is doubtful whether any of them would even own land again.¹² In Ethiopia, under the Public Ownership of Rural Lands Proclamation, 1975, although women may, in theory, hold land, in practice the term "farming family" is related to a head of a household, i.e., men. Only widows, divorcees, co-wives in polygynous unions who receive no support from their

10/ Kano, M. Z., 1979. Social structure and leadership: A study in rival political structures in Mubi, Gongola State, Nigeria, 1809-1976.

Ph.D. dissertation, Indiana University, Bloomington, Indiana.

11/ Pala, A. O., 1978. Women's access to land and their role in agriculture and decision making on the farm: Experiences of the Joluo of Kenya. Discussion Paper No. 263. Nairobi: Institute for Development Studies, University of Nairobi.

12/ Colson, E., 1963. Land rights and land use among the Valley Tongas of the Rhodesian Federation: The background to the Kariba Resettlement Program. In D. Biebuyck (ed.), op. cit., 137-56.

husbands are registered as independent "heads of families".¹³ In Colombia, given the normal practices with regard to the settlement of new lands, small farmers who are given lands in the initial stages of settlement usually move away and the lands are taken over by large ranchers who reproduce patterns of latifundismo -- the opposite of what the schemes aim at.¹⁴

On the other hand, amendments in formal legislation may create new rights in land for persons who did not have such rights under traditional systems. For instance, among the Motu on the south coast of Papua, although in theory all descendants of the first cultivator had the right to use the land, in practice use was limited only to certain resident males of the descent group. The Government Lands Commission, however, followed the theoretical principle and compiled genealogies which assisted those who would have had customarily no right to claim rights in land around Port Moresby. These claims were also influenced by the fact that with the expansion of Port Moresby land values skyrocketed.¹⁵

Further, legislative changes may have the effect of directing benefits to those who least need them: the elite. It is elite groups that are usually most aware of proposed legislative amendments and their potential impact. They are in a position to use their influence to manipulate the law or to delay its implementation -- this, for instance, has been the almost universal experience in the realm of land reform.¹⁶

D. The introduction of new crops could affect land tenure systems and the division of labor. These impacts could, therefore, influence the attainment of project targets, the distribution of benefits, and induce foreseeable delays in project implementation.

There are numerous examples of changes in land tenure and effects on the customary division of labor as a result of the introduction of new crops -- coffee, cocoa, tobacco, oil palm -- or of a new way of cultivating crops, for example, irrigated rice. In Paso (Costa Rica), for example, the movement to tobacco cultivation and out of agriculture into pasture forced landless households into new patterns of dependence on large landholders akin to patron-client ties.¹⁷ In Cameroon, the introduction of coffee and

13/ FAO, 1979. The legal status of rural women: Limitations on the economic participation of women in rural development. Rome: FAO.

14/ Roberts, R. L. III, 1975. Migration and colonization in Colombian Amazonia: Agrarian reform or neo-latifundismo. Ph.D. dissertation, Syracuse University.

15/ Groves, M. 1963. Western Motu descent groups. Ethnology, 2, 15-30.

16/ See, for example, with regard to Ethiopia, Cohen, J. M., 1973. Rural change in Ethiopia: A study of land, elite, power and values in Chilalo Awraja. Ph.D. dissertation, University of Colorado.

17/ Barlett, P. F., 1975. Agricultural change in Paso: The structure of decision making in a Costa Rican peasant community. Ph.D. dissertation, Columbia University.

cocoa has transformed the system of production from one oriented to self-sufficiency to one producing cash crops. This has had an impact on the traditional system of land use and land controls. More recent concepts of property and labor in conjunction with the technology of cash crop production has led to the wresting of control over the use of land by the extended family from the wider group.¹⁸ Similar effects have occurred with the introduction of cash crops (particularly coffee and cocoa) in Papua New Guinea where the traditional matrilineal system of land inheritance is in conflict with the practice of sons planting perennial crops on their fathers' matrilineal lands with their father's consent so as to prevent the land from passing to a man's sister's son.¹⁹

A recent in-house analysis of rural development projects in West Africa highlights some of the problems resulting from a failure to investigate traditional land tenure and land use systems.²⁰ Analyzing the effects of the absence of sufficient "location specific" knowledge, the report said: "As a result the design of some of the Bank's earlier projects was based on overgeneral assumptions which later proved flawed ... (An) assumption that proved somewhat misleading was the practice of assessing the availability of farm labor purely in terms of a farmer's total household. Experience in West Africa suggests that it is equally important to recognize the division of labor by sex, religion, age, and activity".

E. Bank reports in the agricultural sector increasingly refer to traditional tenurial and land use systems.

At times they are viewed as "obstacles" to project implementation or as causes for a project's failure to attain appraisal targets. Studies by the World Bank's Operations Evaluation Department (OED) refer to land related problems as causes for delays in effectiveness of projects and in implementation. For instance, out of a sample of ten cases, the effectiveness of two projects was delayed because of land acquisition problems. In another sample of forty-two projects, land problems delayed project implementation in one-third of the projects. The analyses stressed the clear need for a deeper knowledge of local conditions since some delays could have been avoided with greater local knowledge and an assessment of the projects' legal and sociological implications. Regular staff supervision also focuses on problems relating to land under a variety of heads -- mainly "managerial", "technical" and political".

18/ Levin, M.D., 1976. Family structure in baKosi: Social change in an African society. Ph.D. dissertation, Princeton University.

19/ Brookfield, H. C., 1968. The money that grows on trees: The consequences of an innovation within a man-environment system. Australian geographical studies, 6, 97-119.

20/ Sadaat, O., and F. van Gigch, 1981. Lessons from the field: Rural development in West Africa. Finance and Development, 18 (4), 37-40.

The results of this experience were succinctly summed up in 1978: "Compounding the technical problem has been the fact that projects have often been designed without adequate knowledge of the basic socio-economic factors governing rural life".

There is a growing awareness in the Bank of the need to examine traditional land tenure systems more carefully, not merely during implementation when they could be "problems", but in the earlier stages of the project cycle (identification, preparation, and appraisal) since they influence project design.

F. With increasing Bank sensitivity to significant variables that should be taken into account in project design, traditional land tenure and land use patterns are crucial, and their identification and incorporation into projects can be systematized.

While there is growing awareness in the Bank, Borrower Governments, institutions (such as FAO), and consultants who assist in project preparation of the need to understand and identify the impact of traditional land tenure systems on projects, this awareness is not yet translated into regular and systematic identification, the examples are mainly the result of an ad hoc approach dependent on sensitivities of particular project designers. What is, therefore, necessary is, first, to increase the awareness of the importance of taking into account traditional systems and, second, to provide a systematic basis for the identification and inclusion of these systems in the design of projects. This report attempts to facilitate the attainment of both goals.

The following chapters examine a few basic concepts, identify key issues, assess changing traditional systems of land tenure and land use and their capacity for flexibility, and set out the techniques by which these systems can be identified and incorporated in project design.

II. BASIC CONCEPTS

This chapter sets the stage for an examination of the key issues relating to traditional tenurial and land use systems by analyzing a few basic concepts which recur in succeeding chapters. There is no intention to get embroiled in a long-standing controversy whether traditional tenurial systems can be translated into concepts commonly used in "western"

law, for the project designer is concerned with practices as they are and with what the project is likely to achieve.²¹

Custom. Meek, following Osborn, defines "custom" as "a rule of conduct obligatory on those within its scope, established by long usage. A valid custom has the force of law. A valid custom must be of immemorial antiquity, certain and reasonable, obligatory, not repugnant to Statute law, though it may derogate from common law".²² This is the "legal" definition based on the practice of English courts. But, as has been pointed out earlier (see pages 1 and 2), many practices relating to land persist even though they may be "repugnant to Statute law". Further, in England the terms "long usage" or "of immemorial antiquity" were curiously determined to mean a usage dating back to the accession of Richard I in 1189 A.D. In India, proof of custom in a court requires 40 years' usage. These are purely evidentiary devices to control what might otherwise encourage an unrestricted flow of cases claiming customary practices. In fact, particularly in non-literate communities, each new practice which obtains group sanction is hallowed through the claim of its antiquity.

Customary land tenure. Most definitions of customary law possess a circularity that often defies analysis. Even greater difficulties inhere in defining "customary land tenure". The United Nations defined the term as "the rights to use or dispose of use-rights over land which rest neither on the exercise of brute force, nor on evidence of rights guaranteed by government statute, but on the fact that they are recognized as legitimate by the community, the rules governing the acquisition and transmission of these rights being usually explicit and generally known though not normally recorded in writing".²³ The definition raises more questions than answers. The use of the words "brute force" takes the reader back to Hobbes and the artificial reflections on life in the early

21/ Those interested in the controversy could refer to:

The Privy Council judgment in Amodu Tijani vs. Secretary S. Nigeria, 1921, 2 A.C., 399;

Biebuyck, D. (ed.), 1963. African agrarian systems. London: Oxford University Press for the International African Institute, where a common theme, except for one chapter, is that traditional systems cannot be terminologically equated with "western" systems; and Bentsi-Enchill, K., n.d. Do African systems of land tenure require a special terminology? Reprint Series No. 7, Illinois: Northwestern University, where the opposite view is maintained.

22/ Meek, C. K., 1949. Land law and custom in the colonies. London: Oxford University Press (reprint 1968, London: Frank Cass).

23/ United Nations (UN), 1966. Progress in land reform. Fourth report. New York: UN, 165.

days of man. The definition, further, is too narrow: it excludes statutes recognizing customary rights. It also eliminates religious codes which are written and customarily govern the use and transmission of property among significant sections of the population -- the Islamic and Hindu codes.

The problem with attempting a definition of the term "customary land tenure" was aptly summarized by Simpson: "Many authorities, arguing with justification that English legal terminology is apt to be misleading when applied to customary concepts of land tenure, have evaded the issue and have tended to define customary land tenure merely by describing the various rights and restrictions applicable to the holding of land in the particular area of their studies... . Legislatures, when they have been brave enough to attempt a legal definition, have done so by reference to such well-worn expressions as 'current customary usage', 'customary law' or 'native law custom'. For instance, the Malawi Land Act, 1965, defines customary land as 'land held, occupied or used under customary law'. (This expression) however (itself) requires definition; and even where such definitions exist -- Ghana, for example, defines customary law as 'rules of law which by custom are applicable to particular communities...' -- there still remain many unanswered questions, not least with respect to the meaning of 'custom'."²⁴

The problem also stems, in part at least, from the nature of the beast. Custom is elusive, changing, subject to different interpretations -- a response to changing situations. It is often difficult to get a uniform interpretation: different sub-sections of the same tribe may respond with different "rules",²⁵ different "schools" come into existence (as with Islamic and Hindu codes), each with slight variations that attempt to solve problems, or adapt to changing situations. Thus, within the same project area there may be different "customary" ways of dealing with land since the systems are basically human adaptations to a physical resource base, with a given state of knowledge and technology, and human choices between alternative methods of reaching goals within an existing socio-political organization and the distribution of power.²⁶

^{24/} Simpson, S. R., 1976. Land law and registration. Cambridge: Cambridge University Press. Despite his reservations, Simpson does not hesitate to join the "brave" although he confines his definition to the narrow legal meaning -- that is, customary usages recognized by courts of law, or "legal custom".

^{25/} "It is usually difficult to discover what the customary law of a tribe is at any particular time owing to a divergence of opinion amongst the tribal elders": Homan, F. D., 1963. Land consolidation and redistribution of property in the Imenti sub-tribe of the Meru (Kenya). In D. Biebuyck (ed.), op. cit., 225.

^{26/} For instance, among the Lungu of Zambia, some sections of the tribe are matrilineal, others patrilineal. Project officers can readily supply their own examples.

With all these caveats, however, for the purposes of this paper some definition must be adopted. The definition, more in the nature of boundary markers than a straitjacket, is "the rules accepted by a group of the ways in which land is held, used, transferred and transmitted. These rules may have the 'force of law', that is, they may be enforced by the courts of a country even though they are unwritten and not incorporated, or specifically set out, in any statutes". To avoid controversy, the term "traditional land tenure and land use systems" will be employed throughout the rest of this paper.

Ownership. This term is fraught with even greater confusion, largely because popular concepts of the term influence perceptions. These perceptions affect project design and implementation. For example, to quote a report, "the absence of individual private land ownership" (in West Africa) -- which affects the capacity of the individual to receive credit -- and "in a traditional village society the accent is more often on 'security of production' than on progress in production and besides, the decision making process is usually 'communal' rather than 'individual'." Statements such as these, which may be found in certain project requests, are generalizations that need to be elaborated for project design purposes. This is particularly so because project designers without sufficient background in non-Western legal systems may not always realize the many implications of the term "ownership".

The popular notion of an "owner of land" is a person who enjoys a demarcated piece of land, registered in his name, with the right to gift, transfer, and will away the land. This conception of total freedom is usually at variance with reality. For instance, the land may be mortgaged and if the owner/mortgagor fails to make mortgage payments in time, the land can be sold by the mortgagee. Similarly, what would happen if the owner fails to comply with building codes, or to pay land taxes and water charges? There may be a tenant on the property protected by statute (the Rent Acts in UK and India, for example) who pays only a fixed (and, possibly, "uneconomic") rent. In that event, notwithstanding any efforts on the part of the owner, and provided the tenant complies with the statute, the owner may not be able to evict the tenant or even to raise the rent. Finally, there is the question of "eminent domain" -- the power of the State to acquire the land for its sovereign purposes -- in which event the owner may be entitled merely to compensation, often paid in installments that may not be equivalent to the "market value" of the land. Thus, in practice, an owner's perceived "rights" may be completely fettered. Land may be registered in the name of one person, he may hold it (as with the joint family in India) as co-sharer with others, it may be used by a third person, and a fourth may have the right to pass over it (an easement).

That is why "...English law... has directed its attention not to ownership, but to possession, or, as it is called in the case of land,

seisin. All titles to land are ultimately based upon possession in the sense that the title of the man seised prevails against all who can show no better right to seisin."²⁷

If in a land where registration and cadastral surveys have been in existence for some time the law directs attention to possession and the nature of such possession, it would be even more important to examine the terms of possession in countries where registration and cadastral surveys are in their infancy -- as in large areas of Latin America, Central America, East Asia and the Pacific, and Africa.

Communal. This term also occurs quite frequently in reports. It has been loosely employed since, on occasion, it can refer to a tribe; on others, a lineage or an extended family. These distinctions are of importance because where "communal ownership", for instance, refers to a tribe, it is imperative to investigate whether this "ownership" is merely nominal and the real decision-making power and possession lie with an individual or a family. In effect, where land is said to be "communally owned" there should be an attempt to determine the locus of decision making and the nature of rights of persons in possession. With reference to land, the term "communal" should be restricted to lands to which all members of the group have access -- for example, village commons.

In summary:

- (a) This paper is concerned with the use and disposition of land according to practices accepted by a group -- even though these practices are not recognized by formal legislation.
- (b) It is persons who are in possession of land, and the nature of their rights to possession, that are most important.
- (c) Possession must be investigated to determine not only the nature of the rights, but also the levels of decision making (that is, for example, who has the right to allocate, or revoke the allocation of, land).

^{27/} Cheshire, G. C., 1962. The modern law of real property, 9th edition. London: Butterworth and Company, 28, 31. (See also, to similar effect: Lawson, F. H., 1958. Introduction to the law of property. Oxford: Clarendon Press, 87-89.).

III. ANALYTICAL BASIS FOR INTERPRETING LAND TENURE AND LAND USE SYSTEMS

The determination of who is in possession of the land, that is, who has the right to use it, and who is actually using it is necessary since it would provide answers whether there is land available for the project, and also influence project design and scheduling. The answers can only be obtained through investigations "on the ground" even in countries that have cadastral surveys and provisions for title registration for, as explained in greater detail below, actual patterns of land use (with which alone project designers are concerned) can differ significantly from apparent, formal-legal patterns. It should also be remembered that cadastral surveys are carried out at intervals of ten years and more, and that title registers often do not contain notations about share-cropping arrangements, or traditional allocations of land (for instance, to wives and sons).

The basic question is who has an interest in land?²⁸ An answer to this question can be subdivided into several interrelated enquiries: Is the land being used, who is the "owner" or has the right to allocate the land, are distinctions drawn between types of land, who is the allottee of the land or uses it, what are the rights of the allottee, how is the land actually used, are distinctions drawn between different types of crops?

A. Existing rights to the land

Is the land being used? One of the first questions that has to be answered at the stage of project identification and preparation, particularly in settlement and plantation projects, is whether there is land available for the project. There is a difference between land without title and land that is not being used. Land may not be used for several reasons related to the technology employed, the nature of the soils, seasonal climatic variations, and the type of user. For example, land may not apparently be used because shifting cultivation is practiced by the group: there are no boundary marks (except in the minds of members of the group).²⁹ This is the case with the majority of cultivation in PNG, parts of the Philippines, in Malaysia, Indonesia, Africa and in Latin America. Again, the land may apparently not be used because of seasonal

^{28/} The phrase "interest in land" is used in a wider sense here than in law where, for instance, a licensee has no interest in land. In this paper the main concern is occupation, and the terms of occupation, of land.

^{29/} In shifting cultivation field boundaries are not maintained and the fallows are generally "stages in a return to a well-established woodland or forest, within which the signs of earlier cultivation may be difficult to see": Morgan, W. B., 1969. Peasant agriculture in tropical Africa. In M. F. Thomas & G. W. Whittington, (eds.), Environment and land use in Africa. London: Methuen, 254.

use, and project designers (government staff, local or international consultants) arrive during the fallow period, or when the pastures and water have been exhausted and, in the last case, the transhumants have moved to other lands. Or, again, the land may be used in common and may, therefore, have no apparent individual use. Or, finally, even though the land is not being presently used, transhumant groups may have a traditional right to pass, and re-pass, over defined routes on the land.

Thus, as Biebuyck says of Africa, there is no land without title, "the notion of vacant lands, as introduced by colonial governments, did not exist,..."³⁰ The same could be said of PNG, Amazonia, Indonesia, and the Philippines. The concept of "vacant lands", lands "without title", was introduced by colonial governments and, at times, was the consequence of, for instance, a "failure to understand the custom of shifting cultivation (which) led successive governments to underestimate the amount of land required by native tribes, or to claim as Crown property land which they had believed to be vacant".³¹ At others, investigations were carried out during a season when, for instance, tribes and herds were concentrated, and it was, therefore, assumed that the lands being used during the period of investigation were both all the lands used, and all the land needed by the group.³² With increasing population there is even less land available.

But even though it is necessary to conduct local enquiries to determine whether there is "vacant" land, or land without title, quite often project designers place too much reliance on casual statements of government that land for the project will be available, or that the lands to be used in the project are "government" lands. Statutory title to land, also a continuance of a designation commenced in colonial times, cannot be equated with what actually happens in the project area. When there is a problem, delays in implementation and failure to reach project targets are likely to result. Some examples from Africa will suffice: In a forestry project, it was believed that the 4-5,000 acres of land required for the pulpwood component of the project could be easily acquired. In fact, because of land competition and differences between formal-legal powers and traditional values in land acquisition, difficulties in acquiring suitable land occurred throughout project implementation, and about 1,000 acres could not be acquired. In another project,

30/ Biebuyck, D., 1963. Introduction. In D. Biebuyck (ed). African agrarian systems. London: Oxford University Press for the International African Institute, 55.

31/ Meek, C. K., 1949. Land law and custom in the colonies. London: Oxford University Press (Reprint, 1968, London: Frank Cass), 12.

32/ See, Baker, R., 1975. "Development" and the pastoral peoples of Karamoja, North-eastern Uganda: An example of the treatment of symptoms. In T. Monod (ed.). Pastoralism in tropical Africa. London: Oxford University Press for the International African Institute.

even though government claimed title to the project lands, the members of one tribe who were to be resettled in the area refused to do so since, traditionally, the land had been used by another tribe. Under a livestock project, attempts to enclose areas for ranch development resulted in repeated encroachments, and the destruction of fences by villagers who, traditionally, had rights to use the land. In a project in West Africa, constructing village water supplies has been difficult because individuals in a neighboring country have land tenure rights over the areas on which these supplies are to be built. It would, thus, appear axiomatic that it cannot be taken for granted that unused lands can be equated with lands that are vacant, or without title -- that is, that some person or group, does not have the right to use the land. This aspect is the first that should be investigated by project designers and verified by Bank identification/preparation missions, recognizing that verbal statements that the lands belong to the government, or that they would be available during project implementation, may not always be accurate.

Who is the "owner"/who has the right to allocate land? Closely related to the previous question is "who" is the owner of the land, or, in areas where there is no cadastral survey or registration of land titles (and, this covers most of the developing countries), who has the right to allocate lands for cultivation or use? It is often assumed that because land is classified as "statutory", or "Crown" land, or as "terrains vagues", the land belongs to the governments who can deal with them as they think fit. Thus, for example, in Thailand one-half of the country's total area is classified as "reserved forest", "owned" by the government. And, yet, 10 percent of the total population have occupied some of these areas "illegally", for centuries. In the Sudan, government declarations of lands that were formerly used by transhumants as "public lands" (or similar declarations in Ethiopia) have not stopped transhumants from exercising their traditional rights to use the land, though not without conflict in these cases with settled agriculturists and other animal owners.³³ Or, again, project designers view with some trepidation the fact that the "owner" is a group -- a tribe, for instance, comprising all members dead, living, and yet to be born (as is recounted of most African tenurial systems, or those of PNG, and in the Pacific, and Amazonia).

The term "owner" may cover a group -- a tribe, as for instance the Jivaro (Brazil), some Liberian tribes, and in Barbuda (the Caribbean); a lineage (a group of persons claiming descent from a common ancestor) -- as among the Anlo Ewe (Ghana), Kalingas (Philippines), Luo and Kikuyu

^{33/} See, for instance, Ahmed, A. G. M., 1980. Planning and the neglect of pastoral nomads in the Sudan. In G. Haaland (ed.), Problems of Savannah development: The Sudan case. Bergen Occasional Papers in Social Anthropology No. 19. Bergen, Norway: University of Bergen Press.

(Kenya), Ndebele (Zimbabwe), Kongo (C.A.R.), Basseri and Tuareg (Iran and Niger), the Aymara (Peru), Tiv (Nigeria), Sere (Senegal), in Fiji, the Solomon Islands, and PNG; an extended family (India, Nepal); a nuclear family (Afar - Ethiopia; and under Islamic law); an individual person (the Caribbean, except Barbuda); and a legal person such as a trust — wakfs (religious trusts under Islamic law), guthi (religious trust) lands in Nepal, an idol (India), a village in Indonesia, or Mexico, among the Iban of Malaysia, Samoa, Tigre (Ethiopia), or the State.

For the project designer, searching for the "owner" of the land in these circumstances, or trying to incorporate the "owner" into project organizational components can be a fruitless endeavor, especially where there are no cadastral surveys. More so since the "owner" may be a mere figurehead. What is important for the project designer is to find the person, or persons, who have the right to allocate land. In practice, fieldwork shows that, through a process of "genealogical amnesia", this usually comprises a smaller, locally based group³⁴ that has the right of allocation, and the right to use the land. This appears to be the case whether one is referring to the settled agriculturist, or the transhumant. Examples may be found among the Jalatec (a Mayan Indian group in northwestern Guatemala), the Diola of Lower Cassamance (Senegal), the northern Mossi of Upper Volta, in Tigre (Ethiopia), the Maasai (Kenya, Tanzania) the Boyr Ahmad (Iran), and the Awlad 'Ali and Bedouin in the Egyptian western desert region.³⁵ It is essential to find out which group or person (as, for instance, the "earth priest" in northern Upper Volta) has the right to allocate lands since this determination would influence project organization, the choice of decision-making levels, and the persons to whom communication components of the project may have to be directed to achieve project goals.

34/ The phrase, "genealogical amnesia" was coined by Hoben, A., 1973. Land tenure among the Amhara of Ethiopia. Chicago: The University of Chicago, to describe a process by which the term "lineage" is used to delineate a changing number of generations. The answer to the question "who is a relative?" often is "the person who behaves like a relative". See, for instance, Obeyesekere, G., 1967. Land tenure in village Ceylon. Cambridge: Cambridge University Press.

35/ See, for instance: Cassaverde, R. J., 1976. Jalatec social and political structure. Ph.D. dissertation. University of Rochester.
Thomas, L. V., 1963. Essai sur quelques problemes relatifs au regime foncier des Diola de Basse-Casamance (Senegal), In D. Biebuyck (ed.), op. cit.
Bruce, J. W., 1976. Land reform planning and indigenous communal tenures: A case study of the tenure chiguraf-gwoses in Tigray, Ethiopia. S. J. D. dissertation. The University of Wisconsin, Madison.

There could, in fact, be several decision-making groups: the tribe as notional owner; the lineage or sublineage as the allocator of land; and, at the lowest level, within the extended or nuclear family, the eldest male (or female) who further allocates land among members of his family (to his wives, as among the Luo; or sons, among the Valley Tonga of Zimbabwe or in PNG).³⁶

At times, allotments at the lowest level are made to defeat the provisions of existing statutory law (as, for example, in Guyana, Haiti, Brazil, PNG, Zimbabwe, Turkey). For instance, in both Turkey and Brazil, statutory law requires an equal division of land among all heirs. In Turkey, traditional practices either deny the daughter a share by claiming that it has been paid as dowry, or allow the daughter a share only equal to half that of a male (which is what traditional Islamic law provides).³⁷ In Brazil, arrangements are usually arrived at between elderly parents (or parents-in-law) and the principal heir under which the parents gradually sell their property to the principal heir, or to the child who cares for them in their old age. There is considerable flexibility in these arrangements (which may include the grant of the right only to the usufruct of a few acres of land at a time). But all these arrangements require consensus among the legal heirs since they are at variance with Brazilian law.³⁸ Though these allotments to wives (in Ghana, Upper Volta, Kenya, Lesotho), or to children (in PNG and Brazil) have been termed an allotment of the "usufruct" alone, creating "no title" in formal law, the allotments have to be investigated since such possession affects project design, and could affect an assessment of project targets (for instance, it may be difficult to convince the allottee to purchase the inputs to be provided under the project).

Distinctions between types of land allotted. Nearly every group makes careful distinctions between what types of land can be allotted to, and enjoyed by, an individual (or a family, or a sublineage) to the exclusion of others, and what types of lands are open to common use by all the members of the group and, at times, even outsiders. The distinctions are mainly based on two factors: first, the scarcity, or economic value of the land; and, second, the technology employed.

Traditional groups are well aware of the physical and economic attributes of the land, and tenure is determined accordingly. Among the Kapauku of Papua (now Irian Jaya), for instance, land was divided into

36/ Pala, A. O., 1978. Women's access to land and their role in agriculture and decision making on the farm: Experiences of the Joluo of Kenya. Nairobi: Institute of Development Studies, University of Nairobi, Discussion Paper No. 263.

37/ Coulson, N. J., 1971. Succession in the Muslim family. Cambridge: Cambridge University Press.

38/ Kluck, P., 1979. Small farmers and agricultural development policy: A look at Brazil's Land Reform statute. Human Organization, 38, 44-51.

fourteen categories based on six contrasting components (for example, distribution of vegetation, cultivable potential, soil qualities). Garden land was exclusively used by families, bush belonged to the person who cleared it, forests were open to all lineage members for hunting and collection of fruits.³⁹ Another common distinction is between upland and lowland, as among the Toucouleur (Senegal) and the Malays.⁴⁰ The lowlands were fertile; the upland, not so. Therefore, tenure rules were more strictly enforced with regard to the lowlands than the uplands. So, too, among the Mandaya of the Philippines whereas the upland branch were mainly swidden cultivators of rice, the lowland group were sedentary cultivators of Abaca (Musa textilis = Manila hemp). Tenure rights were longer among the lowland group and strictly enforced; the upland group moved each year to a new hillside area, retaining rights over only the previous season's land.⁴¹ The Valley Tonga of Zimbabwe distinguished between valuable riverine land and bush land. Lineage rights were rigidly maintained with regard to the former type of land (for instance, transfers could only take place within the lineage), not with regard to the latter type.⁴²

There is a third type of land -- the kampong (Malay), the Kandyan garden (Sri Lanka), homestead land among the Meru (Kenya) and in Lesotho -- which regularly seems to be owned by individual families. This little area around the household, planted with a few trees, spices, and vegetables, is usually excluded from other tenurial rules. In Sri Lanka they are, even today, exempt from land ceiling laws.

Why is it necessary for the project designer to look into the type of lands? First, because the more valuable they are, the greater the likelihood that the group that uses them will be well-defined and small; therefore, they can be communicated with more easily for project purposes. Second, because traditional groups are more aware of soil potential than others and form a useful source of information for the project

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- 39/ Pospisil, L., 1965. A formal analysis of substantive law: Kapauku Papuan laws of land tenure. American Anthropologist, 67, 186-214.
- 40/ Boutilier, J-L., 1963. Les rapports du systeme foncier Toucouleur et de l'organisation sociale et economique traditionnelle -- leur evolution actuelle. In D. Biebuyck, op. cit.
- Wong, D., 1975. Tenure and land dealings in the Malay States. Singapore: University of Singapore Press.
- 41/ Yengoyan, A. A., 1964. Environment, shifting cultivation and social organisation among the Mandaya of eastern Mindanao, Philippines. Ph.D. dissertation, University of Chicago.
- 42/ Colson, E., 1963. Land rights and land use among the Valley Tonga of the Rhodesian Federation: The background to the Kariba Resettlement Programme. In D. Biebuyck (ed.), op. cit., 137-56.

designer, information which might prove valuable with regard to the type of crops to be introduced under the project. Third, the type of land and its use is often related to traditional systems of division of labor and may affect both relations between the sexes and the ability to introduce other types of crops, or a system of double cropping. Fourth, the current use of different types of land would also affect assessments of labor availability for the project (see Section B, below). Fifth, to enable the project designer to assess alternative uses to which the land is being, or can be, put.

The scarcity value of land and the growing tendency towards individualization of the tenurial system is assisted not only by the attitudes of governments (and statutory laws encouraging this trend) but, more importantly, by population growth, and the search for cultivable lands to feed this population. There are numerous examples of the influence of population growth on land tenures. For example, population growth in Latin America has tended to make tenurial systems more rigid.⁴³ Among the Nupe of Nigeria, increasing population pressure led to a complex system of landownership and transfer which amounted, in effect, to outright transfers for cash.⁴⁴ Among the Orokaiva of PNG, the closer identification of individuals with small tracts of land appeared to be similarly related to high population density.⁴⁵ Again, among the Nyakyusa of Tanzania, increasing population gradually converted shifting cultivation with intergenerational rotation of plots into inheritance of land within families.⁴⁶ It is increasingly difficult for groups to adjust to the need for land by migrations -- such as those by the Mossi of Ghana to the Ivory Coast, or the process by which herd size is maintained by migration of younger sons among the Bokkos Fulani of Jos (Nigeria) with a portion of the herd in search of new pasture areas.⁴⁷ There is increasingly less land available for cultivation and settled agriculturists, encouraged by governments concerned about potential food

43/ Barraclough, S. and A. Domike, 1966. Agrarian structure in seven Latin American countries. Land Economics, 42, 391-424.

44/ Nadel, S. F. 1942. A black Byzantium. London: Oxford University Press for the International African Institute.

45/ Rimoldi, M., 1966. Land tenure and land use among the Mount Lamington Orokaiva. New Guinea Research Bulletin No. 11. Canberra: Australian National University.

46/ Wilson, M., 1963. Effects on the Xhosa and Nyakyusa of scarcity of land. In D. Biebuyck (ed.), op. cit., 374-91.

47/ Hickey, J. V., 1975. Bokkos Fulani pastoralism: Human and herd regulation in a complex ecological setting. Ph.D. dissertation. The University of New Mexico.

shortages, have moved into marginal areas, reducing grazing areas, felling the tree cover, and heightening soil erosion potential. This happened in Nepal, in the Sudan, in Niger.⁴⁸ The encroachments of agriculturists into marginal areas has also increased tension and conflict, and lessened the symbiosis, between agriculturist and herder.⁴⁹

Land use and tenurial patterns are also related to the type of technology employed. Where the technology is simple -- a hoe and dibble stick -- it makes little sense for individual tenures to exist where the land cannot be cultivated, or grazed, for more than one season. Populations that practice shifting cultivation usually need more extensive land areas and "own" land in common although it is a smaller unit within the group that allocates land. What is important for the project designer in these cases is not to dismiss the technology out of hand as inefficient but, rather, to enquire into the reason why the technology is employed. The technology cannot be attributed only to lack of contact with a more "civilized" world, but could rather be an ecological adaptation to the land and its potential.⁵⁰ The project designer may, thus, discover that proposed introductions of project technology, or crops, will result in depletion of soil resources and that the innovations will cause greater harm than good in the long term. Finally, since the type of technology used is related to the traditional division of labor, the project designer must take it into account in assessing the probable impact of the introduction of project inputs on this division of labor, on traditional rights, and on the availability of labor for the project.

48/ Macfarlane, A., 1976. Resources and population. Cambridge: Cambridge University Press.

Manger, L. O., 1981. The sand swallows our land. Bergen Occasional Papers in Social Anthropology No. 24. Bergen, Norway: University of Bergen.

Monod, T. (ed.), 1975. Pastoralism in tropical Africa. London: Oxford University Press for the International African Institute.

49/ Ahmed, A. G. M., 1980. Op. cit.

50/ See, for example: Renard, A. S. and R. D., 1980. Introducing the resource system of development, with special reference to the Karens of Northern Thailand. In FAO, Report of the FAO/SIDA seminar on forestry in rural community development. Rome: FAO, 107-113.

Carneiro, R., 1968. Slash-and-burn cultivation among the Kuikuru and its implications for cultural development in the Amazon Basin. In Y. Cohen, (ed.), Man in adaptation: The cultural present. Chicago: Aldine-Atherton.

Meggers, B., 1971. Amazonia: Man and culture in a counterfeit paradise. Chicago: Aldine-Atherton.

Do traditional tenurial systems distinguish between types of crops cultivated? The discussion here will be confined mainly to two types of distinctions: that between subsistence and cash crops; ⁵¹ and between seasonal and long-term crops. Seasonal cash crops give rise to greater rigidity and individualization of tenures; there is also a difference in the traditional division of labor. For instance, the cultivation of Abaca by lowland Mandaya necessitated longer tenurial rights in the land. Because there was also a need for land for cultivation of food crops, increased land pressures raised the value of land. From a system in which both sons and daughters inherited land, the lowland Mandaya moved to a unilineal inheritance system in favor of sons. Even greater tenurial changes take place with the introduction of semi-permanent (or long-term) crops. In this category fall economic trees (oil palm, coffee, cocoa, durian, hemp, fruit trees). A few examples have already been cited earlier (see Chapter I, D).

The first test to be applied with regard to trees is whether the traditional tenure rules treat them as being attached to the land. If they are deemed to be attached to the land, then they pass to the person in possession of the land -- as, for instance, in India and in parts of Kenya. On the other hand, in many parts of the world, trees are not treated as being part of the land, in which case they belong to the person who planted them and are treated as individual property. In practice, problems arise with regard to the planting of trees since it could amount to a claim of ownership of the land. For example, in Lesotho, the planting of trees on arable lands is discouraged since this would amount to a claim of ownership of the land. In Iran, too, possession of land can be claimed by the person who plants the trees.⁵² The other problem that exists when traditional rules separate possession of land from ownership of trees is that this separation creates a right in the planter of the trees to enter on the land, a source of constant friction. Further, as in Malaysia, kampong land can always be resumed so long as the fruit trees survive -- this adds to the problem of determining when the former owner may return and claim possession of the land. Where mortgages are permitted -- as they are, for example, in Ghana, Malaysia, and Kenya -- the land may be mortgaged to one individual, the trees to another. The mortgagee of the land could then plant trees (for instance, kola nuts in Zanzibar) in addition to those already on the land which could add further complications to the tenure and rights both to the land and to the trees.

^{51/} The term "subsistence" should, strictly, be confined to crops that can be directly consumed; while "cash crops" should refer to crops which require further processing before being capable of consumption or use. The literature, however, does not maintain these distinctions uniformly.

^{52/} In an agricultural development project in Iran, it was claimed that farmers would destroy the almond orchards if they were given management of them since the planting of these trees by the Development Authority created a right to possession of the land in the Authority.

Different rights, however, exist when the trees are to be used for timber or fuelwood. In this case, the general test appears to be whether the trees are growing wild, or whether they were planted. In the former case, the general rule is (with some exceptions as, for instance, among the Twa of Rwanda) that members of the lineage (or locally based group) have equal rights of access to forest lands. Where, however, trees are planted (bamboo, for instance), they belong to the person who has planted them.

The main reasons for the difference in tenurial arrangements between subsistence/seasonal crops and trees appear to lie in that trees take longer to mature (and, therefore, access to them should be maintained),⁵³ they require a great deal of labor (for instance, the oil palm, or citrus), and they have an economic or scarcity value.⁵⁴

In the light of the above discussion it should be realized that it is important for the project designer to examine what crops are cultivated in the project area, who cultivates them, what the division of labor is, and how the produce is appropriated. This examination is necessary because the introduction of a crop could change the tenurial system, lead to resistance to the introduction, and alter traditional rights. Further, since the introduction could also affect the availability of labor, project designers should assess whether double-cropping should be introduced, or whether it is at all possible to obtain labor for the second crop. For instance, Meek points out that "In Nigeria an attempt to introduce green manuring had to be abandoned in a certain area when it was found that, under the local system of tenure, women were entitled to grow their minor crops among the major crops of men."⁵⁵

B. Possession of the land

Who uses (has physical possession of) the land? It is extremely important for the project designer during the preparation stage to make on-the-ground enquiries as to who is actually in possession of the land. Is it the "owner", a tenant, a sharecropper, a wife, a son? For, depending on the answers to these enquiries, project components such as extension and credit would have to be designed differently. These enquiries can, therefore, be divided into two subsidiary questions: How is the land being used (in other words, what is the division of labor)? Are there any traditional labor-sharing arrangements in land use?

Under most traditional systems of land use there is a division of labor in agriculture by sex: the men do the heavy work (clearing, ploughing), women do the planting, weeding, harvesting, threshing -- possibly the

^{53/} Under an agricultural development project in Trinidad and Tobago, farmers "lost interest" in tending citrus plants because they would not bear fruit for five years.

^{54/} For more on social factors in forestry projects see: Noronha, R., 1981. Why is it so difficult to grow fuelwood? Unasylya, 33, pp 4-12.

^{55/} Meek, C. K., 1949, op. cit., 8.

only exception in agriculture is Haiti where the men do an estimated two-thirds of the work.⁵⁶ This traditional division extends both to the types of lands and crops cultivated. For instance, in parts of Sierra Leone, upland rice is grown as a subsistence crop by women; swamp rice is grown mainly as a crop for sale by men, with women assisting in the seeding and weeding. Men control the sales proceeds of swamp rice; women, therefore, complain that their further involvement in extending swamp rice cultivation cut into their incomes. As Bank staff observed in the case of a rural development project in Sierra Leone, it was extremely difficult to extend swamp rice cultivation. "Rice grown for cash is a relatively new approach and requires substantial change in the traditional farming system. At the same time, it is more directly influenced by price changes than is the upland subsistence rice crops. Family decisions on the latter fall more under the influence of cultural traditions than market prices". Further, there is also the question of who should obtain credit under a project -- if women are the cultivators, then credit has to be directed to them. In effect, where traditional practices are affected, the project should be designed to develop measures compensating those affected, and include a carefully prepared communications and extension component.

Among pastoralists, too, there is a traditional division of labor but the picture here is slightly more complicated than the settled agriculturist. Transhumance demands a combination of domestic and communal forms of production. On the one hand, each household (the "tent", or extended family) is, in general practice, a self-sufficient and autonomous decision-making body; on the other, access, particularly to pastures and water, requires a wider organization. Thus there are different levels of decision making among pastoralists -- the household with regard to the acquisition, maintenance, and use of animals; the camp (a number of households) with regard to herding; a wider body with regard to the allocation and distribution of rights of access to pasture. Depending upon the availability of resources, and calculations of economic and political gain, the size of the group and the herd fluctuates. These seasonal differences, changing needs, fluctuating size, and different levels of decision making have to be taken into account in project design if the project is to achieve its goals.

The traditional division of labor also influences labor availability for project works -- at times crucial to project success. For example, under the gandu system in northern Nigeria, wives and sons first work on their family plots, followed by work on their own plots.⁵⁷ In these circumstances, would labor be available for, say, the cultivation of cash

56/ United Nations Development Program (UNDP), 1980. Rural women's participation in development. Evaluation Study No. 3. New York: UNDP. See also: Zeidenstein, S. (ed.), 1979. Learning about rural women. Studies in Family Planning, 10, for time series data on women in agriculture.

57/ This has been carefully examined in an agricultural development project in the Sokoto area of Nigeria.

crops, or for the construction of fences?⁵⁸ Labor availability can only be assessed in the light of traditional practices -- the division of labor, patterns of migration -- not on the basis of an abstract assessment of census statistics of available manpower (statistics which are, quite often, unreliable). Migration patterns may necessitate radical changes in project design and scheduling of project works. For example, in both West Africa and Nepal there is a high percentage of seasonal male migration -- for work and for social reasons -- in these circumstances the project has to take into account these patterns and might have to re-schedule project works, or consider mechanization. The project would also have to determine whether those left behind (say, women) are decision makers who can continue to implement the project in the absence of the others. At times migration may alter existing patterns. For instance, the outmigration of males in Swaziland to work in the neighboring mines in South Africa, has allowed the matrilineal lineages to consolidate their control over land and to oust males from their traditional rights of cultivation of lineage plots.⁵⁹

The second question is whether there are any traditional forms of labor exchange and cooperation among the project population which can be used to cultivate new crops which the project proposes to introduce; conversely, whether these traditional forms will hinder attainment of proposed project goals. Labor exchange and cooperation are quite common traditionally -- the gayap (Trinidad), donkpe (Dahomey), gandu (Nigeria), gotong royong (Indonesia), and nogar/parma (Nepal). Few projects consider the impact of these traditional forms of labor exchange on project goals, or attempt to assess whether traditional forms of land use can be employed in attaining project goals.⁶⁰ There is increasing evidence which permits, with appropriate cautions, two generalizations with regard to the use of traditional forms of labor exchange for the cultivation of new crops: first, the bureaucratization of traditional forms (or their conversion to formal rules) results in a loss of meaning to the participants, the traditional form loses its effectiveness, and gradually ceases to operate. Second, when new crops have been introduced, traditional rules with regard to the division of labor and who cultivates which crop do not appear to apply.⁶¹ There also appears to be a similar relaxation of tenurial rules

^{58/} In a livestock project in Senegal, firebreak construction had to be abandoned because of the difficulty of getting laborers.

^{59/} Personal communication from Mrs. Gloria Scott, World Bank Adviser on Women in Development.

^{60/} There are exceptions, of course, as, for instance, in some projects in Indonesia, Kenya and Nigeria.

^{61/} For example, in Togo, since cotton was a newly introduced crop, the traditional rules prohibiting unmarried men from cultivating food crops for their own benefit did not apply. See: Sossah, K., 1980. Migration provoquee a Bassar. Lome, Togo: Societe Togolaise d'Etudes et de Developpement (SOTED).

when a group migrates and new rules are formulated.⁶² But, for the project designer, it is important to assess the extent to which the introduction of a crop will affect traditional rights -- for instance, oil palm in Nigeria was first grown on "women's lands" (that is, lands traditionally allocated to women), thereby effectively depriving them of their traditional land allocations and the income derived from these lands.

C Security of tenure

What are the rights of the person(s) using the land? Under this section, two questions are to be answered: first, in what capacity does the person use the land; and, second, what is the duration of possession.

The capacity in which a person uses land is extremely important since it influences the duration of land use, as well as eligibility for credit. Access to lands is determined by membership (real or fictional) of the group. But once access has been obtained, then the duration of land use relates to the capacity of the person -- is he a son, or a wife, is the cultivator a sharecropper or a tenant, is shifting cultivation practiced? What, in effect, must be asked is what security of tenure the person in actual possession of the land has. Where Islamic law prevails, the owner in possession has absolute title to lease, mortgage, transfer his title to the land.⁶³ In Hindu law, an enquiry must first be made as to the nature of the possession of the cultivator -- is the land self-acquired? If the answer is "yes", then the occupant may deal with it as he pleases; if not, then it is necessary to enquire into which other persons have an interest in the land.⁶⁴ The last situation is not unique to India -- it occurs as well among the Valley Tonga and the Malays: land acquired by a parent becomes "ancestral land" in the hands of his successors.⁶⁵ Transfers of land do occur in Ghana, among the Ibo, and in the Gambia -- it is not quite accurate to lump together an entire region (West Africa, for example) and claim that because land is "communally" owned the person in possession cannot mortgage, rent, lease, pledge, or enter into an agreement for conditional sale of the land. Generally among transhumants (with, possibly, one exception)⁶⁶ pasture rights cannot be transferred.

Different considerations arise where there are tenants on the land. Some tenants may be protected in possession by law (as in India), or by tradition (as in Haiti and Brazil); others may not. But, if there are

62/ Hill, P., 1970. Migrant cocoa farmers in southern Ghana. Cambridge: Cambridge University Press.

63/ Mulla, D. F. 1968. Principles of Mahomedan Law. (16th edition, M. M. Hidayatullah, ed.), Bombay: N. M. Tripathi.

64/ See: Derrett, J. D. M., 1963. Introduction to modern Hindu law. London: Oxford University Press.

65/ Wong, D., 1975, op. cit., and Colson, E., 1963, op. cit.

66/ Tapper, R. L. 1971. The Shahsevan of Azerbaijan. A study of political and economic change in a Middle Eastern tribal society. Ph.D. dissertation, University of London.

tenants, project design must take them into account lest the benefits go only to absentee owners.⁶⁷ Further, as in the case of sharecroppers (a recognized feature in Latin America, Tunisia, the Sudan, Turkey and India, to mention just a few countries), consideration must be given to whether occupants of the land will have any incentive to double-crop, or use project inputs.⁶⁸

What happens when the person in occupation dies? Does the land revert to the group who, acting through their leaders, can re-allocate the land to some other person, not necessarily related to the former occupant? The right to land is heritable.⁶⁹ But the manner of inheritance differs. This means an assessment of what is likely to happen if the project is implemented. For example, what may appear to be sufficient land for a family unit at the time of the project implementation may be insufficient, or may affect project economic viability, when inheritance laws are considered. For example, in India, in countries where Islamic law prevails, and in PNG, each succeeding generation inheriting a piece of land can demand partition, and promote further land fragmentation. In these circumstances, project design should be able to take into account this traditional division of lands and assess whether project targets can be attained, or whether rules should be framed modifying traditional inheritance rules.

The second question, the duration of use is linked with the capacity of the person using the land. Duration is quite often divorced from ownership of land. Thus, for example in Lesotho, although land is said to be "communally" owned, surveys have shown that farmers held allotted lands for nearly their entire farming careers.⁷⁰ So, too, among the Lozi (Zimbabwe) where, theoretically, the cultivator had only the right of usufruct.⁷¹ A similar situation exists in Nigeria and Ghana. But where the cultivator is a sub-allottee (a wife, or a son), or a sharecropper, the duration of tenure is much more tenuous and tends to exist as long as the person remains a wife or son, or until the superior holder evicts the sharecropper.

67/ See: Sorbo, G. M., 1980. Off-scheme interests and economic differentiation in Sudanese tenant communities. Paper read at a Sociology Seminar, The World Bank, January 24, 1980.

68/ In the case of irrigation projects in Madagascar, it was noted that sharecropping, though illegal, still continued, and that there was no incentive to these cultivators to double-crop under the projects.

69/ In shifting cultivation, the cultivator only has the right to a plot, not to the same plot cultivated previously.

70/ Eckert, J., 1980. Lesotho's land tenure: An analysis and annotated bibliography. Special bibliography No. 2. Ministry of Agriculture, Kingdom of Lesotho, and Department of Economics, Colorado State University.

71/ Gluckman, M., 1965. Politics, law and ritual in tribal society. Oxford: Basil Blackwell.

D. Beneficiaries from the land outputs

How is the produce of the land distributed? It is a mistake to assume, as is often done, that the unit that produces the crops (an extended family, for example) also consumes the crops. Thus, for example, among the Sere of Senegal harvest shares go by custom to heads of compounds, wives, religious authorities, and heads of the matrilineage. In the Indian joint family, a similar division of harvest shares takes place among the male members (and their offspring) in the family, despite the fact that only one brother may be cultivating the land. Again, where further fragmentation would lead to uneconomic holdings the practice (in India, Turkey, and Brazil, for instance) is for members of a family to cultivate the land in rotation (this is also the case in Sri Lanka), and for all others to receive a lesser share than the actual cultivator. In these circumstances production decisions are divorced from consumption decisions. For the project designer, then, the questions that must be answered are: Would the actual cultivator agree to use proposed project inputs to increase production? What design of project organization and communications component would be necessary to reach and influence both sets of decision makers?

E. Other operational questions

Other project considerations. There are two other considerations, related to traditional patterns, or aspects, of land use, that should be evaluated before project design is finalized. They are: (a) Is the population in the proposed project area multi-ethnic? and (b) What is the carrying capacity of the land?

- (a) Is the target population homogenous or multi-ethnic? Project design often assumes a homogenous population -- there is a tendency to shy away from referring to known facts, such as the multi-ethnicity of the population, or the fact that there is caste stratification.⁷² And, yet, the existence of multi-ethnicity or caste stratification could affect the attainment of project targets because of difficulties, for example, of obtaining common participation or competing claims for project benefits. Particularly in settlement projects, it is necessary for the project designer to enquire whether the immigrant groups

^{72/} Several agricultural development projects in Rwanda examined the relationships between different ethnic groups and their impact on project design, location and implementation.

would be accepted by the settled population.⁷³ Where there is caste stratification, there is also a division of labor based on caste -- this would affect labor scheduling for project works, as well as assumptions regarding the distribution of benefits among the target population.

- (b) Carrying capacity of the land.⁷⁴ It is necessary to estimate land needs, particularly in projects relating to transhumants and shifting cultivators where observations made during one season in a year, or during an entire year, can be wildly inaccurate (see para. 3.03). Land needs, again, must be estimated against likely population and climatic trends, the level of technology currently used, the technology which the project proposes to introduce, and the time within which the change might take place. Also, whether project incentives would lead, perhaps unintentionally, to overcropping and mining of soil fertility or accumulation of larger herds and consequent overgrazing.

3.33 To sum up, an answer to the question "who holds what interest in land?" must involve an examination, on the ground, of the nature of possession: who is in possession of the land, what are the rights of the occupant (security of tenure, ability to deal with the land), how did the occupant obtain possession of the land (allotment -- whether by an individual or group), how is the land used (type of crop, division of labor, competing groups/uses), and how the produce of the land is appropriated. In all cases, there is an identifiable group or individual that makes decisions with regard to allotment, use, and appropriation. Decisions with regard to

^{73/} In the Papua New Guinea, there were some conflicts between immigrants and the settled population belonging to different tribal groups in the New Britain area. Preparation of an agricultural development project in the Centre-West Region of the Ivory Coast pointed out that inter-communal relations between the original inhabitants and immigrants are a serious problem and would have to be taken into account in project design.

^{74/} Carrying capacity "is the number of people and the level of their activities which a region can sustain in perpetuity at an acceptable quality of life and without land deterioration Carrying capacity recognizes that all habitats have a finite assimilative capacity. Theoretically when this upper limit has been exceeded, a gradual environmental decline will set in, ultimately producing adjustments to the population itself". Bernard, F. E., and D. J. Thom, 1981. "Population pressure and human carrying capacity in selected locations of Machakos and Kitui Districts", The Journal of Developing Areas, 15, 386-7.

allotment and use are usually arrived at in accordance with principles that reflect both the philosophy of the group and the internal distribution of power. If the proposed goals of the project are to be attained, answers to these questions and an understanding of the traditional system are essential. Project goals should be in consonance with the traditional system and, where they are not, it is only an understanding of the system that would provide the designer with clues as to where changes can be introduced, how they are to be introduced, and how rapid the change will be. The techniques of melding traditional systems with project components, the potential for developing or using traditional institutions, the examination of alternatives that project designers may be faced with, are discussed in the following chapter.

IV. TRANSLATING TRADITIONAL SYSTEMS INTO PROJECT DESIGN

The previous chapter analyzed the basic aspects of traditional tenurial systems that ought to be investigated before project design is finalized. The following discussions deals with the nuts and bolts of project design. It breaks down the project cycle into its successive phases and assesses what aspects of traditional land use and tenurial patterns are relevant at each phase.

A. Identification

Because the basic outlines of a project are framed at this stage, it is extremely important that the following three major aspects of project design are expressly addressed: location, target population, and institutions.

(a) Project location

Is the land in the proposed project area being used? Even though title may vest in the government, traditional use of the land may continue. If the land is being used, is the use concurrent or sequential? Concurrent use takes place where one person cultivates the fields, while another has rights to the trees; sequential use takes place when, for instance, one person cultivates the land for a season and, thereafter, the land is used by others for grazing. If there is sequential use, then, clearly, it would be difficult to propose double-cropping without consideration of alternative arrangements for those who might be dispossessed.

Where the lands are being used, what is the capacity of the person using the land? Is the person a squatter, a wife, a tenant? Where there is a complete lack of clear titles, it may be necessary to relocate the proposed project rather than expect resolution of these problems during project implementation.¹

There may be boundary disputes between villages, some of which may be in the project area.² The question, then, at the stage of identification is whether these can be resolved before appraisal or implementation.

Or, again, the project may propose rehabilitation of modern canals, but not of contiguous traditional canals. In this event, serious socioeconomic considerations and the likelihood of conflict, between users

^{1/} This was one of the issues raised during preparation of a rural development project in Haiti.

^{2/} In Tanzania, intervillage disputes about boundaries delayed implementation of some components of a rural development project in the Tabora area.

of the modern canal and users of the traditional canal, must necessitate re-examination of the proposed project location.³

Would land for the project have to be acquired? Even though title to lands may vest in government, traditional rights of use may still subsist in them (see Chapter I, A and Chapter III, A). It may be necessary, in these circumstances, to commence land acquisition procedures, and to look into the rights of people using the land. In addition, land may also have to be acquired from persons legitimately in occupation of the land. At times, because of deficient procedures, even squatters may have title to land which could obstruct acquisition for project purposes;⁴ at others, the occupiers may possess documents which, although not legally recognized, enable them to receive credit.⁵ Land acquisition is one of the more intractable aspects of project implementation and, therefore, at the stage of identification three questions should be asked: (a) are there any procedures for land acquisition; (b) what period is necessary for the completion of these procedures and how successful have the attempts to acquire land been in the past; and (c) whether the project would have to provide compensation in addition to that provided under the legal procedures. Since the lead time required for the completion of land acquisition procedures is usually quite long, these procedures should commence at project identification and an assessment should also be made whether the procedures will be substantially completed before consideration of the project by the Bank's Executive Directors. If it appears unlikely that land can be acquired for the project before Board presentation, or that there will be no definite schedule for land acquisition which can be adhered to during project implementation, serious consideration must be given at the stage of identification to modification of project goals, or to the identification of another project area.

Alternative claims. Depending on the type of project, enquiries may have to be made regarding the alternative uses to which the land can be put. For example, an Agricultural Department may want the land for the project but a Tourism Department may want the land to be converted into a national park. In this case, would the project area be reduced in size, or

3/ This was examined in the course of preparation of a project in the Lake Alaotra area of Madagascar.

4/ During preparation of a rural development project in Brazil, it was noted that some occupiers of the land may in fact have strong legal claim to the area, having been there before the land was assigned to the Rural Development Agency, since an incomplete discriminatória had been conducted beforehand.

5/ As, for instance, has been found in some projects in Latin America.

should the design of the project be modified to accommodate proposed changes in area?⁶ How would such changes affect the project population? Would the conversion of part of the area into a national park have an adverse nutritional impact on the population, or diminish their incentives to participate in the project? Another question regarding alternative uses of land relates to the choice of sites. For instance, if a dam is to be built under the project and the initial site is the ancestral land of tribal peoples who would be displaced, are there alternative equally suitable sites for the dam which would not cause the disruption of the lives of people? If there are not, what measures have to be taken to resettle these people, and where can similar lands be found?⁷ A third type of consideration regarding alternative land uses relates to the actual user of the project area land, and the priorities of the people using it. If, for instance, lands are used for grazing and partly for crop cultivation, would a forestry project be successful in acquiring the land for the project?⁸

(b) Target population

Identification, through socio-economic studies, of the characteristics of the target population is essential. For it aids an assessment of whether the project benefits -- fertilizers, improved seeds, access to bore-holes and new wells -- will actually reach those who are the target population. This requires an understanding of the social structure and the patterns of social stratification of the group. Egalitarianism may be ideal, but rarely does one find it in practice. The elite are better informed, and are usually quicker to take advantage of project inputs for their benefit. It is necessary to look at social organization (and especially the leaders) to determine whether they could provide a vehicle for the dissemination of project concepts and project implementation; or, conversely, whether they could hamper dissemination if they are not involved. Where powerful interests are threatened, there would usually be resistance to project implementation. This would necessitate careful consideration of project design, including an assessment of arrangements that may have to be made with the local elite so as to reduce resistance to project implementation and permit the target beneficiaries to maximize their benefits.

Quite often, however, at the stage of project identification these details are sketchy, the data inadequate or unreliable, and there is insufficient time to read the literature on the area before those responsible for project identification visit the area, or there is insufficient consideration of (or budget for) the employment of an anthropologist,

6/ Such a problem was actually encountered during preparation of rural development projects in Brazil, Burundi and Nepal.

7/ See also Goodland, R. 1982, Tribal peoples and economic development. Human ecologic considerations. Washington, D.C.: The World Bank.

8/ This was one of the problems in implementing a forest plantation project in Kenya.

knowledgeable about the area, as a team member.⁹ If the data is considered insufficient or unreliable, this is the stage at which base data should be collected, or arrangements made for the collection of base data, relevant to the project. Because there would then be sufficient lead time for data collection which should not be left for completion during project implementation.

The main types of data would be:

- (a) population characteristics: rates of growth, migration patterns;
- (b) heterogeneity and social stratification: is the population multi-ethnic, or stratified by caste? What are the relations between the different ethnic/caste groups? Is there a division of labor linked with ethnic/caste membership? Is type of land use related to ethnic/caste membership (for instance, do the lower castes use inferior, or unirrigated, lands while the upper castes have the best lands and practice irrigated cultivation)? Is the spatial dispersion and residence of the target population related to ethnic/caste membership (for instance, do lower castes live on the outskirts of villages -- this could affect the project communications and extension component)?
- (c) cultural practices: Is there a division of labor by sex; are some types of crops only cultivated by women, others by men? Is this division of labor related to subsistence and cash crops? Is sharecropping, tenancy, common? What are the rights of cultivators -- duration of cultivation, share of crop, capacity to inherit, gift, exchange, mortgage land? Do transhumants use the land for part of/the whole year? What transactions take place between the settled population and transhumants (exchange of goods and services)? Is shifting and/or settled cultivation practiced, and is this type of cultivation related to the type of crop cultivated? Are

^{9/} Throughout this paper the term "anthropologist" is used interchangeably with "sociologist". The term "anthropologist", however, is preferred since it is mainly students of this discipline who have studied traditional land tenure and land use systems. For a discussion of project implementation experience when project designers are not sufficiently aware of prevailing land tenure arrangements, see Cernea, M. 1981. Land tenure systems and social implications of forestry development programs. Bank Staff Working Paper No. 452. Washington, D.C.: The World Bank.

some crops cultivated by transplanting, while others by broadcast methods?¹⁰ Are there traditional cooperative methods of cultivation, is this restricted only to subsistence/traditional crops? What are local priorities with regard to types of crops, cultivation versus grazing, food crops versus tree crops?

- (d) social organization: Who has the right to allocate land? What is the effect of such an allocation? Are there leaders who can be of assistance in project implementation and should therefore be included in project organization? What are the rights of the leaders (only allocation and control of grazing lands, for instance)? What are the levels of decision making in the groups (for example, does one unit control production; another, consumption)?
- (e) land occupancy: Average size of holdings. Who is in actual possession of the land? What is the status of the occupant -- tenant, wife, son? What areas are cultivated? Why? Are there crop sharing arrangements?
- (f) previous history: It is important to examine previous behavioral patterns of the target population, and assess what has taken place in earlier projects, if any. A failure to do so could result in the project benefitting groups that were not intended to be beneficiaries. For example, in settlement projects, if the goal is to benefit the smallholder/settler and, in practice, big farmers retain their former lands, or wealthy farmers retain their lands while obtaining tenancies from smallholders who then work as laborers of the big farmers, the project would not achieve the goal of smallholder settlement and should be redesigned to avoid such occurrences. Or, again, when the settlement pattern involves settlers following timber concessionaires who move on, then the settlers either stay as permanent settlers or continue to follow the timber concessionaires, depleting the soil resources and denuding the tree cover in the process, the question is whether a Bank project can change that pattern. Or when land reform is systematically obstructed by the wealthy, who have connections in government, could a land reform and land

^{10/} In a rice project in Cameroon, climatic changes encouraged the transition from broadcast to transplanting rice, but this transition was also facilitated by the fact that farmers transplanted sorghum.

redistribution project have any chance of success without considering the impact of such a project on the holdings of the wealthy, the resistance that might be encountered, and devising methods of obtaining the consent of the wealthy (including, for instance, new inputs or technology as incentives)?

(c) Institutions

Government commitment. The level of government commitment, demonstrated through budgetary allocations and the secondment of staff, is essential to project success. Where, for example, the government department in charge of a proposed project is not interested in meeting a Project Identification Team, or is inadequately staffed to implement the proposed project, consideration should be given to deferring the project. Equally important is local capacity to implement the project. If, for example, the wealthy control local governmental institutions or are the arbiters of land disputes, what reliance can the project designer place on the effectiveness of local institutions, or their capacity to implement the project?

Training capabilities. Again, depending on local information available at the Identification stage, it might be necessary to direct extension and credit to a particular group, say, women. Here the project designer must enquire into the availability of women extension workers or the time necessary to train them, and weigh the cultural attitudes to women workers. Identification is the best time to assess the period necessary for the training of individuals, the need for technical assistance, and the capacity of local institutions to implement the proposed project.

Traditional authorities and government bureaucracy. Finally, at the stage of identification, a preliminary assessment should be made of the form of organization, and the levels of decision making that are required within the proposed organization. For example, a preliminary decision should be arrived at whether group titles, as opposed to individual titles, are to be fostered by the project. Second, there should also be an assessment as to the division of organizational responsibility. What role, for instance, would the government bureaucracy play in regard to traditional authorities?

B. Preparation

At the stage of project preparation, the base data necessary for detailed project design (particularly regarding the target population) should be available.¹¹ The base data may show that the traditional

^{11/} Monitoring and Evaluation is no substitute for the absence of base data. Therefore, when a project request suggests that since base data for project formulation is weak, a strong monitoring and evaluation element will be built in, it is doubtful what success will attend the efforts of the proposed unit.

systems in the proposed project area are complex, or that there is great variability in individual cases, and that, therefore, there cannot be one standardized approach under the project. Project designers should then ensure that the local organizations, which may play an intermediary role in project design and implementation, are fully aware of these differences and subtleties and able to adopt appropriate operational approaches to promote achievement of project goals.¹²

But, whether or not the existing traditional system is too complex, the project designers should compare the system with existing legislation, if any. This would be necessary to determine whether formal legislation recognizes traditional practices, whether traditional practices are permitted by law without being specifically recognized, or whether traditional practices conflict with legislation.

Resolving the conflict between traditional systems and formal legislation

Where there is a conflict between legislation and traditional land use systems (expressly, or by implication) the following are the most important questions to be answered:

- (a) can the status of the users of land in the project area be regularized;
- (b) is it necessary to amend the legislation to incorporate traditional systems within the law;
- (c) what is the time-frame within which the regularization or amendment can be carried out;
- (d) can the amendments, or adaptations, be enforced?
Will they, in other words, "work"?

Regularization of status. One of the first questions to be answered is whether there are existing procedures in the legislation for the regularization of the status of users of land in the project area. For example, can the "squatters", or "illegal occupants" (as they would be in the eyes of the law) be granted legal status -- initially, for instance, through the grant of a certificate of "occupancy"¹³ or recognition of traditional rights (a fairly simple procedure in Tanzania).¹⁴

If this were possible, then enquiries should also be made whether it is possible to "freeze" those in occupation of land, or declare the area a "zone of national interest" thereby freezing all land transactions within

^{12/} This approach is well exemplified by a rural development project dealing with the Baringo area of Kenya.

^{13/} This approach was found under rural development projects in Costa Rica and Tunisia.

^{14/} For instance, under a livestock project in Chad.

the area.¹⁵ Because, if this is not done, among the many consequences could be:

- (a) an opportunity for the urban and rural elite to take advantage of the situation for their own benefit -- by evicting sharecroppers, or tenants, or redistributing lands among their relatives and nominees.
- (b) where land acquisition is proposed, more people might come into the project area, after hearing that the project authorities would compensate the residents,¹⁶ or speculation in land might be induced merely by the proposal to have a Bank project in the area (as in Ecuador).

Also, because a mere notification by government freezing land transactions, or declaring the area a zone of national interest, or notifying the project area as an area where land acquisition proceedings are to commence rarely reaches the rural areas and those most affected by these notifications, two other actions may have to be taken (if data are not available): a census of the project population and a rough demarcation of the areas actually used by different individuals or groups.

If the information collected under the required basic data for project preparation is both valid and reliable, and there is a cadastral survey, a crosscomparison between the cadastral registers and the base data is relatively easy and of short duration. This information might show that the register is accurate except in a minority of cases and can, therefore, be relied on. On the other hand, the information could lead to the inference that the register is outdated and that conditions on the ground are far different. In this event, a quick census and a rough demarcation of areas is the most practical.

The provision that is usually made in projects where there are no cadastral surveys (or where surveys are obviously outdated) is for cadastral surveys. But what is most important is to ensure that there is an accurate record of persons using the land -- the question of their respective rights can come later. And, therefore, while the provision of cadastral surveys is very important in Bank-financed projects (and provision is made for them in numerous projects in the Latin America and Caribbean region, either under an advance from the Bank's Project Preparation Facility, or during the project implementation phase), several considerations should be assessed before they are made the sole method of determining which beneficiaries use the land. Cadastral surveys take time, demand trained personnel, and are relatively costly. Most importantly, because of

^{15/} This was encountered under a rural development project in the State of Maranhao in Brazil.

^{16/} As observed under an irrigation project in the Philippines.

the time they take and, particularly if these surveys are left till project implementation, the elite can change the situation on the ground. Further, there is also the question of who is going to pay for topographical surveys and the cadastral survey -- at times the farmer might object to, and be unwilling to pay for, them.¹⁷ The goal should be to ensure that the project beneficiaries enjoy the same security of tenure that they had before project implementation. Towards this end, it is essential to find out, first, who is actually using the land and make a rough delimitation of areas used.¹⁸ With competent personnel, such an enquiry should not take much time -- far less, in fact, than the average time taken between various stages of project identification, preparation, and appraisal.

It might be suggested that the goals of a project may not be to provide the same security of tenure as the project beneficiaries enjoyed. Even in this event, a survey of persons actually using the land is essential. For instance, it could be argued that a project goal is implementation of land reform, in which event the tenurial system is to be deliberately altered. But land reform usually involves the transfer of title to the actual cultivator -- be he tenant or sharecropper -- and that is why the actual cultivator must be noted before an absentee landlord steps in to defeat the provisions of land reform legislation.

Possession and use should be identified even when -- as in the case of transhumants -- the rights of user may be unrecognized at law and, at times, not considered germane to the project. For example, when a project proposed construction of a dam in Cameroon to extend irrigated rice cultivation, failure to consider the rights of transhumants who pass through the area to be covered by the proposed dam, and provision of alternative routes, would have resulted in conflict, deprivation of rights, destruction of canals, and unnecessary costs and delay in project implementation. This situation has occurred in the Sudan, where transhumants' routes have been blocked by huge blocks of mechanized farms.

Legislative amendment is a solution often proposed. It is, however, a solution that must be employed with care. First, the needs and practices in the project area could be confused with those of the country, or vice versa. Second, depending on the legislative system within the country, amendments to legislation could take a long time and delay either project effectiveness or implementation. Third, a question which should be resolved is whether the amendments are really necessary. There is the

17/ During preparation of a rural development project in the State of Mato Grosso (Brazil), it was reported that farmers were unwilling to pay for the topographical surveys required by INCRA (which issues title deeds) prior to issue of title.

18/ That is, a survey carried out with simple instruments (compass and chain or alidade) on the ground to mark existing boundaries and record them on approximate scale on map sheets. At this stage triangulations are not needed.

related need for project flexibility, and the inability to forecast with any degree of certainty the likely social changes resulting from the project. If the project is to be flexible, would legislative amendment be the most suitable method of retaining this flexibility? Could flexibility and social feasibility be achieved through amendments in legislative rules (which could, for instance, be amended by executive order) or through notifications, or through the framing of rules for the project area alone which, if successfully implemented, could then form the basis for legislative amendment? Fourth, would the existing social structures in the project area be capable of adapting to changes in social relations that the amendments will promote?¹⁹ All these questions should be answered by the project designers, although their implementation could take place thereafter, and even during project implementation.

The time-frame. Essential to the success of later project implementation is an assessment by the project designers of the time-frame within which regularization or status, or legislative amendment can take place. For this ultimately relates to what the project will achieve. For instance, where it is necessary to amend forestry legislation (or the rules framed under the legislation), this should not be delayed to the appraisal stage unless the rules (deemed essential to project success) can be amended before the project is negotiated or presented for approval by the Bank.²⁰ Innovative ideas usually take longer to be accepted. Therefore, an innovative idea such as the constitution of a Soil Conservation Fund has first to be discussed with beneficiaries who proposed the innovation. Thereafter, the provision of a legal format for those proposals is easier to handle.²¹ The time after return from appraisal, however, is rarely the stage at which the Bank's Legal Department should be asked to review existing soil conservation legislation -- obviously since, if the legislation is contrary to the project components and goals, post appraisal field work may be necessary. Or, if contracts are proposed between beneficiaries and the project organization or local authorities, the preparation team should identify the contract in outline (which must be related to project goals), assess how long it would take for the proposed contracts to be entered into, and which body (or persons) will enter into, and enforce, the contracts. This is also a question of the design of the organizational framework (see below).

^{19/} This question is rarely answered (except implicitly, in project targets). "Despite the importance of understanding the political and social factors ... program evaluations focus more attention on economic factors than the political and social": Gardner, P. D., 1979. An examination of the institutional and economic factors in influencing Thailand's land reform program: A cost-recovery analysis. Ph.D. dissertation. Michigan State University.

^{20/} This was done, for example, under a forestry project in Nepal.

^{21/} As in the case of a watershed project in Colombia.

Enforceability of regularization or amendments. Equally important is an assessment by the preparation team of the capacity for enforcement of proposed procedures for regularization and amendments. This is both a question of institutional capacities as well as of social feasibility. The success of previous attempts should be assessed. Where, as for instance in Tunisia, there is lack of uniformity of enforcement of land reform, and farmers refuse to comply with regulations, the potential for enforcement is low. Or, where an order is passed with no provision of detailed measures for implementation, resulting in coercive efforts to enforce the order, it is of little use to consider amendment of legislation. Where a Land Use Decree is enacted, but has little effect on traditional practices, project design should consider whether to continue using the traditional base as an organizational unit. But the implementation stage of a project is rarely the stage at which project participation in soil conservation works can be enforced by decree, or the rights of transhumants investigated for the first time. Again, if experience shows that there is no land available which is not under traditional tenurial systems, it may not be wise to encourage outmigration from one area to another without first investigating whether the proposed settlers will, in fact, be allowed to use land in the proposed settlement area, notwithstanding that by statute the land in the proposed settlement area may be government land.

Other issues

The other main issues which project designers should determine relate to organizational design, and social feasibility.

Organizational design. Following the initial identification of the project, the preparation team should examine in detail the institutional capacity of the government, local authorities, traditional groups to implement the project; as also whether the training proposals from the identification stage have been implemented (see Chapter 4, A (c)).

Organizational design involves an assessment of the distribution of power and the ability to decide at the appropriate level. For example, in a transhumant group what decisions are usually made at what level: do they relate to consumption, do they relate to herd management, do they relate to the distribution of rights to use of pasture and water? If the local authorities charged with the distribution of land are controlled by the local elite, where is the power to decide vested so that there is little deviation from project goals? What personnel are necessary where the major problems are of a sociological nature?²² Should a participatory approach be adopted together with the use of traditional structures for a pilot project?²³ Where a government authority is inefficient, is it necessary to provide appropriate authority and autonomy, or would the setting up of an appropriate autonomous body involve too many difficulties which would delay

^{22/} As examined under a rural development project in the Mutara area of Rwanda.

^{23/} As considered for a project in the Middle Atlas region of Morocco.

project implementation and therefore require reassessment of project targets? Where there are two government departments dealing with land issues -- one, with cadastral surveys and land titles; the other, with land reform -- which department should play the coordinating role in the project? If the activities of one department cannot be coordinated by the other, should a third department be involved? Is there a third such department with overall authority?

Organizational design must be related with project goals and the means of reaching these goals. This would include a joint decision by the preparation team and the government as to whether group, or individual, titles are the best method of reaching project goals. The decision cannot be based on preconceptions, but must be pragmatic.²⁴ There is no particular sanctity in individual tenure, nor should there be an automatic choice of group tenures. The choice should depend on careful consideration which can only result from a study of existing social organization, and peoples' priorities.

Included in organizational design is an examination and decision by the preparation team of the techniques of reaching the target population (communications and extension). What types of personnel are necessary to convey project ideals and implement the project (numbers, types of training, levels of placement)? Are they available? Will they be available and in place when the project becomes effective?

Finally, there is the question of monitoring -- the development of a management information system. The preparation team cannot leave a decision regarding monitoring to the appraisal mission alone. There must be an examination of the nature of the system required, the capacity for carrying out monitoring, an assessment of where the monitoring unit would be most effective as a management tool within the organization, the need for technical assistance with regard to monitoring, and the time within which the monitoring unit can be in place.²⁵

^{24/} Preconceptions regarding the superiority of individual tenures still occur among expatriate project designers, as the following comments in recent project requests will evidence: "Desertification can only be arrested through a concerted program of action including allocation of land to individuals or 'groups'," and, "Only if individuals have secure rights to land use are cattle numbers likely to be regulated". As has been pointed out earlier (see Chapter III, C), even though there is "group ownership" of land, the individual could have security of tenure.

^{25/} There is no examination in depth of monitoring systems in this paper since the Bank has published a Handbook on Monitoring and Evaluation of Agricultural Projects. Washington, D.C.: The World Bank, 1981.

Social feasibility.²⁶ There must be an assessment by the preparation team whether the proposed project is socially feasible -- that is, whether the proposed beneficiaries will actually benefit, whether they will participate in the project, and what the outcome of their participation will be. In essence, a rate of return calculation is a series of projections based on assumptions, among other matters, about human behavior. In effect, the preparation team asks itself the questions, "will the project be a success?" and "how successful will it be?" The answers depend on how the term "success" is defined. As Monod, quoting Jacob, says, "Successful for whom? Successful in terms of the best use or more efficient use of the land? Successful for the (project area residents), or successful for the national states or economies in which the (project) area is located? An extreme example: in East Africa, we have several 'successful' development schemes that evolved simply by driving pastoralists away and putting the alienated land to either better pastoral management or to other productive uses; hence, though 'successful' from one point of view, it was not to the benefit of the pastoralists as a group".²⁷ A project can be socially feasible if, first, the structure, goals, and priorities of the target population have been understood. Second, existing socio-economic organizations should be used to attain project goals. Third, project goals should reflect local priorities and project design should relate to these priorities, not conversely. There is no general solution which is applicable in every case since groups differ in their structures, their goals, their distributions of power and labor, and in their forms of decision making.²⁸

C. Appraisal

Aid Agency staff normally have the opportunity to review preparation of the project as it progresses and to advise the government, though Borrowers are obviously responsible for preparing the project request. The final assessment of the economic viability, and technical, financial and social feasibility comes at the appraisal stage. With regard to land use and organizational design, this involves a comparatively quick cross-check of the basic data, and the relationship between project organization and project goals.

^{26/} It is realized that economic viability and technical and financial feasibility are equally important though they are not dealt with in this paper.

^{27/} See: Monod, T., 1975, op. cit., 173.

^{28/} For more on social feasibility, see: Perrett, H., and F. J. Lethem, 1980. Human factors in project work. World Bank Staff Working Paper No. 397. Washington, D.C.: The World Bank.

The questions regarding land of paramount importance for an Appraisal team are:

- (a) the organizational capacity of the proposed institutions to attain project goals;
- (b) what types of training, communications and extension facilities are available, and their adequacy;
- (c) whether procedures for the regularization of traditional land use systems, or the amendment of legislation, have commenced, how long these will take, and how effective they will be;
- (d) whether, given the existing system of tenures or the amendments proposed, project beneficiaries will be "creditworthy"; and
- (e) whether there should be any conditions of negotiation, loan approval and effectiveness, or covenants.

If, even at appraisal stage there is inadequate base data, it would be more efficient to convert the project into a pilot project.²⁹ Project flexibility is essential, since the impact of a project and the attainment of project goals can never be forecast with certainty. In addition to pilot projects, flexibility can also be retained by providing for mid-term reviews where all the pre-implementation assumptions can be re-examined and, if necessary, target goals can be altered and the project design changed.³⁰

An equally important consideration for the Appraisal Mission is the replicability of the land tenure approaches adopted under the project. Although a project may be a success, this success may never be capable of being transferred to similar, or other, projects in the country. The project may be too costly, or conditions in the project area may be unique, or the project may be so dependent on expatriate personnel that it is not replicable. In these circumstances, the Appraisal Mission should ask what lessons can be learned from the project.

Finally, if the project involves contracts between government and/or local authorities and individuals or groups, the Appraisal Mission should be satisfied that these contracts, in broad terms, can be entered into, will be understood and accepted by the beneficiaries, and are capable of enforcement.

^{29/} An example is the Baringo Semi-Arid Areas Project in Kenya.

^{30/} This occurred under a forestry project in the State of Gujarat (India).

V. CONCLUSIONS

The understanding and incorporation of traditional land use and tenurial systems in agricultural project design is essential to project success. But, if projects are to take into account these systems, cooperation between three disciplines is essential: the agriculturist, lawyer, and anthropologist. All these have to be harmonized into a project that is compatible with existing systems, takes into account environmental strengths and constraints, and is the result of the recognition of social factors. Neither the anthropologist nor the agriculturist are generally skilled in the interpretation of law, the techniques of drafting, and an assessment of the legal impact of proposals. This would imply the early involvement of lawyers and institutions in the project country who could be of vital assistance as sources of information, advisors, and interpreters of traditional tenurial systems and formal legislation. The Aid Agency's Legal Department could also help, preferably at the stage of project identification, to ensure that the Terms of Reference of project designers will consider the legal aspects of land tenure and to assist their colleagues in providing advice to the Borrowers in such regard.

There is growing recognition of the need for the regular and early involvement of anthropologists in the project cycle. Given budgetary constraints, and the likelihood that these will continue, it is not suggested that staff requirements be radically expanded to employ anthropologists. Most of the advice will still have to come mainly from consultants. It is, however, recommended that anthropologists should assist governments right from the stage of project identification. For it is at that stage, and at the stage of project preparation, that an anthropological input will have the greatest impact on project design. This involvement should be viewed as an essential part of the process of design, not as a cosmetic activity.

Areas for further work. Though this paper deals with traditional land tenure systems relating to agricultural project design, there are further areas where these systems have an impact, or are affected by development projects. Two areas appear to have priority: irrigation projects, and transportation projects (particularly where the construction of feeder roads, or highway maintenance is envisaged).

TRADITIONAL LAND TENURES AND LAND USE SYSTEMS IN THE DESIGN OF

AGRICULTURAL PROJECTS

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Spanish: Presupuestos de fincas. Editorial Tecnos, 1982.

ISBN 84-309-0886-2, 725 pesetas.

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French: L'Analyse des projets agro-industriels. Economica, 1982.

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Spanish: Análisis de proyectos agro-industriales. Editorial Tecnos, 1981.

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Edited by Orlando T. Espadas

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