LAND TENURE ISSUES IN PROJECT DESIGN AND STRATEGIES FOR AGRICULTURAL DEVELOPMENT IN SUB-SAHARAN AFRICA

by

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October 1985

This paper represents the author's analysis and not the opinion of any of the organizations which have sponsored his research.

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ACKNOWLEDGMENTS

This paper was prepared at the request of USAID, thanks to Ray Love, Deputy Assistant Administrator for Africa Bureau, and Lane Holdcroft, then Head of Africa Bureau's Technical Resources Division, with whom the idea originated. The author has very much appreciated the consistent support for this effort from David Atwood (Bureau of Science and Technology/Rural Development), Pat Fleuret (Africa Bureau/Development Programming) and Curt Reintsma (Africa Bureau/Technical Resources).

Pat Fleuret and David Atwood provided very detailed and helpful critiques of early drafts, and the paper has also benefited from comments by Curt Reintsma, John Grayzel (Near East Bureau) and Joan Atherton (Policy Planning and Coordination Bureau). At the Land Tenure Center, Marion Brown, Jim Riddell, Don Kanel, John Harbeson, Steve Lawry and Peter Bloch have contributed helpful comments at various stages. In many parts of this paper I have built upon the fine work of these colleagues. From outside the Center, much appreciated comments on all or parts of the paper have come from John Cohen (Harvard Institute for International Development), Louise Fortmann (Department of Forestry and Natural Resources, University of California-Berkeley), and Allan Hoben (Department of Anthropology and African Studies Center, Boston University). Several research assistants made valuable contributions: Solomon Gashaw helped by gathering many of the sources cited here; Jill Cantor assisted with the excerpts from the literature; and Joy Green winnowed AID documentation for examples from the project experience. My thanks to them and to Patty Grubb, Kathy Torok and Jane Dennis-Collins, who typed this report, and especially to Patty Grubb, who cheerfully bore the major burden of multiple revisions.

Finally, I wish to express my deep gratitude to the many colleagues, friends and students from Ethiopia, Sudan, Botswana and elsewhere in Africa, who have over the years enriched my understanding of African land tenure.

Any errors of fact or opinion which remain in spite of so much good advice and assistance are my own.

John W. Bruce

October 28, 1985

EXECUTIVE SUMMARY

Because seriously skewed land distribution is unusual in Sub-Saharan Africa, aside from situations created by European settlement and largely eliminated at the end of the colonial period, interest in land policy tends to focus less on redistributive land reform than on the adequacy or inadequacy of existing land tenure systems in responding to the demands of development. Redistributive land reform is relevant in certain limited contexts, but every country in the region faces the issue of whether reform of its land tenure institutions is necessary, and if so, what shape should be taken by the reform. Land tenure reform alters the substantive rules and institutional arrangements of indigenous land tenure systems, seeking to induce changes in land use in the interest of productivity, equity, and similar objectives.

Is land tenure a manipulable variable, a lever with which development planners and administrators can move other, more inert pieces in the problem of underdevelopment? Or is it so profoundly imbedded in the woof and warp of social structure and culture that it is itself one of the most obdurate pieces in the problem, a "bottleneck" to be eliminated? How can AID utilize tenure reform in pursuit of its development objectives? These are the questions addressed in this paper.

1. Understanding Indigenous Land Tenure

Development planners too often work with misleading stereotypes of indigenous tenure. Research from the sixties and seventies has greatly enhanced our understanding of indigenous land tenure.

1.1 Is Indigenous Land Tenure "Communal?"

Access to land in Africa is generally based upon membership in a group such as a lineage or a village, a group defined by common descent or residence, or some combination of the two principles. Tenure to pasture is often communal, in that individuals do not have exclusive rights to discrete areas of pasture. But as regards farmland, even under shifting cultivation the rights of the individual cultivator are usually clearly defined, and limited in duration by declining fertility rather than any prohibition against indefinite use. Once cultivation stabilizes land is generally held in perpetuity, inheritable by customary heirs. Any tenure system involves some element of societal control of land use, but most indigenous tenures governing farmland are better characterized as individual. They deviate from the Western concept of ownership in that land is not generally sold, but it is important that this not lead us to underestimate the strong proprietary sense and security of tenure which most African farmers enjoy with respect to their land.

Four dimensions of indigenous land tenure need to be borne in mind:

1.2 The Vertical Dimension: Social Hierarchy

In some of the more complex African traditional societies, prerogatives involving control of land use have been reserved not to a single social group but to a hierarchy of groups, pyramiding toward a paramount chief or king. Rights held by the levels in the hierarchy are sometimes referred to as estates of administration and the rights held by the cultivator as the estate of use. Where such a tenurial hierarchy exists, we must understand it in order to grasp the role which the land tenure system plays in supporting the system of social and political control. It is equally necessary, however, not to accept uncritically assertions from those in the hierarchy about who "owns" the land, but to ask persistently: who makes the actual decisions concerning the use of the land?

1.3 The Horizontal Dimension: Multi-Tenure Systems

A tenure system involves more than a single tenure because land is put to a variety of uses, and there will be separate tenures for some of these uses. The best known distinction is that between pasture and farmland, but there are many others. In addition to several primary tenures for land according to use, there will also be secondary tenures, such as sharecropping, derived from the primary tenures. This variety within a tenure system offers a potentially important source of models for tenure reform planners.

1.4 The Historical Dimension: The Pervasiveness of Change

A presumption of antiquity and stability for indigenous tenure systems is often wrong. Even in pre-colonial times, a variety of influences (agricultural innovation, famine, population growth, conquests and migrations) regularly required modification of indigenous tenure systems. No consideration of the future of a particular tenure system should ever start from a presumption that the system is static.

1.5 The Personal Dimension: The Farmer's Viewpoint

Farmers see a land tenure system as opportunities and constraints around which they develop land acquisition and retention strategies which are intimately related to the homestead or household cycle. When tenure rules are changed to promote better land use, it is the farmers to whom the rules are addressed and their behavior which one tries to change. Before we can judge how they will respond to reforms, we need to understand how the land tenure system within which they are operating looks to them.

2. A Century of Change in Indigenous Tenure Systems

2.1 Colonialism and Tenurial Dualism

European settlement created dual tenure systems in a number of colonies and these patterns have proved remarkably persistent. They usually involve a subsistence sector under indigenous tenure and a more market-oriented sector

under Western tenure types. Tenure may play some role in determining the extent of commercial production, but the differences appear to be based primarily in historically different treatment of the areas and continuing patterns of subsidy to the market-oriented sector--not on characteristics of the tenure systems themselves.

2.2 Commercialization of Agriculture and Related Forces

Where Africans became active producers for the market, tenure change often followed, usually in the direction of greater independence and security of tenure for the landholder. The classic case concerns the tenure changes which accompanied the introduction and commercialization of cocoa in West Africa. New tenure patterns emerged, sometimes with the support of the colonial judiciary, as in the case of "family land" in Ghana and Nigeria. How fast such processes are continuing at the moment is an open question, given the stagnation affecting much of African agriculture.

2.3 Changes in Local Institutions with Tenure Roles

Colonial administrations tended to establish geographically-based administrative units and to exercise authority over Africans based on their areas of residence, rather than kinship. "Chiefs" with geographical areas of control were recognized as "communal land" administrators with an essentially "public" character, while lineages and clans tended to be recognized as having "private" rights in smaller areas.

2.4 The Impact of Islamic Law

Islamic law has a clear concept of individual ownership of land and a well-developed law concerning the transfer and inheritance of land. It also holds that sporadic use of land is not sufficient to establish ownership and that such land is state owned. Islamicization thus chips away at the rights of the lineage, clan and tribe, from both the state and individual ends of the social spectrum. Its patriarchal legal models are especially disruptive of matrilineal systems.

3. Is Indigenous Tenure a Development Constraint?

Indigenous tenure systems are so varied as to rule out any flat answer to this question, but it is possible to indicate what aspects of certain tenure systems cause particular problems. It is essential to bear in mind throughout this discussion that African farmers stand with one foot in an older, subsistence-oriented system of production, and one foot in an emerging, market-oriented system. The objectives met by the older system--guaranteed access to a subsistence opportunity under farming strategies oriented toward risk-avoidance--are still very relevent to today's farmer. When we ask whether an aspect of land tenure retards innovation and investment in increased production, we must also ask what the farmer would lose in terms of economic security and risk-management if that aspect were changed. The farmer's productivity and even survival depends on how well he or she is able to balance the demands of the two sets of objectives. Land tenure evolves as the balance between the values accorded to these objectives change. That balance changes at different

rates for different farmers, and in periods of rapid change it is difficult for a tenure system to be responsive to all their different needs.

3.1 Land Use and Conservation

Shifting cultivation is rapidly becoming untenable in many areas of Africa due to increased population pressure on the land resource. Technology permitting, most indigenous land tenure systems accomplish without too much difficulty the transition to an agriculture based on fallows and rotations. The development of firm rights in fallow is the critical step from a tenure standpoint. Where there is a failure to make this transition to a rotational agriculture satisfactorily, it is more often due to lack of reliable new technologies and inputs than inflexibility in the tenure system. On the other hand, commons arrangements with respect to pasture and forest resources often do permit overutilization and long-lasting damage to resources. The creation of adequate institutional arrangements for commons management is a complex task, though certainly not inherently impossible. While individualization may be a solution in some contexts, it is no panacea. No tenure system, including freehold, is proof against destructive land use; desperate farmers sometimes must maximize short-term production in order to survive, despite long-term resource costs.

3.2 Security of Tenure and Investment in the Holding

Capital accumulation in African agriculture is an accretionary process, taking place through incremental investments of labor, cash surplus and credit in the holding over a long period of time. A farmer will not make long-term investments in his holding unless he is secure in his expectation of reaping the benefits of his investment. Most indigenous tenure systems have provided and still provide adequate security when land is plentiful, but can they do so as scarcity increases and land values rise? The experience is mixed. In many cases the system has provided the requisite security. Where it has failed to do so, this may be due to inappropriate substantive rules, or the inability of traditional land administrators to deal effectively with ethnic competition over land, land-grabbing by new elites, or arbitrary government action.

3.3 Exclusivity of Tenure and Farm Management

While indigenous tenure of farmland is not accurately characterized as communal, there may be community-sanctioned land use practices which limit the autonomy of the farmer as manager. Use of stubble as communal grazing after harvest is an example of such overlapping use arrangements. In addition, a few indigenous tenure systems provide for periodic redistribution of all land, or selective reallocation from large holdings to create holdings for new households. Permanent improvements such as fencing may be discouraged or prohibited in these circumstances. The durability of such restrictions in the face of significant incentives appears to vary considerably.

3.4 Efficiency and Equity in Land Distribution

Indigenous tenure systems often do not provide for sale of land, and offer varying degrees of resistence to sales. Change in this respect tends to be gradual, and lack of a land market in our sense is often cited as not permit-

ting an efficient allocation of resources. In African circumstances, however, some of our assumptions about the functioning of a land market may not hold true. Land purchasers may be more interested in land as a hedge against inflation or security for loans to be invested outside agriculture, than in producing on the land, and the impact of a land market upon land distribution and landlessness requires careful monitoring. The lack of a land market may also not pose so great a problem as if sometimes imagined. Under many indigenous tenure systems, land borrowing, share-cropping, possessory mortgages and other non-perpetual transactions perform some important functions of a land market.

3.5 Land-Secured Credit

While such security is not needed in most lending to smallholders, the ability to secure a loan with land can be important in the case of loans for expensive permanent improvements in the holding. The problem with mortgaging under indigenous systems lies in the danger of a permanent alienation through foreclosure and sale. As sales gain acceptance, so does mortgaging. Legalizing mortgages may not have the hoped-for impact on access to credit for smallholders, however. Mortgaging requires a predictable land market. Even where such a market exists, banks often will turn down smallholders on more general grounds of "credit-worthiness," or simply because they do not wish to incur the administrative costs of many small rural loans.

3.6 Patterns of Inheritance and Continuity in the Farm Enterprise

Matrilineal and some patrilineal systems of inheritance confer discretion on a kin group in selection of an heir. Under matrilineal systems, the heir will normally not come from among the children of the deceased land holder. An emergent commercial farmer has at the outset little with which to build except the labor of his immmediate family, and it may be questioned whether such a system gives children sufficient reason to stay on the farm, for stable transgenerational development of farms. This area is not well-researched, and opinions as to the seriousness of this factor are based on fragmentary evidence and impressions.

3.7 Fragmentation and Subdivision of Holdings

The subdivision of parcels by inheritance over generations into smaller and smaller operated units have given rise to considerable concern about preservation of "viable holdings." In fact, subdivision has proved extremely difficult to regulate in the absence of alternative opportunities outside agriculture. Once subdivision has progressed to a certain point, a farmer must somehow get access to more than one parcel to put together an adequate holding. Subdivision thus contributes to the growth of fragmentation of holdings. Fragmentation involves inefficiencies due to the distance between parcels and the small scale of farming. On the other hand, it often plays a critical role in a farmer's risk management strategy, giving him access to different soils and, especially in mountainous areas, even different ecological niches.

3.8 Man/Land Ratios, Population Mobility and Citizenship

Indigenous tenure systems are generally based in kinship and ethnicity, and this sometimes prevents (or at least retards) movement of people from

areas experiencing heavy population pressure to areas with low man/land ratios. It is doubtful that this is significant in other than the fairly short run; it may be more significant in terms of limiting transfer of new technologies to new areas. "Stranger" farmers migrating beyond the borders of their own tribes have played an important role in this process in Africa.

3.9 Redistributive Reform

While the economically undifferentiated and egalitarian village is a myth, inequalities in landholding under most indigenous systems have been relatively slight and--at least in most cases--not cumulative. Some indigenous systems involved reallocation of land from holdings which came to be viewed as "too large." Redistributive land reform is most relevant in the circumstances of former European settlement, and as such usually not of very long-term concern. Where serious indigenous maldistribution does exist, as it did in Ethiopia, it often has an inter-tribal dimension and can be at least as politically explosive as in Asia or Latin America. Sharecropping or similar arrangements require careful analysis because they are often founded in patterns of tribal conquest and subjugation. These relationships are not based on arm's-length bargaining and to this extent, standard assumptions about economic behavior under sharecropping and tenancy may not provide accurate guidance in these circumstances.

In summary, there is a kernel of fact within each of the concerns about indigenous tenures and those concerns deserve to be borne in mind by those planning agricultural development projects and strategies. However:

- For any given indigenous tenure system, only some of the concerns traditionally expressed about indigenous tenure will be relevant;

- When one of them is relevant, a careful examination is necessary to determine how serious it is in that specific transitional economic and social context; and

- Insofar as a particular facet of an indigenous tenure system is perceived as posing difficulties in respect of one need of farmers, it is important to examine whether it is not meeting another need, perhaps equally or more important to the farmers.

4. Tenure Reform Models

4.1 The Variety of Tenure Reform

Some observers see tenure reform as useful in facilitating evolutionary processes, organizing and hastening a transition caused by fundamental economic forces. Others see tenure reform as a tool with which to initiate change and to alter general directions of development. It is perhaps realistic to think of land tenure as one among many mutually dependent variables, one whose manipulation may affect the course of development but which (like the others) is unlikely to produce much of an effect if manipulated alone. It is in addition a variable to be manipulated with considerable care: land tenure reform can be a powerful force for social disintegration. What are the major reform patterns?

4.2 Individualization of Tenure

Individualization is seen by many analysts as the most appropriate remedy to the asserted shortcomings of indigenous tenure. It would create a property form which would mesh more easily with the other institutions of emerging private enterprise economies, a property form which would allow land to be dealt with as a commodity.

Kenya's individualization program has been by far the most ambitious in Africa. It has been remarkably successful as a field operation, systematically surveying and registering in freehold all the good farmland in the country and many marginal areas as well. In central Kenya the program was associated with a prosperous period for smallholder agriculture, but it is virtually impossible to determine how much that prosperity owed to the tenure reform and how much to other initiatives. Micro-studies from several parts of the country indicate that the process has had a number of negative impacts and that the strategy under which "yeoman farmers" were to arise out of the reform has not played out as planned. Kenyan farmers have to a large extent failed to comply with the legislation, and where they have done so it is apparently with different objectives than those anticipated by the architects of the reform. It may be questioned whether the results have justified the effort involved.

Individualization need not involve a full conversion to freehold, and in a number of countries it has taken the form of long-term leasing of land by the state to the individual. In Lesotho, individualization means seizing the opportunity under a 1979 Act to have a long-term lease from the Commissioner of Lands of a holding originally allocated by the chief. Zambia has also used long-term leases for individualized tenure, primarily as the tenure for former white settler holdings.

4.3 Cooperativization of Production

The ujamaa program in Tanzania involved both villagization and cooperative production. That it has proved disappointing both in terms of productivity and farmer participation is widely acknowledged, but there is much less agreement as to the reasons for the disappointing results. Some commentators assume the inherent unworkability of the model, others mismanagement of the program, and still others that Tanzania peasants simply rejected the approach. Tanzania is currently moving away from production cooperation and in the direction of long-term leases for individuals. In ujamaa villages, the village would hold the land on an even longer lease, and individuals would hold as sub-lessees from the village.

In post-revolutionary Ethiopia, the impetus behind production cooperation has been more ideological, but the introduction of such arrangements has been gradual, with only about two percent of the land now collectively farmed. Individual farms are proving more productive than those farmed collectively by peasant associations; and collective farming has not been well received by the former sharecroppers who saw the revolution as their chance to at last own their own land. The government's commitment to collectivization does not, however, appear to have waned.

The Tanzanian and Ethiopian experiments, it should be noted, have both been top-down exercises involving some degree of coercion. Both have involved the creation of new local institutions as the foci for collectivization, rather than using traditional forms.

4.4 Reinstitutionalizing Indigenous Land Tenure

"Reinstitutionalization" is used here to describe reform which may involve substantive changes in tenure but emphasizes change in the institutions which administer the tenure system, while preserving the element of kin group or other community control. A "communal" dimension is maintained, and the role of the national bureaucracy is minimized. Such reforms take a variety of shapes. In Nigeria and Ghana, the courts have by analogy to English legal institutions defined a property form known as "family land." In pre-revolutionary Ethiopia, "agricultural communities" were empowered to codify their own land tenure systems. In Botswana, a system of tribal land boards was created to replace the chiefs as land administrator but left the indigenous tenure system for farmland largely intact. Another option, the Asian "land corporation," has yet to be introduced into Africa. The major attraction of the "reinstitutionalization" model is its promise of cost-effective reform with a minimum of bureaucratization and social dislocation. In some national contexts, however, it may be viewed as inadequate to the extent that it permits survival of a tenure diversity based in ethnicity.

4.5 Reforming Inheritance and Its Consequences

Africa presents a tremendous diversity of systems of kinship and inheritance. Some reforms are underway. Kenya has legislated a set of uniform rules of intestacy, though indigenous rules may be resorted to in a will. Zambia is considering such a reform, and there matrilineality is a major issue. Proposals for reforms to provide for inheritance by female children and wives may be expected to increase. Inheritance reform affects deeply internalized values and roles. It is not surprising, then, that some reforms attack not inadequacies of rules of inheritance but their undesirable consequences, such as fragmentation. The experience with consolidation of fragmented holdings in Kenya and elsewhere suggests that it may be futile to attempt to eliminate the phenomenon through consolidation without addressing its causes.

4.6 Nationalization and Buraucratization of Land Administration

Numerous countries in Africa (Senegal, Nigeria, Sudan and Zaire, to name just a few) have since independence declared state ownership of all or nearly all land. In many of these cases indigenous tenure systems have continued to govern land use, and state ownership has been used primarily to give government a freer hand in land acquisition and distribution in development project areas. Where the state has seriously attempted to take over land administration from indigenous institutions, results have been far from satisfactory. Planners seem to consistently and drastically underestimate the amount of work done by traditional land administrators, and consequently fail to invest anything like what would be required to create a sound bureaucratic system of land administration.

4.7 Understanding Choices Among Tenure Reform Models

Choices among tenure reform models are not determined by technical considerations, but by reference to basic values and ideology. The appropriate tenure system for a given country is ultimately one which will mesh well with its other basic economic and social institutions, be they socialist, capitalist, whatever. But pious declarations by governments of the reasons why they have chosen particular reform patterns should not be uncritically accepted; tenure reform models are chosen as much to maintain and enhance power as to realize more lofty objectives. The extent of experimentation with tenure reform in the post-independence period is probably explicable by the fact that the elites achieving power at independence had little vested interest in indigenous tenure systems, and have been seeking ways to use tenure reform to enhance their power bases.

5. Land Tenure and Project Implementation

Most African farmers hold their land under indigenous tenure arrangements, and development planners confront this persistent phenomenon in the "project" context. Projects come to grief over land tenure because they are designed on incorrect assumptions--rarely explicit--about land tenure in the project area. Common errors in project design which give rise to tenure problems are:

5.1 Neglect of Social Constraints on Farmer Behavior

This may involve simple ignorance of constraints posed by indigenous tenure rules or an underestimation of their durability and persistence. Two common errors are neglect of "overlapping" use rights as between the farmer and the community, or between communities, and failure to note community controls over land use by individual farmers. The basis of such mistakes is often naive reliance on a formal legal position, which may have little or no relationship to behavior.

5.2 Miscalculation of Farmer Incentives

Inadequate understanding of existing tenure arrangements can cause project planners to misjudge the incentive effect of project-created opportunities and result in farmers rejecting those opportunities. Common examples would include the impact of insecurity of tenure on an opportunity to invest in the holding; the impact of fragmented holdings on incentives for adoption of mechanization; or disincentives involved in food-for-work labor on someone else's land.

5.3 Inadequate Framing of New Tenure Arrangements

A variety of projects, and in particular settlement, irrigation and range management projects, involve setting up new tenure arrangements. The tenure introduced may fail to elicit the responses desired. Apparent local support for the new arrangements may turn out to be for purposes quite different from those of the project planners.

5.4 Tenure Problems Caused by Project-Induced Change

Projects themselves sometimes create new situations which give rise to land tenure problems. Some of these may directly affect the project. Where intended project beneficiaries have ambiguous or insecure title to land, the value of which land appreciates dramatically due to the project, the result may be displacement of the beneficiaries by the more powerful, sometimes called "project hijacking." If such conflict does not produce displacement, it may result in a stalemate which nonetheless frustrates the objectives of the project. Serious conflict may also be generated where land is subject to overlapping use rights and the project seeks to enhance one use to the exclusion of others. Land-grabbing and other conflict may be set off by even the prospect of the project.

6. Characteristic Tenure Issues by Project Activity

6.1 Components of Broad Agricultural Development Programs

The introduction of new crops, inputs and farming practices may be affected by land distribution patterns. A small size of holding due to maldistribution may constrain a risk-adverse farmer from a major commitment to production of a non-subsistence crop for the market. The farmer may also be constrained from investment if he or she must share the benefit of the production with another right-holder in the land. Conversely, new crops, inputs and farming practices can significantly change land use practices and ultimately tenure patterns, where overlapping land uses are eliminated. The transition from shifting to rotational cultivation has profound implications for tenure patterns.

Major investments in the holding, whether of capital or labor, may raise the tenure issues noted in the preceding paragraph. Risks due to insecurity of tenure are more acute, however. The increase in the value of the land due to the investment may draw competing claims to the land and the investment will be lost with the land. Under some tenure systems, permanent improvements in the holding may antagonize the group or its representatives because they imply the arrogation of a permanent right by the landholder.

Mechanization and other labor-saving investments are important to increase the productivity of labor in African agriculture, but may have controversial impacts on land tenure. Mechanization may permit expansion of cultivation to the detriment of unintensive land-users such as pastoralists, with serious implications for relationships between ethnic groups. Although it may not be a necessary concommitant of mechanization, significant displacement of labor has in some cases resulted from mechanization, as has the absorption of some holdings by others to achieve greater scale. Tenure patterns may affect the rate of adoption of mechanization, but ultimately mechanization has considerable potential for altering tenure patterns and land distribution.

Credit opportunities which require land security for loans may not be acceptable to the local community, because of the prospect of irrevocable loss of the land to the community through foreclosure and sale.

6.2 Settlement and Irrigation Projects

In most such projects the land to be cultivated is either already owned or compulsorily acquired by the state. The project, as agent of the state, can create a land tenure system for the project by delegation of certain land rights to project participants.

In irrigation schemes there is often displacement of existing cultivation and other economic activities. Land tenure problems can be minimized by careful site selection. When displacement does occur, compensation may not be provided for under national law. Rather than automatically accepting the national standard or imposing their own standards, project planners should seek to satisfy minimum notions of fairness held by the local people affected by the project.

Allotee selection for rainfed settlement schemes is usually not related to pre-project land rights. In irrigation schemes, however, allotments are an important form of compensation for land lost to the project. Allotee selection involves hard decisions as between local groups with conflicting claims, and on pressures for land from civil servants and outside entrepreneurs. What is possible will differ from site to site and detailed guidelines are unhelpful. The donor and the national government should agree upon clear general objectives but be ready to strike balances in negotiation with local communities.

Security of tenure is clearly an incentive to production in both irrigated and non-irrigated schemes. But especially in irrigation schemes, governments tend to retain control over access to land, in order to compel compliance with a common management plan through the threat of loss of tenure. This may be argued to be necessary in light of the farmer inexperience with irrigation, and there is some merit in the argument, though it only justifies controls in the very short term. It is also argued to be necessary in the longer term, to compel production of a crop needed by the economy but not so profitable as others for the farmer. Such controls have on the whole proved inefficient. If conditionality of tenure is seen as necessary initially, it should be minimized and phased out quickly. A period of experimentation with control not by the state but by water user groups or private contractors seems both inevitable and desirable. Tenure needs to be used more as an incentive, less as a sanction.

Appropriate plot sizes in a particular project will be affected by production objectives, competing labor activities, allotees selected, common service levels, and crops. Very small plots may play an important part in the learning process, but eventual plot sizes should be decided in relation to carefully thought-out income targets. Subdivision of allotments among heirs threatens viable opportunities but control of subdivision is difficult. Success ultimately depends upon the willingness of a designated successor to resist claims by relatives, and such resistance may on balance create more problems for the successor than the benefits it confers.

Land tenure planning for such projects becomes far simpler if project objectives are consistent and clearly prioritized.

6.3 Range Management

The "tragedy of the commons" model which has dominated much recent thinking on pastoralist tenure is misleading to the extent that it assumes an open-access situation. Most "commons" are subject to some community control of access, though the extent and effectiveness of the control varies greatly. Such open access situations as exist are often due to the breakdown of indigenous systems of control under various external forces.

Where better control of range use is necessary, there are three options:

1. Consolidate management (and perhaps ownership) of all herds on the range in a single institution. This is a solution unlikely to be acceptable to most pastoralists, who prefer to retain individual ownership of animals and herd management;

2. Individualize tenure. This is problematic unless there is reliable rainfall or sufficient groundwater to provide animals with water and some fodder. The cost associated with individually owned ranches simply cannot be capitalized at any reasonable prospective off-take from the small herds which constitute the bulk of Africa's livestock. In an arid and variable environment, the ability of herds to range widely and freely is often the only economic strategy for smallholders, and an individualization scenario implies reduced access to pasture for small stockholders. Botswana's commercial ranching program is the most interesting experience to date. So far, there is a lack of evidence that individualization of tenure has produced the anticipated intensification of production through investment and better range management practices;

3. Effective regulation of grazing in a continuing situation of individually managed herds grazing a commons. The task is difficult but not insuperable, and five approaches are suggested as possible components in a strategy:

- Reduce the area of the commons to the maximum degree consistent with the environment through capital expenditures on wells, water catchment dams, etc.

- Define (re-define if necessary) the group administering the commons carefully for effective administration of the smaller commons.

- Restructure or even create local management institutions with effective internal decision-making mechanisms and the legal capacity to hold land and deal effectively with the world outside the pastoralists' society.

- Define a system of controls from a variety of options: stocking quotas, periodic closure of reserves to stock, control of grazing through control of access to water points or critical dry season grazing, and/or negotiated agreements between groups of users.

- Provide supportive linkages for local insitutions to government, for enforcement of their decisions and dispute settlement, as well as technical assistance.

6.4 Forestry, Fuelwood and Resource Conservation Projects

Trees interact with land tenure more dramatically than any other crop, primarily because of their long life. The nature of the interaction depends upon the tenure of the land on which they are planted.

When trees are to be planted on individually-held land, insecurity of tenure is sometimes clearly an impediment to tree planting, as it is for most long-term investments in the holding. In other circumstances, it is equally clear, tree planting can establish and extend tenure. (Tree planters may take advantage of indigenous rules which, if they granted only limited tenure in land, clearly protected crops in the ground--however long-lived.) Tree planting can significantly alter land distribution, and project planning must proceed in an awareness that project design decisions can determine such impacts. Projects can both be hampered and assisted by tree-tenure interactions, which are predictable only on a close examination of a particular case. Such predictions are complicated by the fact that some indigenous tenure systems recognize tenure in trees distinct from tenure in land; "tree tenure" deserves new recognition as an issue in project design.

Tree-planting on commons areas raises a very different set of tenure issues, and they have seriously affected "community forestry" efforts. In some cases no convincing incentives have been created for care of the trees, while in others elites have taken over the benefits of the project. In planning such projects, particular attention must be given to: (1) development of clear community arrangements for protection of the trees; (2) clear and convincing provisions on long-term distribution among the whole community of benefits from the trees; and (3) creation of short-term incentives in particular individuals for care of the trees. Perhaps the single most important task is convincing beneficiaries that the trees are their trees, not the government's trees. If the trees are regarded as belonging to the government, their planting may well be regarded as a land-grab by government. In such circumstances, trees have a very low survival rate.

On state-owned land, creation of forest reserves often involves displacement of cultivators. There has been experimentation with taungya systems in many African countries, but the system can be exploitative and attention is increasingly focusing on means to provide participants with greater security of tenure.

Finally, assertions that trees are to be planted on land "not previously owned by anyone" should be regarded with the most profound skepticism. If the land becomes valuable, some group with a dormant claim will almost inevitably come forward to assert it.

6.5 Other Project Contexts

Land tenure can be important in project contexts where its relevance is not immediately apparent. Two examples: in rural roads projects in some African countries, even the prospect of farm to market road construction led to land-grabbing by elites, displacing the rural farmers whom the road was expected to serve; and in agricultural research, the on-farm trials connected with farming systems research appear to be flushing out tenure issues raised by particular innovations much earlier than would otherwise have been the case.

7. Dealing with Land Tenure in the Project Context

7.1 Recognizing Land Tenure Issues

Increased awareness of potential tenure problems by AID's project staff is the long-term solution, but there is also a need for much greater efforts to draw out local counterparts on tenure issues. Where the Ministry of Agriculture is not in charge of land policy and administration, linkages must be developed to the ministry with such responsibility. Land tenure problems are often neither as sensitive nor intractable as they may seem at first glance, and can often be addressed directly. When tenure problems seem likely, it is usually a vain hope that they will somehow "sort themselves out," at least within any project-relevant time horizon.

7.2 Options for Response

If some elements in the project model are not going to mesh smoothly at important points with the tenure pattern in the project area, there is a potential "land tenure problem." The range of options for response include:

1. Reframe the project activity so that the problem does not arise;
2. Change the land tenure patterns so that the problem does not arise;
3. Avoid the problem by moving the project; or
4. Move the activity to an alternative niche within the land tenure system.

Of these options, changing the land tenure pattern is the least commonly resorted to and often the most difficult. Such change may be initiated through action by national government, or through project-level approaches. Precisely because it <u>is</u> sometimes possible but complex, the following three sections consider some parameters in the process.

7.3 Land Tenure Reform: Action at the National Level

To test the feasibility (and adequacy) of a national-level reform to meet a problem arising in the project context, the following questions must be considered:

1. How serious are the political implications of the tenure change?
2. To the extent that the issue is politically sensitive, has government the necessary political will?
3. Can government make the necessary decisions on the tenure issue within anything like the time frame for a normal project planning exercise?
4. Is new legislation necessary, or is the necessary empowering legislation already in place with only regulations and implementation necessary?
5. Is there reason to believe that the steps which government takes will alter behavior in time to contribute to the success of the project?
6. Does government have the staff and administrative capability to implement the tenure change?
7. Does the change create continuing demands on resources for system maintenance which are beyond the capabilities of government?

8. If the project is a regional rather than a national project, is government willing and able to consider promoting tenure change on a regional basis?

The last question is uniquely important, both because many projects are regional, and because needs in particular areas of a country may differ considerably. Tenure reform usually involves law reform, which is sometimes a national prerogative, but tenure needs of particular areas of a country may vary considerably due to different ethnically-based tenure systems, different development potentials and different paces of development. A national elite may feel that reform which seeks to work only local changes perpetuates and perhaps increases divisive particularity. Local farmers may on the other hand react with suspicion to any program which treats them differently than other citizens. Where a diversity of situations requires, legislation should be framed to provide nationally uniform objectives, regional diversity in detail, and phased implementation.

It is important to emphasize that legislation, if enacted, may not affect reality beyond the pages of legislative supplements. Alternatively, they may have important impacts that bear little relation to the legislators' intention, and which may be difficult for researchers to recognize on the ground. The circumstances in which law reform can be expected to have a surer and more immediate impact are:

1. When most people have begun to behave that way, in violation of older rules or simply in a legal vacuum, and the law acts as a ratification and reinforcement of emerging practice;

2. Where some people with a personal interest in the new rules are willing to take the trouble to enforce their rights, and have access to a reliable system of enforcement;

3. Where the state itself actively monitors and effectively sanctions the breaking of the law; and

4. Where the state's administrative machinery intervenes to change facts (e.g., replanning parcels and layout) in a way which undermines the previous tenure system.

It is not law alone which changes behavior, but law which authorizes, organizes and releases other economic and social forces which, acting in conjunction with law, change behavior.

National land policy may require changes in land law and tenure much broader than those of any project. A project may serve as the occasion to press for such legislation or to demonstrate its viability through pilot implementation. Given the uncertainties connected with national legislation, only in rather limited circumstances will it be a promising approach to altering tenure to meet a particular project need. Are there other approaches?

7.4 Land Tenure Reform: Minimalist Approaches and Action at the Project Level

Where the aim is simply success in a project objective, the most practical response is often to alter the project idea a little and the tenure system a

little--the minimum adjustments needed to reach a workable accommodation. How does one strike a sound balance, and imagine workable accommodations? The planner must distance himself or herself from the project idea far enough so that the problem is seen as a mismatch between the project idea and the tenure system, rather than just a "tenure problem." The "problematic" aspect of the tenure system needs to be seen not just in terms of a tentative project scenario but also in terms of the advantages which it may have for the farmer. A tenure which at first appears to pose a problem for the project idea may on more careful examination be found to also offer opportunities. A multi-tenure system provides a tenure "menu" on which a solution to the tenure "problem" may be found. Such angles of approach can produce strategies for change which minimize both immediate project costs and longer-term social costs.

7.5 Tools of Tenure Change at the Project Level

There are a number of tools of tenure change which can be employed at project level by project managers:

(1) Community Legislation: There is a prevalent misconception of "customary" rules as deeply internalized, observed by ancestors from "time out of mind." It is often believed that such rules change only through what might be called "snowballing deviance," in which particular instances of deviance eventually become pervasive and are recognized as new custom. But "traditional" communities also legislate, acting purposefully to change rules to meet new circumstances. Projects can encourage such change in several ways, including preferential treatment of those communities which have taken the desired steps.

(2) Contract: Because projects have benefits to offer, they can sometimes be traded for changes in land tenure arrangements. Contracts can be used as a tool for regulating tenure arrangements between groups or individuals, or between the project and groups or individuals.

(3) Project Economic Leverage: Projects can affect behavior with economic leverage exerted through preferences, subsidies and a wide range of other actions, used independently or in connection with community legislation and contract.

(4) "The Land Law of the Project": Where projects are to be created on state-owned or appropriated land, as in many settlement and irrigation schemes, the state creates a land tenure system for project beneficiaries as it defines the terms of their access to land. A challenging task under any circumstances, such authority needs to be used with particular restraint when working with communities long-established in the project area.

8. Conclusions, and Implications for AID

8.1 The Role of Land Tenure in Agricultural Development

How critical is the role of land tenure in agricultural development? There has been remarkably little interaction between the macro-economic technology-transfer models which have dominated development economics and the household-firm models available for analysis of land tenure. Much of the classic eco-

nomic development literature on tenure relates to share-cropping, which is of limited importance in Africa. During the 1960s, useful qualitative research on African land tenure gradually undermined many stereotypes about "communal" land tenure, but those insights have still not been adequately absorbed by economic development theory.

In the mid-seventies, several factors combined to bring land tenure issues to the fore. There was a new concern with population absorption in agriculture, and a growing perception of land resources as both radically limited and deteriorating. These concerns, together with evidence pointing toward the continuing viability of the small farm, has redirected attention to the African farmer and the terms on which he holds his land. The "induced innovation model" sees the generation of technology as endogenous, a process in which factor endowments are critical and classic resource allocation issues are central. The "efficient but poor" thesis has been placed in question, re-opening discussion of the impact on efficiency of differential farmer factor endowments and differential freedom to innovate, as determined by social status. Finally, comparative evidence has emerged to suggest that the size distribution of farms has been a critical determinant of the demand for industrial products in developing economies, and so for balanced development. We are entering a period of what will hopefully be a profitable re-examination of the utility in the African context of the household-firm and property institution models which economists use to reason about land tenure.

Interest in African land tenure among development planners has never been higher. There has been a concurrent realization that there is little hope of success for African farmers unless a broad range of incentives for efficient production are improved dramatically. Better prices for African farmers and improved land tenure arrangements are both important ways of improving farmer incentive structures. Price increases probably have more promise as a "quick fix" to stimulate production in the short run, but responses to such increases will be disappointing if the non-price, institutional elements in the farmer's incentive structure are neglected.

8.2 Some Conclusions Concerning Reforms

While most concerns about indigenous tenure have a basis in fact, those concerns have tended to be exaggerated and "problems" have been overgeneralized. Indigenous tenures have been judged too exclusively in terms of an emerging capitalist economy, forgetting that the African farmer still stands with one foot in an older economy and society, whose demands the farmer will ignore at peril not only of progress but even subsistence.

The experience with major tenure reforms has been disappointing. Neither Kenya's freehold nor Tanzania's ujamaa has produced the reactions desired from farmers.

8.3 Implications for USAID

(1) Appropriate Involvements with Reform: The experience to date with major reforms suggests that we have a limited ability to produce predictable results through this sort of legal and social engineering. Mistakes can be costly in both social and economic terms, and the track record is not good.

It is, therefore, suggested that AID show considerable caution about committing itself to support major national programs of reform.

AID should instead actively pursue opportunities for more incremental tenure change, and opportunities for experimentation with tenure change on a more modest geographical scale. The project context is an opportunity to develop and test solutions to land tenure problems, and project design staff need to take to heart the admonition that projects should be viewed as experiments. If they are not, we learn little from them.

Where redistributive reform appears appropriate, it will require much the same of AID as redistributive reform elsewhere: a good eye for windows of political opportunity, which can be developed only through research and interaction with those who formulate land policies; the capability to react supportively, very quickly; and resoluteness in bearing the costs.

Tenure issues tend to be perceived as long-term. In a particular situation, it may well be that no immediate resolution is possible. In that case, the appropriate response is not inaction but the funding of relevant research, training of a technically competent cadre of reformers, and institution-building to create greater competence for effective reforms.

(2) Research Implications: Applied land tenure research should continue in light of several critical areas of inquiry with respect to which little or no data is available. Such research will need in the future to focus less upon descriptive treatment of tenure rules, more on dynamic forces such as inheritance and transactions, and on problems and potentials of decentralized land administration by traditional or modern local institutions.

(3) Policy Dialogue on Land Tenure Issues: Land tenure issues are usually not hopelessly "sensitive." They are probably less politically explosive than some other current topics of policy dialogue, such as decontrol of food prices for urban consumers. On the other hand, donors clearly have greater threshold credibility with African governments on "getting the prices right" than on socially intricate land tenure issues. Dialogue will need to build slowly, and on a firm basis of research, training, and project experience. In order to pursue such dialogue effectively, USAID missions will often need to build new linkages to ministries other than the Ministry of Agriculture, which administer land and other natural resources.

INTRODUCTION

The 1984 Strategic Plan of the U.S. Agency for International Development's Africa Bureau states: ". . . the complex variety of land tenure patterns and their changing nature is still imperfectly understood by the Bureau. We believe the land tenure question is, over time, critical to farmers' decisions and we need to understand it better in our program/project formulations." A number of research initiatives funded by USAID are presently underway in response to this need. This paper is an attempt to pull together what is known and to present it in a format useful to an audience of development planners and administrators.

In agricultural societies in particular a very broad range of human activities are affected by arrangements for access to land. A land tenure system expresses kinship and ethnic identity, controls access to productive resources, helps shape patterns of income and employment, and is a determinant of the distribution of wealth, status, and authority. What exactly is land tenure? It is simply the terms and conditions on which land is held and used. It is a broader concept than land law because it encompasses practice, whether it corresponds to the law or not. It is broader than land use, a strictly observable phenomenon, because it is concerned with rights to land and the manner in which societies regulate access to land. Good land tenure analysis encompasses both rules and practice, and seeks the explanation of practice in the interplay between rules and other factors affecting behavior.

Only a little space is given here to land reform in the classic redistributive sense. The badly skewed land distribution which gives impetus to redistributive programs in Latin America and Asia is relatively rare in Africa. Where such patterns originated in land confiscations for European settlement in the colonial period, reform programs have generally broken up the largest holdings or left them in the hands of the State. Land concentration may be emerging out of the breakdown of indigenous tenure systems, but that process is still in a relatively early stage and calls more for prevention than reform.

The fundamental African land tenure issue is rather, do indigenous land tenure systems inhibit agricultural development? These systems are pervasive and they have, for instance, been said to provide farmers with tenure too insecure to encourage investment in the holding. In the African context, then, "reform" is usually not a question of redistributive reform but land tenure reform, of changing not the distribution of land but the terms and conditions on which land is held. Such reform is a search for the appropriate balance between the rights of the State, lesser social units, and the individual in societies undergoing profound transitions. By changing land tenure, reformers seek to generate desirable land use practices, and to thereby increase productivity and influence evolving distribution patterns. They also seek to establish new plateaus of stability of expectations for farmers in the context of rapidly changing economies and societies. Ultimately, the question addressed here is: Can we increase production and affect the distribution of production through purposeful change in African land tenure systems?

LAND TENURE ISSUES IN PROJECT DESIGN AND STRATEGIES FOR AGRICULTURAL DEVELOPMENT IN SUB-SAHARAN AFRICA

Is land tenure a manipulable variable, a lever with which development planners and administrators can move other, more inert pieces in the problem of underdevelopment? Or is it so profoundly embedded in the woof and warp of social structure and culture that it is itself one of the most obdurate and changeless pieces in the problem, a "bottleneck" to be removed?

To begin, it is necessary to shed certain stereotypes about indigenous land tenure systems. Chapters 1-4 of this paper first suggest several fresh perspectives that should assist in understanding those systems. Arguments concerning the adequacy or inadequacy of indigenous tenure systems are then reviewed and evaluated. Do they or do they not constrain agricultural development? It is concluded that in certain circumstances they may do so, though not so generally as has sometimes been suggested. Given this, what have been the nature of recent attempts to reform land tenure, and how have they fared? Because land tenure patterns can pose both problems and opportunities for agricultural development efforts, they must be of serious concern to project designers and managers. Chapters 5-7 of this paper adopt their perspective, and ask: How can land tenure issues be anticipated in project design? What kinds of land tenure issues are characteristic of particular types of agricultural development projects? How can such issues be dealt with at the project level--so often very different from the national policy context? And what tools of tenure change can be effective at the project level? In the eighth chapter, stepping back from the project focus and assuming a broader view, what is the role of land tenure change in agricultural development strategies? Should tenure be individualized, or production patterns brought into line with "communal" tenure practices? Or are there less dramatic, more socially and financially economical approaches to tenure reform? And if there is any real potential in those reform models, then what role is the most appropriate for USAID in a notoriously (and sometimes exaggeratedly) sensitive area?

1. UNDERSTANDING INDIGENOUS LAND TENURE SYSTEMS

It will be impossible to realistically assess relationships between indigenous land tenure systems and agricultural development so long as we work with simplistic stereotypes of indigenous tenure systems. Research in the 1960s and 1970s greatly enhanced our understanding of the variety and complexity of those systems, but much of what has been learned has not yet become part of the working knowledge of development planners and managers.

1. Why the Term "Communal" is Misleading

It is unfortunate that this misleading expression so often continues to be used as a blanket definition of African land tenure, implying that every individual has equal rights in every piece of a tribe's land. Applied to grazing areas in Northern Rhodesia in the provinces so far studied one may graze his cattle on any land not claimed for individual use; but it must be qualified by the observation that these communal grazing rights are not vested in a whole group collectively, for where land is short as among the Tonga or the Mambwe, individuals can bring pieces of communal grazing land under their personal control for arable purposes by the usual process of starting to cultivate it. The communal grazing areas are not vested in any authority which preserves them from encroachment in this way.

In so far as rights over arable land are concerned these are essentially individual--acquired by the individual, enjoyed by him, and disposed of by him. Rights of individuals over arable land cannot possibly be described as communal tenure without a complete distortion of the facts. Much of the confusion here no doubt springs from contrasting English ideas of land ownership with the conditions found in the most undeveloped systems of shifting cultivation, where a man exercised rights over a piece of land for only a brief period, and when it was exhausted, passed on to open up another piece of vacant land. Under such conditions land was presumably hardly ever inherited and only infrequently transferred. An individual enjoyed rights in respect of a piece of land but only of an ephemeral nature in that they were soon transferred to another piece of land. But with the stabilization of agriculture or with the scarcity of land in a given area or with the emergence of cash cropping putting an economic value on land, or some combination of all three, the permanence of a man's land rights developed quickly. In areas where land is valuable for these reasons, it is regularly transferred or inherited, and rarely abandoned. Hence in some places land once acquired does not revert to the common pool to be taken up by someone else, but passes directly from one to another without any intervening authority. At this stage individual rights of a continuing permanent nature are strongly developed; whilst it may be inappropriate to refer to such tenure by any English term which is liable to contain unsuitable implications, it is certainly necessary to avoid the use of the expression communal tenure. It would seem preferable to call such cases individual tenure, accompanying the expression by such definition as may be necessary of the rights existing. Individual tenure of this type occurs in all the provinces of Northern Rhodesia so far studied.

C.N. White, "Terminological Confusion in African Land Tenure," Journal of African Administration 10, 1958, pp. 124-130, at pp. 128-129.

Indigenous land tenure systems in Africa are specific to particular ethnic groups, evolved in an interaction between culture and environment over centuries. Consider some variables which affect the development of land tenure systems: local climate and ecology, the quality of the land resource, population density, level of agricultural technology, crops, markets, kinship organization, inheritance patterns, settlement patterns, political organization, religious significance of land, and patterns of ethnic conquest, dominance and rivalry. African cultures and environments are diverse and it is not surprising that they have generated a bewildering diversity of land tenure systems.

In the face of that diversity, the literature on land tenure in Africa tends to be either very specific or very general. There are some excellent in-depth studies of the tenure systems of particular ethnic groups, though many of these are out-of-date.[1] These exist for relatively few peoples, and often all we know of the tenure system of a particular group is knowledge spun off from an inquiry into kinship organization, customary law, or political systems. Differences in disciplinary perspectives have made the development of confident comparisons difficult.

In the general literature on agricultural development, "African land tenure" is commonly represented by a broadly drawn composite. The composite usually notes the subsistence agricultural context in which most such systems have developed and characterizes them broadly as "communal." The composite may be a melding of perceived negative aspects of indigenous tenure systems, or a highly idealized version. The former makes much of insecurity of tenure, while the latter commonly perceives an indigenous talent for cooperation, epitomized in communal tenure. These composites are so vague as to be misleading in virtually any specific situation, and unhelpful in solving any particular problem.[2]

To begin, it seems most useful to note a few fairly widespread misconceptions about indigenous African land tenure and then to suggest some perspectives on indigenous tenure which may be helpful in understanding a particular tenure system.

1.1 Is Indigenous Land Tenure "Communal"?

The word "communal" has often been used loosely in discussions of indigenous land tenure. C.N. White questioned its appropriateness in the fifties (see Insert 1) but the usage is still common. "Communal tenure" has been used to cover at least three quite different situations. First, it may refer to a common ownership which implies common exploitation and management. Indigenous land tenure in Africa is communal in this sense only in exceptional cases. The vast majority of Africans farm as individuals and families. When they come together in larger groups for common labor it is usually for a particular, limited purpose (e.g., to clear new land or to assist a neighbor who is ill). The group engaged in communal labor may correspond to the group having rights in the land, but will often have some completely different basis. Second, the term may refer to the right of members of a group to each use independently the full extent of certain land of the group, a right of commons. This is often the case with respect to grazing land or areas for hunting or collection of firewood, but is not the situation as regards arable land, even under

conditions of shifting cultivation. Third, the term may refer to significant group control, reflecting some group interest, over land which is apportioned for the relative exclusive use of individuals or families of the group. The group may be an extended family, a lineage, a clan, a village or a tribe. It is usually defined by common descent, common residence, or some combination of the two principles. The group's interest may be framed as a property right or couched in political and administrative terms.[3]

It is only in the last sense that most indigenous tenure in farmland is "communal." The appropriateness of the term "communal" in a given case will depend upon the extent of the controls and limitations imposed by the group, because all societies impose some controls on their members' use of land. Even our own society, as strongly as it affirms private rights in land, imposes important limits.[4]

What are some of the limitations and controls found under African indigenous tenure systems? In most of Africa land has been plentiful. Where shifting cultivation has been practiced or groups have migrated to settle new territory, traditional authorities have often had an important land allocation function. Usually it is primarily a review of an individual or household decision about where to cultivate, to determine if any conflicting right exists, but sometimes applicants are directed towards partciular parcels identified as available by traditional land administrators.[5] Once cultivation stabilizes, the role of land authorities tends to be confined to first allocations of previously unused land. In some cases, where population pressure on land is heavy, chiefs or elders have the right to take land from larger holdings for new households.[6] Eventually, however, when all the arable land has been allocated and holdings become so small that reallocation loses its point, land passes from generation to generation in accordance with the customary rules of succession and the land authorities' role is increasingly limited to dispute resolution.[7]

The most commonly cited limitation on the African farmer's use of land is that land is not sold under most indigenous tenure systems. This is quite true, but requires clarification. First, certain land transactions take place under almost all traditional tenure systems. In a particular case these may include sharecropping; gifts, exchanges and loans of land (often involving a right of redemption); and possessory mortgages of land. Land as a factor of production is not frozen in static amounts in the hands of farming units whose labor and capital situations vary with time. Second, it is not always the case, as is often stated, that sales of land are "prohibited." The issue may simply not arise: when land is plentiful it has no market value and even when land becomes a scarce good a landholder with no alternative livelihood will not, except in circumstances of exceptional desperation, need to be "prohibited" from selling his holding.

With allowances made for the above, it is often true that land may not be "sold," in the sense of a perpetual transfer for a consideration. Such a sale will be viewed as an attempt to transfer more than the individual holds; his or her rights are transient while that of the group is perpetual. The land should be alienated by the group, if at all. In particular, transfers to non-members of the social group controlling the land may be prohibited,

because membership in the group and ownership of land are inseparable. Strangers may, however, be absorbed into the social group, and prohibitions have broken down in many societies as new crops and markets give land enhanced value. What would be recognizable to a Western economist as a market in land, increasingly impersonal, begins to develop.[8]

Some group controls over land use are substantial, others mere formalities. Traditional formulations can be misleading. As a group of Eritrean elders cautioned Conti-Rossini at the turn of the century, "We say that the land belongs to Emperor in the same way that we say the earth belongs to God. It does not mean he can take it from us."[9] Whether a tenure is characterized as communal should depend more upon the extent of actual social control of land than the way the traditional society conceptualizes such controls. It is necessary to observe the extent and frequency of actual interferences with farmers' use of land.

An undervaluation of individual and family interests in land is a common consequence of the characterization of indigenous tenure as communal. When tenure is characterized as "communal," the farmer/landholder is commonly characterized as a "mere usufructuary," or as having "only a right of use," over property "owned" by the group. But the African landholder is commonly quite secure in his holding, with a right to use the land undisturbed except in certain very specific situations. The landholder has this right to land as a member of the group, and at least where cultivation has stabilized, that right may relate to a particular land, in which the farmer has a right superior to other members of the group. The farmer may hold it for a lifetime and pass it to his or her children. The situation will, of course, differ from one tenure system to another, but the farmer often has a more "proprietary" attitude toward his holding than characterization as a "mere usufructuary" would imply.

We perhaps have a natural tendency to overemphasize either the rights of the group or the rights of the farmers, a tendency resulting from instinctive attempts to force indigenous tenure into our own frame of reference. We tend to either see the group as owner, with the farmer holding derivative and relatively inferior rights--rather like a tenant--or see the farmer as owner, and the group's rights as mere administrative competences, the functional equivalent of the powers of our municipal zoning board. In a few instances, these models may reflect the situation fairly accurately but most indigenous tenure systems lie somewhere in between, and will not fit into our framework without real violence to the facts.

Instead, we need to understand our own concept of "ownership" as composed of a bundle of much more specific rights to do certain things with the land, to make certain decisions about its use, and to be free of the intrusions or interferences of others with respect to the land. In other societies these particular rights which together constitute what we call ownership are divided between the individual and the group so that neither of them holds the full quantum of ownership. In any society the holding of land is "communal" in that the individual's rights are dependent upon social relationships, upon membership in a group with a definite cultural idiom of its own; it is at the same time "individual" in that individuals have more or less definite rights in particular land. The task in analyzing such systems is not attempting to

2. The Hierarchy of Estates in Land Among the Lozi of Zambia

. . . (The Lozi) system of land-holding was an essential part of the organization of social relations from the king downwards through the political units of villages, into the hierarchy of kinship relationships. The king may be called 'owner of the land' only as trustee or steward for the nation. He granted what I call a primary estate of rights of administration to all titles of heads of villages, including himself in his capacity as head of many villages. Each head of a village then broke his estate into secondary estates with rights of administration which he allotted to the heads of households in the village, including himself. These holders of secondary estates might allocate tertiary estates of this kind to dependent heads of household, but usually secondary estates were broken up and allocated in parcels of land to be worked as arable or as fishing sites by the holders, including the administrator of the secondary estate of administration. Thus at the bottom of the series there is an 'estate of production'. Land-holding in these tribes is thus an inherent attribute not only of citizenship but also of each social position in the total political and kinship hierarchy.

Each parcel of land was therefore not communally owned but was subject to a series of retreating or reversionary rights from the final user up to the king. And every one of these rights was effective. If a user of land--a holder of an estate of production--left the village, the land reverted to the holder of the secondary estate of administration of which he was a member; and if the secondary holder in turn left, his estate reverted to the primary holder of the estate of administration; and only if he, and all who might replace him, departed from the area, was the king as ultimate owner of all land entitled to claim the whole estate.

Max Gluckman, "Property Rights and Status in African Traditional Law," in Ideas and Procedures in African Traditional Law, Max Gluckman (ed.), (London: Oxford University Press, 1969) pp. 256-257.

find "ownership" at one level or another, but achieving a clear understanding of what rights and competences vest in the group or groups and the individual, respectively.[10]

How best can a project planner or manager approach the complexities of an indigenous tenure system? The following sections suggest four perspectives from which a tenure system should be examined to obtain a reasonably full picture of its operation.

1.2 The Vertical Dimension: Social Hierarchy

This paper has already touched upon this dimension in the discussion of "communal" tenure and individual rights. So far the discussion has been in terms of the individual and the group, but this dichotomy is commonly a less than adequate representation of the situation. In many traditional polities there is not one group which is the focus of land rights but a hierarchy of groups, each ascending group larger and embracing several groups of the next lower order, pyramiding toward a king or paramount chief of the tribe. The groups may be defined by common descent or common residence, or some combination of the two principles.

Gluckman, writing of the Lozi of Western Zambia,[11] explained that land rights originated with the king and descended to farmers through several layers of the political hierarchy (see Insert 2). He described each level in the hierarchy as holding an "estate:" the estate of the farmer he called an "estate of use;" the estates of the king and subordinate authorities he called "estates of administration." He emphasized that holders of "estates of administration" had not only the authority to allocate land, but the duty to do so, corresponding to the right of every member of the tribe to land. This model is of course irrelevant to these societies which have minimal social and political organizations, but most African societies have a few layers.

The "estates" model has been used critically at times, and a number of cautions are required. One is the author's own, and concerns the questionable accuracy of thinking of an estate of use as reverting to the lowest level of estate of administration; it may often be more accurate to simply think of the estate of use as in abeyance until the estate of administration is exercised to reallocate and tax land. (In this aspect Gluckman's model seems to follow too closely a western feudal paradigm.) Another caution is stated by Bieybuyck: "Some of the rights ascribed to groups or individuals are essentially theoretical . . . It becomes apparent that to hold a particular title in land is often merely a question of prestige or ritual privilege, and has little or nothing to do with its allocation or actual use." All levels in a hierarchy are not to be taken equally seriously as foci of rights and competences. The "estate of use"/"estate of administration" dichotomy clearly captures a critical distinction, but different estates of administration can involve very different powers of allocations and control. Commonly the lowest estate of administration is the most important, controlling decisions about allocations of land to individuals or households.[12]

Look for a tenurial hierarchy. It may or may not exist. If it does, do not assume that every level in the hierarchy is tenurially significant, or has similar significance. Remember that some hierarchical schemes may consist in good part of myth and ideology. Understand the scheme, but always remember to ask who makes the critical decisions concerning the use of the land.

1.3 The Horizontal Dimension: Multi-Tenure Systems

The discussion of the "vertical dimension" took a parcel of land and tried to understand how various levels of social hierarchy with some control over the use and enjoyment of the land were piled above it, in social space, as it were. It is important to recognize that this vertical dimension will not be the same for all land even within a single community, because every land tenure system involves more than a single tenure. A tenure system is indeed a system, a multi-tenure system. Our own tenure system involves not only individual ownership and derivative tenures such as leasehold, but a variety of corporate and public tenures for land devoted to such different purposes as recreation, grazing, and automobile traffic. Indeed, zoning and other land use control mechanisms have now come to so drastically affect the rights of the owner that these can be considered variant tenures.

There is a variety of tenures because land is put to a variety of uses. (For an example from highland Ethiopia, see Insert 3.) In African circumstances the most common case is the different treatment accorded to farmland, allocated to farmers and their households for exclusive use, and grazing land, managed as a commons. But there are also commonly special tenure regimes for residential land, house garden plots, irrigated land, land with trees, or cultivable floodplain. In some societies, land may be set aside under a special tenure regime to support positions in the social hierarchy or for religious purposes. Change in a tenure system may be selective and uneven. For instance, as farmers begin to produce some crops commercially, tenure rules may change for the land under those crops but continue as before for land under subsistence crops.

The tenure system thus reflects the allocation of the surface of group's territory--its horizontal dimension--to various uses. This can have important potential in the project planning context. No group of project beneficiaries is familiar with only one tenure arrangement, and land tenure reformers can examine the variety of tenures in the system for a model, rather than resorting to imported tenure arrangements which are alien to the community.

It should also be noted that in addition to the multiplicity of primary tenures for land according to use, there will also be secondary tenures, derived from the primary tenure or at least defined in relation to it. Obvious examples are sharecropping arrangements, rights of way and to water, and a wife's rights in her husband's land. Especially in the case of sharecropping, because it is an institutional form which is familiar to us, we must take care not to assume that it implies all that it does in the contexts with which we are more familiar. For instance, there are circumstances in some parts of Africa (egalitarian distribution of land in smallholdings, unavailability of new land, a shortage of oxen for plowing, and a need for oxen owners to cultivate more land than they own to capitalize on ownership of valuable oxen) in which sharecroppers are typically more successful farmers who own oxen and landlords are typically poorer households which cannot afford oxen.

3. A Multi-Tenure System in Tigray, Ethiopia

The most basic distinction in communities under chiguraf-gwases tenure is the division of the land of the village into farmland and pastureland. The pasture of most communities is grazed as an individual commons though it may be closed to certain categories of livestock at particular times of year. But the pasture of some communities is, like the farmland, divided into plots for individual farmers. Such divided pasture was usually subject to periodic (often annual) general repartition and redistribution among the farmers by lottery, though such general redistributions were commonly long postponed. Divided pasture is viewed as fairer. When pasture is grazed as a common, the poor farmer with few or no animals is said to benefit far less from his access to it than the wealthy man with his herds, but when the pasture is divided, the poor farmer can sell the fodder which he cannot use or may even lease out his pasture share for the year.

Sometimes, however, the farmland itself is divided. Such a division is into koli and tserhi, each farmer holding in both areas. The koli, or "garden-land," consists of house sites and adjacent gardens. Within this garden-land the elders create new house sites and gardens as the need arises, by selective reallocations from existing holdings. The tserhi is the rest of the community land, the open fields beyond the garden-lands. The holdings there are supposed to be completely repartitioned and redistributed every several years by lottery and are sometimes called "lottery-land."

This garden-land/lottery-land distinction has been important, but is rapidly becoming obsolete. As pressure on land has increased, land tenure rules changed. It was first decided that land for new farmers would no longer be reallocated from the improved holdings in the garden-land, where manure is often applied. Instead, each new farmer was allocated a single larger parcel of land from the lottery-land, which parcel then became garden-land, but on which grain crops were also grown. The garden-land thus constantly expanded at the expense of the lottery-land. As the lottery-land shrank, lotteries were suspended and the holdings created there under the last lottery were left to subsist until consumed by the expanding garden-land . . .

In most communities with churches, a third of the land, "third-land" (meret silus), is set aside for use by the clergy. Third-land is not a supplement for the private holdings of the clergy; rather it is the only place they can hold land in the communities. Clerics are allocated land only from the third-land, and laymen are allocated land only from the other two-thirds. The number of clerics in these

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(Insert 3 continued)

communities often approaches a third of the farmers. The relatively easy availability of third-land ensures that young men will train for the priesthood and deaconate and that the parish church will be well served.

John W. Bruce, "Land Reform Planning and Indigenous Tenures: A Case Study of the Tenure Chiguraf-Gwases in Tigray, Ethiopia," S.J.D. Dissertation (Law), University of Wisconsin, 1976; at pp. 121-124.

1.4 The Historical Dimension: The Pervasiveness of Change

The term "indigenous" has been used in this paper instead of the more usual "traditional" land tenure. Similarly, the rules that govern such systems are commonly called "customary" law. Both terms tend to suggest profoundly internalized normative structures, patterns followed from "time out of mind" in static economic and social circumstances. "Custom is king," explained early anthropologists, and a generation of Europeans imagined that Africans had walked a treadmill until the advent of Europeans.

It is increasingly clear that a presumption of antiquity and stability for indigenous tenure systems is often wrong. Tenure change has in fact been ubiquitous. What have been the sources of such change? Innovation in agricultural technology did not come to Africa with colonialism; the iron-tipped plow has a long history in some parts of Africa. Changes in population densities can lead to important tenure changes. Extended drought and famine can depopulate a formerly crowded area, followed by resettlement at very different man/land ratios. In some areas well-developed hierarchical states emerged, with their need to extract a surplus to support a complex system of government. Conquests created interactions between the tenure systems of the conquerors and the conquered. Migrations shifted peoples from one ecological niche to another, turning cattlemen into farmers and vice versa. A period of inter-tribal peace could entice farmers down from terraced mountainsides to cultivate a plain or out of the deep forest for recessional cultivation along a river bank, or lead to the gradual dispersal of large settlements as farmers move out to live on the land they cultivate (see Insert 4).

All these changes have direct implications for land tenure, and these societies found the social means to adjust their tenure patterns to their new circumstances. A recognition of this history of tenure change is important for getting a proper perspective on tenure change in more recent times. No consideration of the future of a particular tenure system should ever start from an assumption that the system is or has been static.

4. Pressure on Land and Tenure Change in the Nuba Mountains

Particularly severe slave raiding during the nineteenth century saw the complete depopulation of some lower and more accessible hills, and a further retreat by many Nuba groups from the lower slopes and foothills to high valleys and plateaus. There they developed the fairly intensive cultivation necessary to make the best use of limited resources. Terracing to conserve soil and moisture, intensive manuring on at least some plots, and the use of simple rotations and legume culture to maintain soil condition were all characteristic features of hill farming.

The tenures that were developed to meet such conditions reflected adaptation to the requirements of a particular physical and social milieu. Private ownership of land was universal, and proprietary rights were transferred permanently by inheritance, gift and, more occasionally, sale, and alienated temporarily through lending or leasing. The hill community, comprising a group of villages or hamlets occupying the same ridge or hill, was more socially significant than either the village or the tribe . . .

Anglo-Egyptian administration had gradually been extended over the Nuba Mountains in the first two decades of the present century. The military and political authority of the nomad Arabs had been destroyed in the re-conquest, slave raiding by both Arabs and Nuba was gradually put down, and by the early 1920s all but the most recalcitrant hill tribes had been forced to recognize the authority of the central government. As a result there was a considerable expansion of lowland cultivation . . . stimulated by the introduction in the 1920s, of short-staple American upland cotton with the aim of encouraging cash cropping.

The most significant alterations in land tenure have, in many parts of the region, been associated with the change from a situation of increasing land shortage to one of land surplus that has accompanied the extension of lowland farming. New hill-foot settlements have access to relatively abundant potential arable, while pressure on land resources in those uplands where substantial populations remain has also often been relieved by the exploitation of plain farms . . .

Freer access to surplus land has also brought a general decline in the significance of inheritance as a means of obtaining property. Sons are, in most tribes, still provided with an arable plot from the parental holding when they marry and on this basis they can build up a substantial farm by clearing unoccupied bush. If no parental gift

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is forthcoming a prospective bridegroom often simply brings a virgin plot under the hoe. Inheritance customs are more flexible than thirty years ago . . .

Of the other methods of land transference, the character of land sales has also changed considerably over the last thirty years. The market in highly valued hill and homestead plots that formerly existed in many densely settled communities has declined and almost disappeared as population pressures have been relieved . . .

David Roden, "Changing Patterns of Land Tenure Among the Nuba of Central Sudan," Journal of Administration Overseas 10(4) 1971, pp. 294-309.

1.5 The Personal Dimension: The Farmer's Viewpoint

The dimensions of indigenous tenure discussed above, taken together, help us understand how a tenure system works and how it got that way. Such an understanding, however, gives an incomplete and possibly misleading idea of what it is like to be a participant in the system. A farmer does not visualize land tenure as a full-blown "system" any more than John Doe does our own property system, though both of them have been socialized in myths which justify the system. What a farmer does often have, is an acute appreciation of the opportunities and constraints which it poses. Project planners and managers badly need that appreciation.

How can we get access to it? This appreciation, of course, varies from individual to individual, and many will not articulate it very effectively. We can usually obtain such an appreciation only through intensive interviewing of individuals to develop a biographical picture of their experiences in obtaining land. You can begin with the interviewee's first farming experience (probably on parental land), carry on through the first acquisition of land in the interviewee's own right (perhaps at marriage), establish the origins of present landholdings, and examine plans for the future. In so doing, you learn how farmers pursue strategies of land acquisition and retention as their family labor supply and availability of other resources change over time. These strategies often prove to be surprisingly complex, involving the piecing together of a viable holding from land under a number of different tenures, to which the farmer and members of the household may have access based on a variety of statuses. (Hoben's work on the Amhara rist system is exceptional in its understanding of this complex process; see Insert 5.) You also begin to understand the cycles in which landholding households grow and dissolve, their land passing to younger households generated out of their dissolution. You see the critical importance of the law of inheritance in land tenure. As you interview landholders of different ages, you understand that the system does not look exactly the same to a young man trying to establish himself, an older

5. The Farmer's Perspective: Land Acquisition Strategies Under the Amhara *Rist* System

The scattered fields on which a household depends for its livelihood do not constitute a clearly delimited estate which passes intact from the household head to a principal heir, as in systems of impartible inheritance.[1] They rather represent a collection of fields brought together under the management of the head through diverse processes and strategies, of which the most important are inheritance, gift in anticipation of inheritance, clearing woodland, pursuing *rist* claims against the descent corporation, and tenancy.

The relative importance to an individual of these various ways of acquiring *rist* land, and the institutional context involved, varies with his position in the domestic cycle, in the local community, and in the wider sphere of regional politics. A young married man usually obtains most of his land through either inheritance, or gifts in anticipation of inheritance. The institutional setting in which such land transfers occur is largely defined by the norms, interests, and sentiments of household and kinship relations.

Somewhat older men whose fathers are dead, or who live in a different community from their fathers, try to obtain additional fields of *rist* land from descent corporation representatives by pressing claims for a few fields through 'allotment', in virtue of their own or their wife's latent pedigrees. Such claims are formally argued in terms of descent rules, but their success or failure is strongly influenced by interests relating to community organization and leadership.

Elders and office-holders who attain prominence in the wider regional political community try to claim larger amounts of additional *rist* land by demanding a further division--or redivision--of descent corporation land by 'father'. Such claims are formally argued in terms of descent corporation ideology and rules, but their success depends heavily on the claimant's ability to mobilise support for his cause through his personal political ties.

Allan Hoben, "Social Anthropology and Development: A Case Study in Ethiopian Land Reform Policy" *Journal of Modern African Studies* 10(4) 1972, pp. 561-582, at p. 577.

man who has succeeded in doing so, or a widow trying to hang onto her husband's land; nor do they state the rules of the tenure system in quite the same way.

Finally, you get behind the term "farmer," or rather behind the stereotype which we tend to associate with the term: a nuclear farm family household headed by a male farmer who "owns" the farm, runs it as an integrated unit, and makes the resource allocation and other farm management decisions. But in Africa the household's land resource may be found to be drawn together from entitlements of husband and wife or wives, and be only as stable as the marriage or other unions in that particular society. In polygamous societies the household's land will often consist not of a single management unit but of several units, each under the relatively independent management of one wife and with the "household" farm labor (wife and her children) not readily transferable between those units. The "farmer" will often be a woman, and given the massive male labor outflow from the rural sector being experienced in some parts of Africa, women farmers may be the only farmers around. The permutations are endless. The family and household, and the mechanisms for their creation, expansion, contraction and dissolution, are critical in the allocation of land and labor to one another. Marriage and divorce may be important elements in land acquisition strategy.[14] And whatever the rules may be, you come to a renewed appreciation that in most African societies there is a good deal of compromise, of situational give-and-take rather than strict rule enforcement.[15]

In short, you begin to get a feeling for how the players view the game. The importance of this dimension, called the personal dimension here, cannot be overemphasized. It is the farmer who makes land use and other production decisions. If tenure rules are changed to promote better land use, it is the farmers to whom the rules are addressed and their behavior which one tries to change. Before we can judge how they might respond to tenure reform initiatives, we need to understand how the land tenure system within which they are operating looks to them.

2. A CENTURY OF CHANGE IN INDIGENOUS TENURE SYSTEMS

It has already been suggested that indigenous tenure systems are commonly in the process of adjusting to changing demands of their society and environment. In the last century, however, colonialism quickened the pace of change and has driven tenure evolution throughout the continent in some common directions.[16] In this context it is important to disaggregate colonialism, white settlement and the introduction of Western property law, relatively short-lived phenomena with some lasting impacts, from the on-going commercialization of African agriculture and the accompanying introduction of new technologies. Another, often neglected source of change in indigenous land tenure is the spread of Islamic law (sharia). The impact of all these forces has varied from one place to another, but it is increasingly difficult to find tenure systems totally unaffected by them. In the sections which follow, an attempt is made, briefly and in broad strokes, to indicate how those forces have been changing African land tenure.

2.1 Colonialism and Tenurial Dualism

In the British settler colonies of Eastern and Southern Africa, large blocks of the best land were taken as Crown Land and set aside for white immigrant farmers. The Africans who had used the land were removed to reserves. In time, settlers established in their place large commercial farms producing for export.

On the crowded reserves, continuation of old land-extensive agricultural practices soon produced erosion and land degradation. Africans were often forbidden to cultivate certain export crops to avoid competition with whites for export markets. Hut taxes were imposed to create a need for cash, and thus a need to seek wage employment. Some employment opportunities were provided by the white-owned commercial farming sector, but in Southern Africa the mines became the major employers. A major flow of male labor began from the subsistence to the commercial sector. The few very productive regions in the traditional farming sector had depended upon labor-intensive methods, and this outflow of labor affected them adversely. In traditional agriculture generally, a pattern emerged which flourishes today: too many holdings run by labor-short, female-headed households, barely subsisting and often dependent on irregular remittances from husbands or sons in the towns. When large African urban populations began to generate a major market for food crops, white farmers moved into that market with exotics such as wheat. They had situational advantages and were heavily subsidized by the colonial state. African farmers could often not compete effectively and were in some colonies forbidden by law to do so. In the French colonies "settlers" played a much less central role, but significant amounts of land were alienated from local populations for plantation agriculture.[17]

This line of development produced a relatively stark tenurial dualism between the commercial and subsistence farming sectors. In the commercial sector western property forms prevailed, settlers having been given their land in freehold or long-term leasehold. In the subsistence sector, indigenous tenures remained in force. As independence approached, restrictions on African crop-growing were lifted and more farmers on land under indigenous tenure began to produce commercially significant amounts for the market, often responding to growing local markets.[18]

While the line between subsistence and commercial agriculture blurred and continues to do so, the tenurial dualism has persisted (see Insert 6). In the wake of post-independence land reforms, the land did not revert to indigenous tenure. Settler holdings and plantations were either allocated to Africans in freehold or leasehold, or were used by the new states in their experiments with state farms and parastatals. Only a little land was "re-tribalized," i.e., returned to indigenous tenure.[19]

While western tenures exist in large blocks only in former settler colonies, there were few countries in Africa which did not during the colonial period see the conversion of some small amount of land to such tenures. Commonly most of the land converted was in urban areas, but usually some agricultural land was converted and in the years just before independence a few African farmers were given the opportunity to hold land under such

6. Tenurial Dualism, Its Origins and Persistence

If government is to take upon itself to encourage colonization it must undertake to provide the facilities which make colonization worthwhile--land for economic development and labor to work it. In practice, these considerations will come to dominate the outlook of the administration and its aim will be the creation of a community in which Africans are willing to work for Europeans. So great are the difficulties in accomplishing that aim that little attention can be spared for the development of African life in any other direction . . An African tribe can be made into a reserve of labour or a community of independent producers, but not both.

Lucy P. Mair, Native Policies in Africa (London: Longman, 1936), at p. 8.

* * *

Perhaps the most striking aspect of land tenure in Zambia today is the persistence of the dualism created by colonialism between the State Lands (the former Crown Lands, once for white settlement) on the one hand the Trust and Reserve Lands on the other. Western property forms still prevail on the State Lands, though the conversion of freehold to leasehold has changed those forms. On the Trust and Reserve Lands, customary land tenure patterns still predominate, with only very limited introduction of property forms such as the leasehold. The State Lands continue to be the strong focus of production for the market, while the Trust and Reserve Lands are largely devoted to subsistence agriculture, though there are important beginnings of market-oriented production, usually near the State Lands.

The persistence of these patterns almost two decades after Independence would appear not to be due primarily to a causal relationship between tenure and development of commercial production, though a limited causal relationship may exist. Instead, it is explained best by the persistence of an infrastructure with associated access to new inputs, credit and markets, an infrastructure planned by the colonial adminsitration to serve the settlers who once farmed the areas which are now the State Lands.

A unification of land tenure forms must come in time, but it is important to recognize that it will constitute only one element in a much larger task, the integration of the nation's two agricultural economies through the extension of infrastructure and associated facilities into the hinterlands.

John W. Bruce and Peter P. Dorner, "Agricultural Land Tenure in Zambia: Perspectives, Problems and Opportunities." (Madison: Land Tenure Center Research Paper No. 76) 1982, at p. 44.

tenures. The imported legal paraphenalia of western land tenure, including surveying and registration statutes, remained in place after independence, and most countries in Africa retain to a greater or lesser extent two distinct legal regimes for land.[20]

2.2 Commercialization of Agriculture and Related Forces

Shifting or bush-fallow cultivation was practiced in much of Africa prior to the beginning of the century. Clans or lineages, based on common descent in the male or female line, had their own territories. All the land administration that was required in a situation of land plenty was a little coordination of where each household would farm. In some fertile areas near the coast and in major river basins, population densities were already high and so chiefs or elders had a more critical, truly allocative role to play. The geneological level at which effective land control was vested depended in part on the extent to which cultivation still needed to shift periodically.

Into this situation came first the traders, generating a demand for trade goods by Africans. There followed the introduction of new tropical crops, such as cocoa, for which there was a thriving European market. These export crops were grown by peasant producers, responding to the stimuli of new needs for cash created by taxation, availability of new consumer goods, and school fees. It is important that often these new crops were tree crops, crops which occupied land relatively permanently. Cultivation of tree crops stabilized land use, though bush fallow tended to continue for some time as the system for food crops. Existing tenure rules usually posed no problem for aspiring tree farmers. A farmer had always been entitled to security in his holding until he had harvested his crop, and this principle accommodated perennial crops easily. A farmer could keep the holding as long as his trees lasted, and if he replanted they lasted indefinitely. Matters were more complicated when indigenous entrepreneurs came looking for land for tree crops in areas where they had no rights by descent. But solutions were found. In some systems, trees were regarded as belonging to those who had planted the seedlings, regardless of who owned the land. Alternatively, tenancy arrangements or their functional equivalent were developed. (Berry's work in Western Nigeria is a classic in this area; see Insert 7.)[21]

Change came faster for land under tree crops, but gradually became more generalized. Peace and medical advances produced a burst in population growth. In some cases the new security permitted an expansion into lowland areas from defensible, intensely-cultivated hill systems and actually increased holding sizes. In most tropical areas, however, population growth created increasing pressure on the land resources. A process began which is still in progress in many parts of Africa. As crowding increases, fallow periods shorten, leading to clearer recognition of the value of the best land, which can remain in production longer. There is a rush for allocation of the remaining land, and consequently greater activity by traditional allocators of land. The process moves faster in the fertile coastal areas, much more slowly in arid and semi-arid zones such as the Sahel and other areas remote from markets. Once cultivation stabilizes and all good land had been allocated, allocation decreases in importance and the rules of inheritance come into their own. As noted earlier, this tends to shift the focus of social control of land down toward the extended family. The critical decisions become those

7. The Introduction of Cocoa and Land Tenure Change in Western Nigeria

Before the introduction of cocoa, the ownership of farmland in most Yoruba city-states was vested in patrilineages (idile). Any male member of the lineage had the right to farm on a piece of the lineage's land, but could not dispose of the land without the consent of the rest of its members. If a lineage got too big for its farm land members would have to seek land from other lineages. Permission was usually granted to outsiders (alejo) on condition that the latter acknowledge the grantor lineage's superior claim to the land by annual gifts or contributions of produce (ishakole) and obey the authority of the lineage head. If the stranger decided to settle permanently with the new lineage, he was gradually absorbed into it, often through marriage . . .

The advent of cocoa farming tended to modify methods and costs of acquiring rights to farmland, but it did not completely disrupt the old system. In Ibadan the hunters who initially acted as guides to farmers seeking land in the forest areas subsequently began to claim rights to ownership over the land they showed to others, receiving initial presents and often ishakole from settlers in their respective areas . . . As before, the annual payment of ishakole served primarily as a token or acknowledgement of the land-holders' ultimate claim to the property, rather than as a form of rent, in the economic sense of the word.

By the time of World War I, the Ibadan hunters had shown land to hundreds of farmers, who could not be readily absorbed into hunters' lineages in the 'traditional' manner . . . Although relations between these farmers and the families asserting prior claim to the forest areas retained some of the characteristics of the traditional dependent relationship between landowner and tenant generally found in societies where cultivable land has long been a relatively scarce factor of production . . .

In general, the spread of cocoa cultivation in Western Nigeria has tended to distinguish the relationship between land owner and tenant from that between a lineage or village head and a stranger who wishes to settle in the community. The economic obligations of a tenant to his landowner have been regularized--the amount being explicity agreed on in advance--and related directly to the type of farming the tenant is engaged in. The mutual social obligations between landowner and tenant still exist, but appear to have declined in importance.

Sara Berry, Cocoa, Custom and Socio-Economic Change in Rural Western Nigeria (Oxford: Clarendon Press), 1975; at pp. 91-100.

concerning how land will move from generation to generation in the "family," a group of only two or three generations in depth.

These changes have not required radical revision of older tenure arrangements, or even a conscious decision that they should change. Instead, they evolved in an unfolding of the internal logic of these systems in response to new circumstances. Allot, a long-time observer of the evolution of West African land law, comments: "Contrary to one's picture of African customary law as age-old, immutable, firmly fixed in the very bones of the people, it has in many places changed rapidly and fundamentally, especially in regard to land."[22] It has done so even in spite of statutory law which attempted to restrict its change, as in the case of sales of land in Northern Nigeria (see Insert 8).

A striking aspect of the West African experience, particularly in Ghana and Nigeria, has been the role played by the courts in developing new legal concepts to facilitate tenure change. Through law-making by decision in the specific case, in the classic common law mold, the courts have recognized the shift of control of land from larger kinship groups to the more immediate family and defined a tenure called "family land." This is a true common legal institution, produced by common influences upon a diverse set of circumstances and developed by the courts to bridge the particularities of indigenous tenures with their ethnic bases.[23]

While the introduction of commercial tree crops upon well-developed lineage-based systems of land tenure in West Africa has produced relatively rapid tenure change, the process was soon underway in many other parts of Africa within reach of markets. How fast that process is continuing at the moment, given the current state of stagnation of much Agrican agriculture? It may be a mistake to project trends discerned in the fifties and sixties into the seventies, for which period we have less information and during which incentives for commercial agricultural production have waned in many countries.

2.3 Changes in Local Institutions with Tenure Roles

A good deal has been written concerning the impact on local institutions of various colonial approaches, whether British "indirect rule" or French "direct rule." Here the intent is much narrower: to note briefly the development of "public" and "private" distinctions as between different levels in land-administering local institutions.

Consider an indigenous tenure hierarchy in a colonial political and administrative context. What is the status of the "estates of administration" held by larger social units? In the pre-colonial period, these levels were often not just foci of certain rights and competences concerning land, but levels in the administrative systems of tribal states. The estate at the apex of the hierarchy had the attributes of sovereignty. To us kinship is a private law principle; to many traditional African societies it is a principle of public law (or rather, for them the distinction doe snot arise). In the colonial and post-colonial periods the attribute of sovereignty has been lost and the various levels in such hierarchies have evolved differently. How they have evolved has depended upon the original character of the estates, the level of the estate in the hierarchy, and the path of development of colonial and post-colonial public administration in the area concerned.

8. The Development of Sales of Land in Nigeria

Nigeria has long been thought to be dominated by corporate tenures, and numerous development specialists have argued for its conversion to freehold. A startling fact is that only recently have land tenure experts come to realize that the movement has already begun.

Recent work in several northern villages by Lawrence Ega documents that this trend is increasing. Drawing on 1975 surveys in the villages of Mayare, Falladan, and Rigachikun, and comparing them with an earlier study done in three nearby villages, Ega demonstrates that there is an increasing amount of land being transferred, contrary to the land tenure laws of the region . . .

When a sample of farmers was asked in 1975 how they acquired the fields they till, a surprising large number stated that they gained them through purchase, rent, and pledge transactions, methods contrary to the principles of existing law and custom. A critical question is what these transfer terms mean in the Zarian context. On the basis of discussions with key informants, Ega established that purchase occurs when a complete transfer of rights takes place from seller to buyer in return for cash; rent occurs when land is transferred to a third party for a period of time in return for money; and pledge occurs when land is transferred to a third party for a period of time in return for money. All transactions are done illegally under the present tenure laws. Although in principle purchase transactions can be legal if approved by local representatives of the government, most of them do not do so, as they believe in the inalienability rule.

Purchase, rent, and pledge transactions are far more likely to occur in areas of land pressure, and there are indications that individualization of tenure is taking place where economic change is more rapid. Given the number of such transactions, it seems appropriate to conclude, subject to further research, that landholders incresingly operate as if they held full powers to dispose of their land as they wished . . .

. . . After careful research and thought, Ega argues that those advocating freehold reforms neither understand the present tenure system nor objectively attempt to evaluate the desirability of Western patterns of private landholding.

John M. Cohen, "Land Tenure and Rural Development in Africa," in Agricultural Development in Africa A.F. Bates and M.F. Lofchie (eds.), (New York: Praeger) 1980, pp. 348-400, at p. 361.

It was noted earlier that some of these estates were reminiscent of a set of simple administrative competences with respect to land, while others appeared to involve propriety rights. The distinction is ours, and would not be recognized in most indigenous systems. It becomes important, however, because colonial and independent governments have thought in such terms. They have inclined, consciously or unconsciously, to impress each level in a hierarchy of estates with one character or the other. In the colonial period, the philosophy of indirect rule led government to coopt certain levels of the hierarchy to govern local populations. Even if only the upper levels were officially incorporated into the scheme of administration, the colonial administration through them effectively enjoyed use of the lower levels. Usually official interest stopped at a level of administration which seemed by its own standards appropriate, e.g., the village. Those standards favored neat, geographically based administration founded on areas of residence, rather than kinship.

The matter is complicated by the fact that indigenous societies did not necessarily have only one hierarchy. In an extreme case, there might be one for war, one for certain sacral purposes, one for dispute settlement, and one for land administration. The French West African literature on land tenure eventually pinpoints the importance of the "chef du terre" as opposed to other, apparently more eminent functionaries. Colonial administrations were often slow to perceive the difference, and if a chief other than the land chief was absorbed into the colonial hierarchy, the position of land chief tended to atrophy. Alternatively, where no traditional hierarchy existed, British administrators tended to create one.[24]

Accidents of this nature have affected the emerging pattern, but it is possible to sketch out some general lines of development. Colonial administrations tended to treat the upper levels of the hierarchy which it converted to new administrative roles as having primarily dispute-settlement functions with respect to land matters, as was considered appropriate for "public" institutions. More active roles often atrophied, or steps taken to limit them. Somewhere in the hierarchy, a distinction gradually developed which divided "public" from "private" institutions, a distinction without meaning in most societies organized on kinship lines. Usually, it was institutions toward the bottom of the hierarchy, such as the lineage or the extended family, on the "private" side, which were seen as the holders of significant tenure rights. Often, considerable ambiguity existed concerning the character of institutions at the border between "public" and "private." Colson attributes much of what came to be thought about "communal" tenure to the falacies inherent in this process (see Insert 9).

2.4 The Impact of Islamic Law

Islamic law (sharia) has a clear concept of individual ownership of land and a well-developed law concerning the transfer and inheritance of land. Islamic land law has its origins in urban, merchant communities, and it stands closer to Western land law than to indigenous African systems. Islam has over the last century spread to many new areas of Africa, especially in West Africa. Islam's strong emphasis on law is commonly muted in initial conversions by itinerant teachers. But even when there are only a few converts, some fundamental requirements of sharia--for instance the rules of intestacy which

9. Indirect Rule and "Communal" Tenure

In the years between World War I and World War II, the principle of indirect rule through traditional authorities dominted the political scene in most British colonies and in the Belgian Congo. This principle led to the recognition of chiefs and rulers where none had existed in earlier periods. This had its parallel in the respect paid to supposed customary rules of land tenure. The theory that land must have an owner exercising rights comparable to proprietary rights encouraged the attribution of previously unclaimed privileges to village communities or to larger political bodies in regions where people had little reason to busy themselves with the definition of land rights, since the uses to which they put the land were limited and conflicts over land occurred only as conflicts between expanding political regimes. The official search for the owners of all land encouraged the confusion of sovereignty with proprietary ownership and the creation of systems of communal tenure which came into being with precisely defined rules. These rules now inhibited the development of individual rights in waste land because it was deemed that such rights encroached upon the ancient right of some community, lineage, or 'tribal' polity. The newly created system was described as resting on tradition and presumably derived its legitimacy from immemorial custom. The degree to which it was a reflection of the contemporary situation and the joint creation of colonial officials and African leaders, more especially of those holding political office, was unlikely to be recognized.

Elizabeth Colson, "The Impact of the Colonial Period on the Definition of Land Rights," in Colonialism in Africa: 1870-1960, L.H. Grann, Vol. 3, (Cambridge: Cambridge University Press, 1960), at p. 197.

require division of an inheritance among all children, male and female--soon set up a tension with traditional practices. When a majority in a society (or its leadership) have adopted Islam, pressures are generated for more general and rigorous observance of sharia.

The impacts on indigenous land tenure can be profound. Islam's inheritance rules and generally individualistic perspective on property rules tend in the long run to erode the authority and role of clan and tribal land administrators. Islam has a patriarchal model of the family, and this tends to undermine matrilineal systems. The role and rights of the individual landholder are enhanced, to the detriment of the rights of the extended family, clan or tribe. (For an example from Northern Nigeria, see Insert 10.) To this extent sharia and Western-based individualization efforts may complement and reinforce one another. Islam is also, however, a state religion and sharia has a concept of State ownership of unutilized land. In Africa this has sometimes prompted rejection of tribal or clan claims to extensive areas of unutilized or sporadically utilized land, with that land instead being claimed for the State.

The picture which emerges is one of a chipping away at the rights of the lineage, clan or tribe from both sides--from both the State and individual ends of the social spectrum. There are remarkably few detailed studies of this phenomenon, and we understand it only in fairly general terms. In such circumstances overgeneralization is a clear and present danger. The interaction between sharia and customary law is dynamic and on-going, and particular historical interactions throw up a fascinating variety of tenurial phenomena.[25]

3. IS INDIGENOUS TENURE A DEVELOPMENT CONSTRAINT?

Most small farmers in Africa--the vast majority of farmers--cultivate their holdings under indigenous tenure systems. These systems have changed somewhat under the impact of market forces and other influences during the colonial and post-colonial periods, often in the direction of greater individual control of the holding and alienability, but they remain altered indigenous systems. Because so many African food producers cultivate under indigenous tenure systems, the crisis in food production in Africa has directed new attention toward the question of whether indigenous land tenure arrangements constrain farmer innovation and investment in enhanced agricultural production.

Some studies answer this question in formal, almost ideological terms: indigenous systems can only obstruct development, framed as they were to meet the needs of subsistence economies. This position overlooks tenure evolution which has already taken place and will certainly continue. Sometimes a critique of indigenous tenure systems aggregates negative features of diverse tenure systems in diverse circumstances and thereby exaggerates the problems of indigenous tenures. In other cases, idealized notions of communal tenure persist.

10. Islamic Law and Land Tenure Change in Northern Nigeria

. . . (It is) probably true to say that the indirect influences of Islamic law have done more to affect the traditional concepts of land tenure and of society as a whole than the direct influences. For example, Meek discovered that the impact of Fulani rule had altered Jukun society from matriarchy to patriarchy. The primary influence of this nature was what may be called the concept of the individual. Islamic law concerns itself with individual rights as opposed to the group orientation of traditional African law. An indication of the two approaches can be seen in their attitude to the problem of partition of inherited property. Under Islamic law any co-heir has an unilateral right to demand partition, whereas, even under a sophisticated and modernized system of customary law such as that pertaining to Western Nigeria, partition is only permitted where all the members of the family have consented.

This concept has undoubtedly played a major role in the breakdown of group tenure into individual tenure. The writers of memoranda for the Northern Nigeria Lands Committee in 1908 all found evidence that the group concept was being eroded by individual claims. The same process was discovered by Luning in Katsina Province in 1961 in an area where both traditional land tenure and Maliki law exist side by side. He found that the original group tenure had definitely broken down into individual tenure and shows how this is evidenced by a great increase in the number of transactions related to land.

One argument which can be raised against the full application of Islamic law is the fact that the pure Shari'a may be modified either by the ruler in accordance with political needs or by local customary law. There has been constant conflict in Islamic law between judges whose interests lie in enforcing strict Shari'a and the state which is faced with the necessity of ruling. The same conflict exists in Northern Nigeria where Alkalai are loath to admit the existence of customary law and insist that in the areas of their jurisdiction Islamic law is the law of the inhabitants in any case. The two systems are in many areas in an uneasy relationship.

C.M. McDowell, "The Breakdown of Traditional Land Tenure in Northern Nigeria," in African Agrarian Systems, David Biebuyck (ed.), (London: Oxford University Press), 1963, at pp. 267-268.

It is important to note at the outset of this discussion that there are some problems implicit in the tools of economic analysis brought to the task of evaluating these tenure systems, tools developed in the examination of mature Western market economies. African economies bear only a limited if growing resemblence to such economies. Rather than the managerial and social autonomy of the "farm firm" and relative impersonality of economic relations, one finds non-cash economic exchanges and understandings embedded deeply in the social and political fabric. Utilizing concepts such as "externalities" and "transaction costs," stereotypes of indigenous tenure systems are judged "imperfect" by comparison to property institutions which are argued to be conducive to efficiency in market economics. But the facts which create "transaction costs" are not merely isolated, inconvenient tenurial facts which hamper the efficient functioning of an emerging system; they are necessary cogs in another, older system which continues to perform important functions. Elements of one functioning system are being evaluated in terms of another.

It is not suggested that discussion of indigenous tenure systems in terms of Western property economics concepts is entirely unprofitable. After all, many economies in Africa are evolving in the direction of market economies. On the other hand, those concepts can be misleading if not used very cautiously, both because they generally assume incorrectly that (1) African tenure is "communal," participating in many of the characteristics of a commons, and (2) the farmer is operating in a larger economic environment quite different from that which actually surrounds him. The indigenous tenure system meshes with many relatively stable elements in that reality, which perform important social and economic functions for the African farmer. The fact is that his reality is changing, and he often stands with one foot in each system. His well-being and productivity (indeed his survival) can be adversely affected by focusing too exclusively upon either of them. Economics has traditionally found it difficult to do justice to these transitional situations, as do other disciplines (see Insert 11).[27]

This section attempts to review the concerns about indigenous tenure systems and to identify situations in which these may in fact be serious. Where there does seem reason for concern, it notes countervailing benefits derived by the farmer from existing arrangements. Tenure arrangements do not, of course, have problems and benefits in general, but only in terms of specific subsistence or development strategies. For the purposes of this discussion, a development strategy is assumed which in very general terms relies on farmers utilizing privately held land to innovate and invest in the interest of increased production for consumption and the market.

3.1 Land Use and Conservation

Shifting cultivation has often in the past been denigrated, and with it, the land tenure systems that accommodate it. That this is wrong is increasingly recognized. Shifting cultivation is a function of an abundance of land, the fact that prolonged cultivation exhausts soil, and absence of an agricultural technology which can counteract that exhaustion. Until that technology is available and affordable, shifting cultivation and tenure systems consistent with shifting cultivation are only appropriate.[28]

Serious problems arise, however, when in the absence of such a technology population densities are reached which can no longer accommodate shifting

11. Economics and Transitional Land Tenure Situations

Agrarian reforms are of deep concern to agricultural development economists for the simple reason that the institutional order which can be neglected and taken for granted in short-term calculations of efficiency may well become the source of a debilitating stagnation, insecurity, and inequality over the decades and centuries. Such possibilities should be anticipated and the prospects minimized in development planning. This means that the problems of devising, establishing, and stabilizing a national institutional order should be understood by economists as problems to be resolved. This is an achievement which requires the participation of economists because the heart of the economic problem of mankind is survival and, hopefully, the progress of humanity, in a world of profound scarcity which only economists seem to appreciate. But if they are to comprehend the significance of agrarian reform in development policies, the appointed tasks of economists must also include an understanding of the problems of economic power, the nature of property relations, and their interconnections with opportunity and freedom, which in turn are aspects of human organizations.

Kenneth H. Parsons, "The Place of Agrarian Reform in Rural Development Policies," Draft, Land Tenure Center, 1982. p. 1.

* * *

A primary reason for hesitancy (to treat tenure reform as an economic issue) is the general unwillingness of economists to tamper with broad organizational and structural frameworks within which economic activity occurs. Available theories of economic behavior have emerged from the systematic study of firms and individuals. Built into these theories is a strong tendency to hold the institutional framework stable in order that analysis of the response of firms and individuals to economic stimuli can be reduced to manageable proportions. Formidable complexities arise when economic dynamics are applied to the institutional framework . . .

Much current "static" and "dynamic" (time-weighted) economic analysis is practiced within a static institutional framework. One distressing feature of the land reform issue is that it cannot be introduced without questioning the basic structural characteristics of the economy. It compels a dynamic treatment of the total economic framework as an organism subject to change. For some economists the solution has been to invite the sociologists, social psychologists, political scientists, and philosophers to take over. The alternative proposed in this paper is that, as economists, we re-examine our theories and explore the extent to which the land reform issue can be brought within an analytical framework of economic study.

Philip M. Raup, "The Contribution of Land Reforms to Agricultural Development: An Analytical Framework," Economic Development and Cultural Change, XII(1) 1963, at p. 2.

cultivation. The prime historical example concerns the "native" reserves established in the settler colonies of Eastern and Southern Africa, often rapidly creating crowding and rendering previous land use practices unsuitable. Continuation of these practices resulted in serious land degradation. In other parts of Africa natural population growth over the last fifty years has now created very real pressure on the land resource. Cultivation stabilizes, going over to a rotation system with declining fallow periods, and farmers are increasingly unable to maintain fertility.

This problem is sometimes characterized as the inevitable outcome under a tenure system which, since it permits shifting cultivation, gives farmers no long-term interest in the land and encourages them to exhaust rather than conserve it. In economic terms, the stabilizing cultivator is said to lack incentives to carefully husband the holding; he does not have property rights which internalize the costs and benefits of conserving or failing to conserve the land. (For an example of such reasoning, see Insert 12.) It is not clear that this is invariably, or even frequently the case. Shifting cultivation systems are not "commons" situations, but often involve significant social control over new land clearing. They allow different degrees of control over bush fallow, which often involves some less intensive use of the fallow. Even where this is not the case, indigenous tenure systems have when the necessity arose readily recognized long-term exclusive rights for farmers or households in more limited land for rotation. The test is whether farmers are able to retain fallow. In some cases the movement from shifting cultivation to a secure rotational agriculture has been actively promoted and organized by government; the paysannat system in Zaire is perhaps the best example.[29]

No matter how flexible indigenous tenure rules may be, however, population pressure may simply outdistance available technologies for maintenance of fertility. This is not primarily a land tenure problem but a land use problem, which can be solved only with new inputs and techniques. Agroforestry seems to offer the best hope in this respect for many African farmers today (the transition was eased and even precipitated in advance of population pressure in parts of West Africa by the advent of commercial tree crops). If the problem is not primarily a tenure problem, however, it is also true that tenure change is a necessary element in conservation of resources as land use changes under increased population pressure. The establishment of a stabilized and productive agriculture will both need to be facilitated and reinforced by new tenure rules, and these must enhance the farmers' rights in the land.

It is important, however, not to imagine that such tenure change offers a panacea for destructive land use. Enhanced individual tenure offers the freedom of action and economic incentive to conserve the resources. Nonetheless, farmers may need to maximize short-term production despite long-term resource costs. Where land use technology cannot maintain fertility under the use required for subsistence or survival of the farm firm, individual tenure will accomplish little. And if the freedom conferred by ownership is coupled with ignorance of proper land use practices, it provides only the freedom to degrade the resource. Witness the American Dust Bowl experience of the 1930s.

12. Land Tenure and Land Degradation

Land is owned by the tribal government. In most cases, a native authority acts on behalf of the tribal society when allocating land for residential use and cultivation among tribesmen and non-tribesmen. The tribal authority also insures that land use conforms to the tribe's laws and customs. Tribesmen are typically assigned plots and retain exclusive rights to the crops grown on these plots. Plots revert to pasturage after the harvest. With the exception of the land used for residential purposes, all remaining land is reserved as commonage where privately owned livestock are grazed.

Once political boundaries are established, population increase must lead to an increase in the demand for land relative to its supply. When land commands a positive price at the margin, pressures are created to change the land tenure system because the usufruct system leads to a decline in the productivity of the land. As population increases, each male member of the community can be supplied with a plot of arable land only by subdividing the land into smaller and smaller plots and by reducing and eventually eliminating the time period that land is allowed to lie fallow. The inevitable result is that farm yields fall to subsistence or lower levels. In addition, the commonage will become overgrazed because there is no incentive for individuals to limit the size of their herds under a usufruct land tenure system. The existence of the tribal community is, therefore, threatened if this land tenure system (which assumes land is a free good) continues to govern land use even though land rent is positive.

In order to insure that the individual invests in the land and limits the size of the herd, the land tenure system must change so that individual rights to land are defined, assigned, and transferable. These changes internalize the externalities created by the usufructuary land tenure system. The individual must consider the full costs of his actions in order to insure that land is used efficiently. The granting of individual rights over the transfer as well as the use of land insures that the cost of land is considered in the methods of agriculture and livestock production chosen by the individual.

David E. Ault and Gilbert L. Rutman, "The Development of Individual Rights to Property in Tribal Africa," The Journal of Law and Economics 22(1) 1979, pp. 163-182; at pp. 172-173.

3.2 Security of Tenure and Investment in the Holding

A farmer will not make long-term investments in his holding unless he is secure in his expectation of reaping the benefits of his investments. Indigenous land tenure systems in Africa are commonly judged inadequate in meeting this need for security, with lesser or greater justification depending upon the rules of the particular tenure system and the stage of development in the area concerned.

This concern with security of tenure is the most pervasive objection to indigenous tenure systems in the literature, and it is worthwhile reviewing briefly its economic basis. Capital formation is essential to development and in agriculture this process is largely accretionary. It takes place over a long period of time through incremental investments in the holding of labor, cash surplus, and credit. Typical investments are in clearing, leveling, destumping, terracing, drainage, ditching, on-farm construction, well-digging, irrigation works, tree-planting, and fencing, as well as construction of farm buildings. The role of the land tenure system is seen to be the maximization of that accretionary formation of capital by creating incentives for investment, as opposed to consumption. Security of tenure encourages investment because the farmer can afford to balance the alternatives of a higher rate of return over time from a slow maturing investment in the farm against possibly lower-yielding but quick-turnover investments, and balance appreciation in value of his capital assets against immediate income. This represents sound and durable reasoning in a market economy with broad farmer autonomy over land use and management decisions. These conditions are not always present in Africa, but seem to exist or to be emerging to an extent which justifies cautious use of this model. The scenario of investment is only realized, it should be noted, in a situation of rising real incomes. Otherwise, farmer decisions will necessarily favor consumption and short-term payoffs, and labor will seek opportunities outside agriculture.[30]

For the moment, however, let us assume farmer autonomy of decision making, a good market for production and an economy which in general offers reasonable returns to investment in agriculture. Do indigenous tenure systems offer the security of tenure necessary for farmers to invest? Here it is important to distinguish between situations involving shifting and stabilized cultivation. Under a regime of shifting cultivation, indigenous rules have been said to provide only "farm tenure," not land tenure. This is misleading if it is taken to imply an inadequacy in the system.[31] In most such systems tenure rules provide security in use of the land not only for a crop but for as long as the farmer cares to cultivate it. He may lose his rights when he moves on to farm other land, but he has had as much security as he needed or wanted. When cultivation stabilizes, the issue of investment becomes more relevant. There are some indigenous tenure systems which clearly have created substantial insecurity--as where farmland regularly cultivated was periodically, say every dozen years, redivided and reallocated to farmers by lottery. This is obviously <u>not</u> consistent with individual farmer investment in the land. Fortunately such arrangements are rare. If one judges security of tenure by the frequency of termination of use of land which a farmer wishes to continue to use, the record of indigenous systems is on the whole admirable (see Insert 13).

13. Security and Insecurity of Tenure under Indigenous Systems

Does insecurity of tenure characterize African traditional law? Very definitely not . . . Victor Uchendu ably points out: "In traditional African economics, the security of rights in land is guaranteed and protected by the very principle under which the initial rights were acquired. In one community it might be the kinship principle; in others it might be the principle of residence, clientage, service to a higher authority or mere political affiliation or allegiance. As long as the social relations which give rights in land are maintained, the question of insecurity in land seldom becomes a live issue."

Similarly an author having studied Shona law and other systems in Southern Rhodesia affirms: "It is important to recognize that despite such high degree of mobility under customary systems of land use, an individual's rights are always quite secure. Land is held by the community as a collective unit, but eligible members of the Kraal have a vested right to use particular portions of the area. Individual rights to arable land are protected so long as the cultivator occupies the land or is presumed to have interest in a particular holding."

It has even been said that "too much security is accorded in some societies." This is the case when the ownership of a farming right remains with the farmer, irrespective of whether he continues cultivation of the land or not, provided he still claims it. Such a situation is rather common; one author reports such cases from all over sub-Saharan Africa. In other societies no such fully (excessively?) developed security exists. Conditions of beneficial use and personal residence on the spot are often attached to the continued undisturbed enjoyment of land rights. Far from being economically harmful, such systems on the contrary ensure productive use of land. They furthermore prevent absentee ownership. In such systems, it is strangely enough the very threat of insecurity which provides the incentive to work . . .

T. Verhelst, "Customary Land Tenure as a Constraint on Agricultural Development: A Re-Evaluation." Cultures et Dévelopment 2 (1969/70), pp. 627-656; at pp. 638-639.

Most indigenous tenure systems provided adequate security in the past. But that security was adequate in a particular context: a largely subsistence agriculture in which land was relatively plentiful. But what happens when pressure on the land increases? In some societies, chiefs or elders take land from existing holdings to create holdings for new households. This reflects a steadfastness in the principles of most indigenous tenure systems that any member of the group has a right to land, but it is not readily apparent why this happens in some societies and not others. Often no "official" action is necessary. A new household head wanting land will go to relatives with relatively large holdings and they will give him land out of a sense of family obligation. The impact on investment is clearly potentially negative, but not certain, because local rules may require that an unimproved part of the holding be reallocated.[32]

Such claims for reallocation may also arise when a village is not too far from town and town-residing "sons of the village," civil servants, merchants and others, press for holdings. Often larger-than-average allocations are sought, for prestige or speculative purposes, or for installment of sharecroppers. These claimants are hard to refuse. It is to these influential "sons of the village" that the villagers must turn when they want a road or a school for the village; when they owe money to a merchant for a plow, and need a little grace; or when an official is abusing them. It might be argued that indigenous tenure systems in which access to land is based on descent must eventually develop a residence requirement for access to land, in order to protect existing landholders. In light of other pressing needs which nonresident members of the group help rural people satisfy, it will not be easy for them to do so.[33]

Growing population pressure is not, however, the only change which may create insecurity of tenure. Granted that indigenous tenure systems have in the past provided adequate security, can one rely on those same rules and institutions to provide security as commercial agriculture develops and particular pieces of land come to have widely different values, either as a result of investment or advantageous location? In some situations the experience with investment under indigenous tenures has been quite positive, as in the case of the introduction of commercial tree crops in West Africa. Other experiences have been less satisfactory. In conversation with emergent farmers one often finds felt insecurity. There may be concern over inability to gain secure title to a farm of adequate size and develop it gradually. Under most indigenous systems, a farmer can have as much land as he or she can use, so long as land is available. But jealousies and conflicts may soon develop. When neighbors perceive that profitable commercial cultivation is feasible, they may place the lands around the developed holding under cultivation and prevent expansion. The chief or headman himself may do so, even reducing the area which he originally approved for eventual cultivation. If permanent improvements have been made in the holding, long-dormant claims to the land may be raised by the powerful. Even without the developed land simply being taken, the emergent farmer's position may become untenable. The emergent farmer may be seen as too wealthy, as a new focus of power and influence in competition with traditional leaders; may be badgered, for instance, to use his tractor to plow the chief's land or community land; may refuse when such requests become too burdensome; may become at the same time the focus of antagonism from the chief and jealousy from the community; may be accused of witchcraft and in-

volved in numerous and endless disputes; and may in the end be forced to move elsewhere. This is an acute danger if the farmer is not originally from the tribal area and is viewed as cultivating by permission.[34]

The causes of insecurity of tenure are diverse, and it should be emphasized that while some originate in the interaction between changing land scarcity and existing tenure rules, others unrelated to those substantive rules are at least as important. Tenure may be rendered insecure by abuse of power by traditional land administrators in hierarchical systems, or by the ineffectiveness of traditional land administrators in enforcing rules in political or economic circumstances which have undermined their authority. Competition between ethnic groups, land-grabbing by new elites, and arbitrary government action, such as taking without compensation or granting concessions inconsistent with existing rights, are emerging sources of insecurity of tenure which may prove in the long run more serious than any deficiencies in the substantive rules of indigenous systems.

How insecure must tenure be, before this insecurity constitutes a serious problem? (There is, of course, no absolute security, only degrees of security and insecurity.) The answer is not obvious, and probably not generalizeable. Insecurity is on one hand an objective fact, a probability of disturbance of a holding which can be determined by research.[35] But it is also a state of mind: it is the sense of insecurity which affects investment decisions. It will be heightened when tenure becomes less secure, in violation of expectations; but it may be muted in a situation of increasing security, even if in absolute terms that security is not very great. The sense of insecurity may also be heightened and made more determinative of behavior by factors external to the individual's situation. In some parts of Africa widespread knowledge of Western property institutions may contribute to the sense of insecurity under indigenous tenure. Here there are important interactions between urban and rural tenure evolution, and between commercial and non-commercial sectors of dual tenure systems.[36] A flat assertion that tenure is "insecure" without indications concerning causation and degree, is not very helpful.

Finally, we need to recognize that the security with which we have been concerned, security in a given piece of land, is not the only security important to African farmers, and perhaps not the most important to many. To place concerns about insecurity of tenure in perspective it must be remembered that there is a broader concept of security, which traditional societies found more relevant and which retains much relevance today: security of access to an economic opportunity. By virtue of membership in a group, a farmer had a right of access to a productive asset, land. This is no small thing. Developing economies have violent ups and downs. Poor men and women will be absorbed into commercial agriculture or the mines or the burgeoning service sectors of African cities, and spit out again when times are hard. It is a good thing if they can go home, and claim a right to the opportunity to subsist.

It may well be that this sort of security cannot be preserved indefinitely. The whole tenure reform issue can in one sense be seen in terms of trade-offs between these two concepts of security. They are not easy to reconcile, though opportunities should be sought to do so. In the meantime, there is an argument that the balance between the two sorts of security should shift gradually, as other conditions change. Security of tenure in a particular piece of land is

only one element in a larger strategy for increases in productivity and commercialization. If other necessary elements are not present--appropriate technology, input supply, credit, extension services, markets--then who would want to give up the older concept of security?

3.3 Exclusivity of Tenure and Farm Management

In many discussions of security of tenure one finds a secondary theme, lamenting the African farmer's lack of full freedom to make management decisions concerning his farm. Commonly this is characterized as a necessary concommitant of "communal" tenure, under which producer incentives for sound farm management are overwhelmed by "externalities."[37] It has already been suggested that indigenous tenures are seriously misconceived as "commons" problems, because African farmers operating under these systems usually have very substantial and durable rights in their farms. There are, however, some limited and rather specific ways in which indigenous tenure systems do limit a farmer's use of his land, and they are common enough to deserve mention. These limitations are a function of the tenure system in that they are rooted in community (residential or descent group) rights in the land. The community, by virtue of membership in which the farmer holds his land, has reserved certain rights over the land to itself.

These limitations appear in two forms. First, there may be a community-sanctioned land use practice which requires, or at least works best, with participation of all landholders. An example is the turning of the community's livestock onto the fields after harvest, to graze stubble and other residues. A chief or elders commonly set dates each year when livestock may be brought onto, and must be removed from the harvested fields. Because a farmer's livestock are free to range with all the others, it may be considered unfair for him to use his land in a manner which excludes it from such grazing. A farmer may be enjoined not to adopt a new crop which places him out of synch with the rest of the farmers, or at least not to erect a fence to protect it from the livestock.[38]

Similar arrangements are sometimes made by communities of cultivators with groups of pastoralists, or between groups of pastoralists. These relationships may be peaceful and symbiotic, but tend to be fraught with tension and conflict in periods of change. Riddell, examining range management assumptions of a number of projects in Niger, found these conflicts pervasive and problematic for project design (see Insert 14).

Such overlapping or multiple use systems are not at all uncommon but the rules and the rigor of enforcement differ greatly from case to case. This makes any generalization as to the seriousness of the concern difficult. It must be remembered that such arrangements, while sometimes constraining the individual innovators, can be broadly beneficial to the group. The limitations may be compared to use restrictions under zoning legislation in our own society. As in that case, the appropriate balance between control and freedom will be a matter of divided opinion.

Second, there are certain indigenous tenure systems under which any permanent or long-term improvements may be discouraged. Tenure systems have been mentioned which involve periodic redistribution of all land, or more selective

14. Conflicting Tenure Rights: Pastoralists and Farmers in Niger

Drought being an ever-present potential fact of any herding season and strategy meant that the pastoral sector could exist only as part of a larger regional economy providing access to pasture in times of short rainfall and a market for the exchange of desert and Sahelian products. For this reason, the Tuareg noble lineages jealously guarded their rights to extract surpluses from the villages they dominated. In the retelling (v. Lovejoy and Baier 1976), it sounds somewhat ideal. By controlling both northern pastures and southern villages, the Tuareg were able to weld together a long-term, successful strategy for dealing with a harsh and parsimonious and unpredictable environment. From the point of view, however, of the populations long dominated by the Tuareg, the take-over by the French in 1918 resulted in little nostalgia for old social and land tenure regimes.

Traditional land tenure of the herders in its overall strategy does not lend itself easily to contemporary, modern range management ideas. In addition to the difficulties of range deterioration and multiple ethnic group use is a third one, namely, the constant movement of cultivators north of the official line demarcating the pastoral zone. Since the loss of power by the Tuareg in 1918, almost all conflicts between cultivators and herders have been ultimately judged in favor of arable agriculture.

Not only are farmers moving across a broad belt, in small villages north of the line they also are to be found at modern high-yield well sites that were put in for the benefit of herders. This movement, in addition to the movement of the Sahara southward, means that each year there is less and less range available for any kind of management.

Cultivators present another problem to the land tenure component identified by the projects. First, if the range is to be protected and deterioration halted (original SEDES study) and livestock production raised, both the herds and the land in cultivation by sedentary productions must be taken into consideration. Cultivators take advantage of the free range created by the French in two ways: first, they plant their crops on the best soils of what is essentially a free commodity; second, they then put their small herds onto the surrounding range (Bonte 1967; Mainet 1965). Even though each individual villager's herd may be small by comparison with pastoral populations, in the aggregate they are an important factor in the use of the southern dry season pasturage and therefore in reversing range deterioration. This means that the arable fields are controlled under

(continued)

(Insert 14 continued)

land tenure rules traditional to the Hausa, etc., while the remaining range is at the same time village commons for one ethnic gorup and dry season range for another ethnic group. This has resulted in two changes for the pastoralists. For the Tuareg, there is an increasing reluctance to leave dry season pasture unattended during the rainy season, to return from the cure sallee to find others have grazed on it in your absence. For the Peul, it has meant an ever-northward movement of the dry season range--increasing susceptibility to overgrazing and drought, on the one hand, and moving these herders ever-farther from access to national and project infrastructure, on the other (Sutter 1978).

James C. Riddell, "Land Tenure Issues in West African Livestock and Range Development Projects," (Madison: Land Tenure Center Research Paper No. 77), 1982, at pp. 24-25.

reallocation of land from large holdings to create holdings for new households. These systems are relatively rare, but when they do exist the principle of reallocation may discourage permanent improvements on land. This has been treated as a problem of risk, discouraging investment. It may result, however, in a rather different type of problem, posed by active community control of land use. The potential difficulty of reallocating land once such improvements have been made may be appreciated, and so the community prohibits such improvements. The acts of planting trees or fencing land, for instance, may be seen as an attempt by the holder to arrogate to himself rights inconsistent with those of the community. Attempts may thus be made to prohibit these activities.[39]

Where these or similar restrictions exist they may constrain innovation. The extent to which they do so is a matter for investigation in a particular case, because it appears that the durability of such restrictions in the face of real incentives varies considerably. In any case, such restrictions are not so common that they should be considered as characteristic of indigenous tenure systems.

3.4 Efficiency and Equity in Land Distribution

Indigenous tenure systems are often faulted for their reluctance to recognize sales. They are characterized as emposing unacceptable "transaction costs," i.e., risks of loss of the land transferred because of uncertainty as to whether the sale will receive legal recognition (see Insert 15). Allocation by an indigenous land administration system, by inheritance or by some combination of these is argued to be inefficient. It is suggested that land would be more productively distributed (i.e., in more efficient factor

15. Indigenous Tenure, Transaction Costs, and Allocation Efficiency

From the economic point of view vague definitions and unsecure allocation of property rights militate against wealth production mainly because they increase transactions cost and inhibit exchange. The more clearly property rights are defined and allocated the lower the cost of establishing ownership and the scope of one's rights in any given parcel of land. The potential buyer, lessee or renter of any parcel of land is willing to expend some resources to ensure that he is dealing with the legal owner of the given parcel of land. But the less clearly-defined are property rights, due, for example, to lack of registration of owners and/or surveying of land, the higher the cost of discovering the owners of a parcel of land. The return to searching for the true owner is the value of the increased certainty resulting from the augmented information concerning property rights in the land. For example, a potential purchaser becomes more certain that no claimant will come forward in the future to say that he is the true or a part owner of the property.

The higher the cost of establishing ownership and scope of rights, the lower the demand price of a potential buyer, lessee or renter. The allocative effects are similar to an increase in transaction cost borne by the demander (that is, buyer, lessee or renter) or an increase in excise tax imposed on the demander. In the equilibrium allocation of land, there will be a divergence between the marginal value of land in the original owner's use and in others' use. This is because in equilibrium the value of the marginal product (VMP) of land in the purchaser's renter's or lessee's use minus the marginal cost of reducing uncertainty is what will be equaled to the VMP of land in the original owner's use. The marginal value of land will be higher in the latter's use than in the former's use. The difference is the marginal cost of attaining increased certainty of ownership and scope of ownership rights. This means that land is sometimes prevented from going to higher-valued uses. There is a deadweight loss in wealth. Finally, the open market price of land will be lower than otherwise due to the lower demand schedule.

Omotunde E. G. Johnson, "Economic Analysis, The Legal Framework and Land Tenure Systems," The Journal of Law and Economics 15 (1972) at pp. 261-262.

combinations) if it were a marketable commodity. The market, it is assumed, would transfer land to those with the capital and skills to utilize it most effectively. A "market" in this context is usually conceived of as relatively impersonal and permitting permanent, rather than simply temporary transfers of ownership and lesser rights in land. In addition to arguments of allocative efficiency, it has been suggested that investment in land is discouraged if that investment is locked into the land and cannot be converted to liquid assets.[40]

The matter is more complicated than might at first appear. First, liquidity of assets is and will in all likelihood continue for some time to be a matter of limited interest to most African farmers. They lack opportunities to invest outside agriculture and so liquidity means little to them. The argument is more relevant as regards investment in agriculture of private capital originating outside the agricultural sector. Second, it needs to be emphasized that land under indigenous tenure, while often not "marketable" in the sense described above, is hardly frozen in idle hands. Under shifting cultivation, abandoned land can usually be reallocated. Even in some situations of settled cultivation, non-use can theoretically result in loss of a holding, though in practice, family or friends will usually farm the land if the "owner" cannot. Where there are temporary imbalances in factors, such as a household short of labor because of illness, there are usually indigenous arrangements to balance them. Land can be "loaned" for a consideration to another farmer and sharecropping is not unusual in indigenous tenure systems. These are in fact land markets (see Insert 16).

It is not clear that transfers of rights less than full ownership for substantial but limited periods of time are necessarily less satisfactory than perpetual sales of ownership in terms of producing efficient resource combinations. Transfers of a temporary nature pose little difficulty to indigenous tenure systems, and there is nothing inherently impossible in a free market in such land rights, with minimal transaction costs. We perhaps assume more necessary connections between "marketability" and "ownership" of land than in fact exist.[41]

Third, all markets are imperfect and new land markets in Africa are more imperfect than most. We tend to assume that capital and entrepreneurship go together and that if agricultural acumen does not, it will be hired. In Africa these assumptions do not always hold true. Most people with capital to invest fall into one of two groups. There is a trade-oriented mercantile class, often of foreign extraction. Sometimes they cannot as non-citizens legally own land. More important, they do not want to own land and are not often interested in agriculture. They do very well out of the rapid turnover of inventories, and often prefer to keep their investments relatively liquid, partly out of a sense of insecurity. There are others whose wealth comes from education and consequent employment in government or the modern private sector. They have privileged access to credit, insider knowledge of opportunities, and the ability to use networks of colleagues to move quickly through bureaucratic mazes which daunt others. These are, however, commonly men and women who have turned their backs on the land and have little serious interest in farming. Moreover, they usually have access to investment opportunities which offer rates of return far superior to farming. If they do purchase land, it is often for speculative or prestige purposes. Their holdings tend to be poorly

16. Indigenous Land Markets

Narrow use of the Western term alienation has kept observers from seeing the real extent of land markets in Africa. If land is not directly salable, it can be passed to others through a variety of actions, often with a profit. Transfers of the factors of production, such as animals and tools, as well as products, were probably more extensive than is generally thought. Improvements in farmland often are seen as held by the individual. Typically, he might be compensated for irrigation works built, trees planted, or fertilizer added. Moreover, while the literature speaks of a usufructuary right with the land surrendered to the larger collectivity when the holder no longer used it, in fact, in many corporate areas the land passes through inheritance to family members, a pattern more likely to exist only in more permanently settled areas or where long fallow systems are used. Transfers of land rights also take place through such forms as marriage, adoption, gift, or loan, a practice that can allow farmers to consolidate fragmented holdings in an equitable manner. Also, such transfers can allow landholders to obtain money for assets without commercial value, a fiction that would support their move into perhaps more profitable agricultural labor employment or to obtain a stake for migration to the town or mine. In any case, corporate-tenure land is much less static and inalienable than the ideal model and Western logic lead one to believe.

John M. Cohen. "Land Tenure and Rural Development in Africa" in Agricultural Development in Africa, R.F. Bates and M.F. Lofchie (eds.), (New York: Praeger), 1980; at pp. 355-356.

managed and less productive than smaller farms around them. There are, of course, exceptions and there would presumably be more if agriculture were more profitable.[42]

These considerations are mentioned by way of caution, to suggest that the benefits of freer marketability of land may in the short and intermediate run be less impressive than is sometimes suggested. In addition, marketability has sometimes been argued to have negative impacts. Whatever benefits a market in land may have, will it not lead to an increasing concentration of land in the hands a few people, depriving others of even a subsistence opportunity? There are a few land markets in Africa functioning on a scale that generates data helpful in answering this question. Historically, major land concentrations have not been market-created but to originate either in pre-capitalist systems or in state action. In the Kenyan case, perhaps the single vital rural land market in black Africa, the indication is while there are many small buyers and vast holdings are not being accumulated on the market, significant landlessness is being created by economic desperation sales.[43]

Concerns about increasingly skewed land distribution, and landlessness in particular, should not be treated lightly. It is essential that tenure change in Africa be planned to avoid replicating the intractable and politically explosive maldistribution of resources which has plagued Latin America and parts of Asia. In addition, recent analysis of the relationship between landholding patterns and agricultural development has emphasized the advantages of unimodal patterns of small holdings and economies of scale are no longer an effective argument for skewed distribution patterns. The suggestion that increasing landlessness and a related population flow out of a developing agriculture is "normal" misses an important point: there is already a massive exodus from the rural sector taking place in Africa, and it has nothing to do with increased efficiency in agriculture. It has rather to do with agricultural stagnation, the deterioration of even subsistence opportunities, educational systems which denigrate work in agriculture, and real or imagined superior opportunities outside agriculture (the "streets paved with gold" syndrome).[44]

The urgent need, it is suggested, is to provide sufficient land to more efficient farmers attempting to move from subsistence to commercial production. Access to additional land through a market of some sort may be an important element in meeting this need, although Hoben has suggested that some indigenous systems may do a very credible job of getting land to the best farmers, and the best farmers to available land, perhaps a better job than would be done by the market in such circumstances (see Insert 17).

But it is equally important to minimize consequent landlessness. Unfortunately, this is a large order, and it is not at all clear that direct state control over land allocation is the solution. It remains to be seen whether in Africa the greater potential for skewed distribution and landlessness lies with the market or in the manipulation of state control over access to land by political elites. The issue must be treated as a matter of utmost seriousness under either system.[45]

3.5 Land-Secured Credit

Discussions of the adequacy of customary land tenure frequently focus upon a different type of security--the pledging or mortgaging of land as security

17. Allocative Efficiency Under a Traditional Tenure System

. . . a person's rist claims always far exceed his rist land. In other words, he is always able to trace pedigrees to ancestral first holders in whose land tract he does not yet have fields. To put it yet another way, there are always far more legitimate descendants of an ancestral first holder than there are men who hold fields in his land tract. Whenever a man tries to obtain rist land through his rist claims he comes into conflict with those already using the land. Yet it is precisely by entering into conflicts of this type successfully that a man can increase his holding of 'hereditary' land and improve his social status . . .

From a general demographic and social point of view the rist system is not merely a way of allocating land to people. It is also a way of allocating people to available land in accordance with their social and political prominence. It serves to move people from communities which are densely populated to ones which are not; and, at the same time, it allocates individuals with unusual political skills the lands commensurate with their political attainments. It is thus a method of adjusting the actual ecology of an agrarian society to the political realities of a competitive and fluid polity, and without producing a large class of landless and alienated peasants.

In the absence of another mechanism for allocating land to people and people to land, the transformation of rist to freehold--through a cadastral survey, and the registration of individual title to land as it is currently held - would, in effect, freeze a transitory pattern of landholding and social stratification at one moment in time. It would convert a fluid system of individual inequalities into a permanent pattern of economic and social stratification; and, paradoxically, in the absence of substantial economic development, it might well lead to the creation of many landless peasants.

Allan Hoben, "Social Anthropology and Development Planning - A Case Study in Ethiopian Land Reform Policy," Journal of Modern African Studies 10 (4) 1972, pp. 561-582; at p. 578.

for a loan. This question arises where substantial loans for emergent or commercial farmers are at issue, as credit for traditional farmers can usually be handled as seasonal loans against crops. Where the need for property-secured credit does arise, it is important to understand the relationship between this security and security of tenure. A banker will not loan to a farmer who is not secure in his holding, i.e., who does not have a secure expectation of continuing in possession to reap the returns on his investments. If the farmer does not reap those returns the bank is unlikely to have its loan repaid. However, this security of tenure is only one of the necessary conditions for land to be used as security for a loan. Land offered by a borrower as security may have to be taken by the lender to satisfy the debt, and as banks do not wish to become farmers, there is a further requirement which must be satisfied: the land must be readily transferable to someone who does want to use it, for a consideration which will satisfy the debt.

The position concerning sales of land under indigenous tenure has already been discussed (1.1 above). When land assumes value by virtue of productive improvements upon it or has value conferred upon it by location near developing centers of services and facilities, indigenous law comes gradually to recognize sales of land. At first, sales may be sanctioned only among members of the group, later to outsiders with approval of the group or its head, still later without such consent. The degree of resistance to the idea of sale varies from society to society. (We do not understand at all well the differences in degree or the mechanics of the transition.) As sales are accepted, so do mortgages gain acceptance. The early experience in Western Nigeria is revealing (see Insert 18).

The need for new avenues to credit is real enough. Traditional security arrangements tend to place the land in the hands of the creditor until repayment of the loan, and so are not well suited to finance agricultural investment.[46] However, demands for tenure changes to facilitate land security for credit are sometimes premature. It was said earlier that a precondition for the use of land as security for loans was that the land be readily transferable for a consideration which will satisfy the debt secured. This requires not only ready transferability and mortgagability of land at law, but the existence of a market and the reliable, effective demand upon which a market relies. Legislative reforms to permit mortgaging far in advance of the development of a land market will have little effect and may disappoint expectations.

There is a second reason why mortgagability may have less impact than expected. Tenure is hardly the only reason why commercial banks hesitate to loan to small and emergent farmers. The farmer must be credit-worthy. To determine this, banks ask: does the borrower have an account with the bank, a good savings record; does he have a record of repaying previous loans; does he have some income from a source less variable than farming, a monthly remittance from a child with a good job in the city, for instance? Banks will often prefer lending against a reliable income stream to lending against an asset for which the market is uncertain. Beyond this, commercial banks look for larger opportunities than those the small farmer can provide, opportunities in which administrative costs of making the loan are low in proportion to the size of the loan, and repayment schedules are feasible which would be too short to permit recovery of the cost of capital investments in a farm.[48]

18. Pledging and Mortgaging of Land in Colonial Nigeria

In Nigeria, in 1922-23, an issue of considerable importance was raised by the Native Chief of the Egba and his Council who asked the sanction of the Government of Nigeria to modify the local land regulations so that property within the city of Abeokuta and other large trading centres might be mortgaged by their owners to anyone they pleased. Hitherto the sale, mortgage and lease of land had been confined to transactions among the Egba themselves, but the continuation of the limitation would, they felt, render the raising of money difficult and possibly extortionate. The people of Abeokuta desired to deal with the local European firms and banks without restriction. It was realized that foreclosure would follow mortgages in certain cases, and there might in consequence be a transfer of house property to Europeans. But nobody would lend money on mortgage unless foreclosure were possible. The Chief and Council did not recommend that similar rights should be extended to agricultural lands since 'we feel it a sacred duty to protect family property and communal land, and that, unless the precaution is strictly preserved, whole family properties would in a short time pass into the hands of European capitalists and our people become landless, and labourers on farms which were once their ancestral lands.'

In 1933 the Governor, Sir Donald Cameron, expressed the opinion that natives of the Yoruba Provinces of Nigeria should be allowed to deal freely with their land, farming or non-farming, among themselves, provided that under no circumstances should farming land become attachable for debt. They might mortgage their crops, but not their agricultural land. He would also allow natives to mortgage non-farming land to an alien, but only on the condition that if the mortgagee had to foreclose he would receive no more than a lease for a reasonable term. Natives should not be allowed to mortgage farming land to aliens. Some of these recommendations would, said Sir Donald, involve new legislation. But difficulty was found in framing the legislation and the whole question has been indefinitely postponed.

C.K. Meek, Land Law and Custom in the Colonies (London: Oxford University Press) 1949; from pp. 266-267.

Mortgagability may be a valid long-term objective, but caution is indicated. In the hands of unscrupulous non-institutional lenders, mortgages can become the means of depriving commercially naive peasants of their land. And tenure change to create mortgagability will not have the positive effects anticipated unless the other conditions which will enable farmers to take advantage of it are satisfied. These include the existence or potential for a rural land market; willing lenders on terms farmers find attractive; the support services which can help ensure success in agricultural innovation; a political situation which permits foreclosure if necessary; and prices for produce which permit recovery of costs of an investment. In the absence of these opportunities money borrowed against rural land will be diverted from investment in agriculture toward other opportunities, such as urban real estate and building projects.[49]

3.6 Patterns of Inheritance and Continuity in the Farm Enterprise

The point has been made earlier that inheritance patterns are part and parcel of any adequate concept of land tenure. Do indigenous inheritance patterns provide the necessary inter-generational continuity for building a well-capitalized farm enterprise?

Under shifting cultivation in situations of land plenty, rules of inheritance of land are of little importance and sometimes do not exist. Land of a deceased proprietor may revert to a common pool of land controlled by the group, with reallocation at its discretion. But as cultivation stabilizes, inheritance rules for land are developed. Rules of inheritance applied to leadership roles and personal property may be applied to land, or new rules developed.

Indigenous legal systems generally do not recognize freedom of testation (the right to dispose of one's property by will). These systems tend instead to rely upon customary rules of intestacy (without a will) which set out what should happen to the land when its holder dies. In some systems, the rules designate a particular heir and have a clear order of preference if that heir is not available. This is the case with many patrilineal inheritance systems. By contrast, in matrilineal and some patrilineal systems the rules confer discretion on a kin group in selection of the heir. There may be an order of preference among heirs which is regarded as natural but not binding, and which can be departed from in order to designate a preferred heir of good character, open-handed and mindful of family obligations. Gifts of land to children during a parent's lifetime may or may not be legally effective, but may in any case influence the eventual outcome.

There are several apparent difficulties with such systems. First, a system of inheritance which confers considerable discretion on a kin group to choose an heir or heirs creates uncertainty as to who will ultimately inherit a farm. This uncertainty exists on the part of the landholder, who does not know who his heir(s) will be, and also on the part of his potential heir(s). This may be a matter of relatively minor importance under subsistence agriculture, when land is readily available, and when two pieces of land of similar fertility have about the same value. But when major investments are made in land, a landholder tends to develop much stronger preferences as to his or her heirs.

It is arguable that such uncertainty is deleterious to the long-term development of farms. A good farm is the work of 20 to 30 years, a full generation, particularly for an emergent farmer without much capital. This farmer invests in the land his household's labor and such limited capital as that labor produces. The development of the family farm is furthered if his children's labor remains available as both they and the farmer grow older. But will they do this, if there is uncertainty as to the heir? The uncertainty would appear to reduce the likelihood of trans-generational, stable development of farms.

More than uncertainty is sometimes involved; under matrilineal systems, which spread in a belt from coastal West Africa into Central and Eastern Africa, it is probable that the heir will not come from the nuclear family--the matrikin will normally choose an heir from among themselves. Membership in the nuclear family, the labor unit which develops the farm, is incompatible with membership in the matrikin whose heirs will someday benefit from the development of the farm. It would seem that this must increasingly affect the commitment of a farmer and his family toward the farm's development. The matrikin are commonly widely dispersed, and usually do not constitute a traditional group for production or investment purposes.[50]

Some emergent farmers complain of the matrilineal system but it should be appreciated that attitudes change gradually. One encounters commercial farmers who argue that the discretion exercised by the matrikin with respect to the heir is a good thing. It ensures, they explain, that a good farmer will be chosen to develop their farms after their deaths. In addition, it has been suggested that in certain societies the matrikin can function effectively as a mutual assistance or even a capital-accumulating group (see Insert 19). In spite of a vast theoretical literature on kinship systems in Africa, our state of knowledge about these practical matters is staggeringly inadequate and the generalizations above should be considered very tentative, based on fragmentary evidence and impressions.[51]

3.7 Fragmentation and Subdivision of Holdings

Some indigenous inheritance patterns are also said by critics to result in extensive subdivision and fragmentation of holdings, destroying possibilities for operations which achieve economies of scale based on new technologies. It is best to first establish what this paper means by the terms "subdivision" and "fragmentation," since they are often used very loosely. "Subdivision" refers to a historical process whereby parcels are divided, while "fragmentation" refers to the broken-up, non-contiguous state of a farmer's holding.

Subdivision describes the process by which a single parcel of land is divided progressively, and by which landholdings may over time be reduced to parcels of economically unviable size. The legal processes through which this is accomplished vary and may be complex, but economically, excessive subdivision is just a matter of too many farmers trying to eke out a living on too little land. Fragmentation, by contrast, describes the situation in which a farmer's holding consists of several parcels. Again, the legal processes by which this arises may vary. The economic objection to fragmentation is clear enough, however. If the number of fragments in a holding is large and distances between fragments great, it can impose serious labor costs and other

19. Matrilineality and Land Acquisition in an Expanding Economy

Goody . . . noted that the wide distributive pattern of matriliny is compatible with poor, egalitarian economies. But I suggest that his emphasis is not entirely right in implying that differential access to wealth puts a strain on the system. The examples of Plateau Tonga plough-owning maize farmers and Ndembu cash-crop cultivators who are beginning to transfer their inheritance to sons could well support a slightly different emphasis. I would suggest that it is not differentiated wealth, in itself, that causes rich men to favour their sons so much as scarcity in the basic resources (fertile land in the two instances above). Competition in a restricted field causes men to draw in their horns and to concentrate their responsibilities on their nearest kin. As I see it, matriliny is fully compatible with competition in an expanding economy. Because of the open texture of its descent groups and its bias towards a wide-ranging recruitment of manpower, matriliny is well adapted to any situation in which competing demands for men are higher than demands for material resources . . .

To illustrate this I consider Polly Hill's account of the southern Ghanaian cocoa-farmers (1963). The great period of economic expansion for the Akwapim (both matrilineal and patrilineal groups) was from before the 1880s until the depression of 1929 . . . Empty lands belonging to the Akim on the other side of the Densu River were suitable for cocoa, and the enterprising and energetic Akwapim applied their funds to the purchase of lands and the farming and marketing of cocoa. The export of cocoa from Ghana was built up from scratch to the value of £2 million by 1914. During this period of heavy capital investment and expansion there were two kinds of purchasing organization. The Aburi used their matrilineal clans, the members of which Polly Hill likens to shareholders. But the patrilineal Akwapim were unable to make the necessary financial outlay without combining lineages into purchasing 'companies' which had no descent basis whatever. The matrilineal farmers bought land by combining the funds of several members of a descent group; or two brothers would combine with their sisters' husbands. The profits of cocoa-farming were used to buy more land, and a nice balance was maintained between individual control of newly acquired property and its absorption sooner or later into the common property of the descent group. The enterprising were rewarded with scope for their abilities, wealth, and prestige; the weak and incompetent benefited, for they were allowed usufruct of a clansman's land.

Mary Douglas, "Is Matrilineality Doomed in Africa?" in Man in Africa, M. Douglas and P. Kaberry (eds.), (London: Tavistock), 1969, pp. 121-135; at pp. 130-132.

inefficiencies on the farmer. These may, however, be outweighed by the importance to the farmer's risk management strategy of having access to several different soils and, particularly in mountainous areas, slightly different ecological niches.[52]

Subdivision is generated by indigenous inheritance systems which create rights in several descendants of the deceased to shares in his land. This is an aspect of the very broad access to land in most indigenous societies. Where there are few opportunities outside agriculture, it is hardly surprising that rules of inheritance provide access to land. In this circumstance, changing inheritance law without creating new opportunities will in all probability have little impact. There is on the other hand evidence that once the point is reached where inheritance rules would result in creation of holdings too small even for subsistence purposes, the rules are bent to reduce the rate of subdivision. The real problem is population pressure on a limited resource, not rules, and land tenure reform is not a very effective tool in this context--it cannot create land.

Turning to fragmentation of holdings, this phenomenon may be caused by inheritance, but it may also be induced by certain advantages which it confers. It is connected with inheritance, where parcels have been subdivided until they are so small that a holding must include several parcels to be viable. But there are other reasons for fragmentation, such as access to different soils or, in mountainous areas, even different ecological niches. It is often a critical part of farmers' risk management strategies, intentional and purposeful. Its benefits may significantly outweigh any inefficiencies in resource use associated with it (see Insert 20).

Where fragmentation serves no such useful purpose, what is a "serious" degree of fragmentation? It depends on a number of factors, in particular the distance between parcels and the residence. Concern should increase, however, if labor is in short supply or a scarce and costly capital item--such as plow oxen or tractors--can be shown to be inefficiently used as a result. Finally, it should be appreciated that a given degree of fragmentation affects different households differently. Labor-poor households with only difficult access to draft animals will be affected more adversely by a given degree of fragmentation than better endowed households.[53]

If fragmentation is a serious problem, and there <u>are</u> instances of serious fragmentation in Africa, then the solution must lie in some combination of land consolidation, inheritance reform, and most important in the long run, the creation of new opportunities elsewhere.

3.8 Man/Land Ratios, Population Mobility and Citizenship

Indigenous tenure systems are generally based in kinship and ethnicity. Some critiques of indigenous tenure suggest that this prevents movement of people from areas experiencing heavy population pressure to areas with low man/land ratios. (See Uchendu's position, Insert 21.)

Individuals and their families have in the past crossed ethnic boundaries regularly, in at least some parts of Africa. They have sometimes been absorbed into landowning groups under legal fictions, because their need for

20. The Case for Fragmentation of Holdings

In certain circumstances fragmentation may be desirable or even necessary. It may, for example, be a perfectly logical and sound response to soil and crop variations or to spreading the risk of climatic or other hazards like frost, hail, flood or animal damage. Igbozurike claims that, in the tropical realm, fragmentation is an "overrated phenomenon." In this area, where people and societies have evolved agrarian practices over millennia, fragmentation has long been endemic and appears to be almost as ancient as the practice of tillage itself. Presumably, therefore, it has utility and relevance for its practitioners, otherwise it would not have lasted so long. The fact that owners with rights to fragmented holdings do not generally agree spontaneously to consolidate their holdings suggests that there may be some underlying economic rationale for fragmentation as well as the more commonly ascribed factors of tradition and cultural inertia. Johnson shows that from a theoretical standpoint fragmentation may indeed by economically rational, provided certain conditions are present. These conditiosn are: spatial variation in land types; a predominantly subsistence economy; minimal use of capital-intensive techniques; low cost of local transport; and a high cost of exchanging parcels of land. The main hypothesis that Johnson verifies is that the greater the degree of subsistence (or the lower the degree of specialization--defined as a situation in which an individual produces more of a commodity than he consumes), the greater the degree of fragmentation individuals will prefer in a milieu in which land is not homogeneous.

Fragmentation may have other ecological benefits. Small plots and a mixed mosaic of crops may tend to check disease diffusion. Crops will benefit from greater protection from exposure to wind, and soil erosion will be reduced. Amenity arguments also play a part. Large, square, desolate fields have less aesthetic value than a "patchwork quilt" of smaller, irregular plots. Hedgerows provide an important sanctuary for plant and animal life--more important than an equivalent area of woodland because they form a network, rather than a patch, of uncultivated environment. Farm consolidation and field enlargement reduce hedgerow length--by 12 percent in a recent five-year period in Huntingdonshire. In the Netherlands consolidation procedures include the planting of areas of woodland for ecological and recreational purposes, to compensate the loss due to field enlargement.

Russell King and Steve Burton, "Land Fragmentation: Notes on a Fundamental Rural Spatial Problem." Progress in Human Geography 6 (4), December 1982, pp. 475-495.

21. The Conflict between National Land Policy and Local Sovereignty over Land

The economic consequences of local sovereignty in land should deserve notice. African economies manifest the familiar paradox in which land surplus and land-scarce economies coexist in the same national economy. In the way I interpret this phenomenon, the major bottleneck lies in institutional obstacles rather than in the immobility of African labor . . .

Land tenure questions cannot be separated from the general problems of economic transformation. This is particularly true for Africa where more than 85 percent of the labor force are engaged in agriculture and a sizeable portion of this is still outside or marginally inside the market economy. Part of the painful process of economic transformation facing Africa also involves institutional transformation. The latter implies a penetration process by which central authority and institutional structures progressively ease out the autonomous institutions in an effort to make them more effective and more productive. Very few African countries have started this inevitable developmental process . . .

The greatest contribution which a national land policy can make to economic development is to increase the accessibility to interests in land, and through it foster greater economic integration. The challenge of national economic policy in an "incorporated" economy lies in its ability to reduce institutional barriers which might restrain internal migration. One important contribution which a national land policy can make to development is to create an institutional environment which will reverse the present trends in migration--from a rural-urban to an inter-rural. This cannot be achieved without policy decisions at the national level. If interests in land are restricted between agricultural areas, it will be difficult to deal with the problems of "uneven" development which might threaten national unity.

Victor C. Uchendu, "The Conflict Between National Land Policies and Local Sovereignty over Land in Tropical Africa," Seminar on Problems of Land Tenure in African Development, Leiden, Netherlands, December 13-17, 1971 (Leiden: Afrika-Studiecentrum) 1971, pp. 14-17.

land has often been matched by the receiving group's need for new members or their assets. As pressure on land has increased, such movement has become more difficult. Where pressure has become intense, "strangers" not yet fully absorbed into the landowning group have been expelled. Such movement may be seriously constrained in the future.[54]

How serious is this problem of relative man/land ratios, in terms of broad demographic patterns? Probably not very serious. Areas of relative land plenty will be fully utilized in a generation even failing immigration. Often the absorptive potential of such areas is overestimated. There are often good reasons for their present sparse population, not readily apparent to planners. This may be presumed to be the case when an area remains apparently underpopulated, in close proximity to densely populated areas. Shifting large numbers of people is very costly, and existing differences in regional distributions are of an order that will be evened out by population growth, movement into urban areas and movement toward other opportunities in the space of a generation. Moving people about, or worrying about their inability to move, is often an excuse for not coming to grips with the problems they face where they are. Confronting those problems can ony be delayed slightly by resettlement programs.

Finally, the issue of access to land held by ethnic groups by citizens belonging to other ethnic groups has major political implications. There are countries in Africa where politics are dominated by one or two ethnic groups and this power may be used to expand dominant group access to land. In such circumstances, pleas for demographic balance may well be demands for tribal expansion and economic hegemony.

3.9 Redistributive Reform

This paper emphasizes tenure reform rather than classical, redistributive land reform, because serious maldistribution of the land resource is not characteristic of African tenure situations. While there is never perfect equality in distribution and the economically undifferentiated and egalitarian village society is a myth, in the vast majority of cases inequalities in landholding are relatively slight and--so far at least--not cumulative. Under heavy population pressure on land, indigenous systems sometimes develop their own mechanisms for redistribution (see Insert 22). Moreover, where notable inequalities in holdings do exist, the presence of vacant land elsewhere often gives the impression that resettlement can solve the problem. All this having been said, serious maldistribution of land has existed in some parts of Africa and where this has been the case, it has proved of the same explosive potential as in Asia and Latin America.

The best known cases are those of the settler colonies, in which a relatively few white settlers were allocated large amounts of the best agricultural land. In Kenya and Zimbabwe, independence movements stirred their people with demands for land and independence has been accompanied by major land reforms. Perhaps the most problematic aspect of land reform in former settler colonies is the persistence of the dual land tenure systems. The independent states have found it difficult to unify land tenure systems. At base, the problem is one of the perseverence of the dualistic economic structures created by colonialism. As important as the outcomes of these

22. Indigenous Redistributive Reform in Tigray, Ethiopia

However diverse the tenure pattern chiguraf-gwoses may be, it is considered central to the operation of the tenure that the land of the community is divided up among the tax paying household heads of the community in shares which reflect the equal sharing by households of the taxes assessed upon the community. When one asks about the size of allocations, one is invariably told that they are equal. "Chiguraf-gwoses is good for the poor" is the refrain.

In fact, they are not equal and absolute equity is hardly expected. It is recognized that some inequalities exist, which in mitigation are said to reflect differences in household size or ability to cultivate and thus not to be unfair. Absolute equality is not declared as a positive, normative objective, which would be viewed as somewhat naive. The stress is rather on the necessity of control of inequality. The distribution of land should be under community control.

Chiguraf-gwoses thus invariably involves mechanisms for control of distribution of land, both to accommodate new members and to maintain a reasonable equality of holdings. It is maintenance of equality which is problematic. To establish equality at a given point is not very difficult. To maintain it over time in the face of the birth and death of community members, and their coalescing and disolving as households, is far more difficult.

Two mechanisms of land distribution . . . have been utilized by chiguraf-gwoses communities. One, now obsolete, is the periodic general reparcelation and redistribution by lottery of the community land. "Equity" was not so much maintained as periodically reinstituted. The other means is selective reallocation by elected elders from existing large holdings. Today the maintenance of equality under chiguraf-gwoses depends almost exclusively on this latter mechanism.

What matters in the end is proportion and disproportion. The farmers do note disproportion when it is on a significant scale, and a few instances of this can be found in most chiguraf-gwoses communities. These inequalities are no less resented because they occur in a quite limited range, even the largest holdings permitting cultivation by a household with live-in "servants" and two or three tenants. These communities hover near the subsistence level. The man who has a holding of fifteen tsimdi is three times as rich as the man with the holding of five tsimdi. In good times, it makes the difference

(continued)

(Insert 22 continued)

between walking without shoes and riding a mule, in bad times the difference between begging and having food laid aside. Large holdings which are obviously far out of proportion to any differences in household size or household capacity to cultivate are pointed out with grumbling by poor men and can cause significant disillusionment with chiguraf-gwoses as a system.

John W. Bruce. "Land Reform Planning and Indigenous Tenures: A Case Study of the Tenure Chiguraf-Gwoses in Tigray, Ethiopia," S.J.D. Dissertation (Law), University of Wisconsin, 1976; at pp. 132-133 and 141-142.

reform efforts are to the countries concerned, they are slighted in this paper for a number of reasons. They affect a very limited number of countries, are dealt with at disproportionate length in the literature, and will not recur.[55]

There are also, however, some cases of serious maldistribution of land which have nothing to do with the experience of European colonialism, and these deserve closer attention. The cause of such maldistribution is usually the conquest, often in pre-colonial times, of one ethnic group by another. In some instances the original landowners will have been expelled from the land. In others, and these are the potentially more explosive cases, those subjugated remain on the land in a servile status. The relationship between the new and former landholders will generally involve personal status classifications based on family or ethnicity which prevent social and economic mobility. It may be closer to serfdom or some variety of clientship, despite a superficial relationship to tenancy. Any attempt to apply analytical models which assume more or less arms-length bargaining between the parties will be profoundly misleading.

In a few cases this maldistribution has led to redistributive land reform, and Ethiopia is the primary case in point. The origins of exploitative landlord/tenant relationships in southern Ethiopia as a result of imperial expansion have been noted earlier in this section. The revolution which brought the Dergue to power in 1974 had complex roots, but land reform was one of the Dergue's central aspirations. Implementation of the land reform established the Dergue's credibility in the minds of rural people as nothing else could have done, and energized a reorganization of rural society into peasant associations to accomplish that end. The reform pattern in Ethiopia remains primarily household allocations cultivated by the households, but to the extent that government forces collective production on the peasant associations it will in all likelihood erode credibility and support.[56]

There are numerous lessons to be learned from the Ethiopian experience. The first is that where whole peoples have been robbed of their land and their

descendants turned into sharecroppers on that land, the presence of extensive uncultivated land elsewhere in the country should not be seen as rendering land reform moot. The second is the remarkable political power of a critical land distribution problem, even if based in a relatively small but important part of the agricultural sector. The classic latifundia stituation portrayed in the present regime's retrospectives existed on no more than a fourth of Ethiopia's arable land, but landlordism and the plight of the tenant achieved such symbolic significance as to determine national political direction. The third lesson is the extraordinary political combustability of situations which mix tenancy and ethnicity, and the geopolitical consequences for a world power which underestimates the importance of such a problem in a client state.[57]

What of tenancy reform as an alternative to redistributive reform? The recent theoretical literature suggests that sharecropping does not in free-market circumstances discourage investment as had been assumed in the classical literature, and that tenancy reform is unlikely to benefit tenants and is no substitute for redistributive reform. That theoretical literature, insofar as it has reference to any body of empirical data, relates to Latin America and Asia.[58] Its applicability in Africa should not be assumed, given the origins of skewed distribution in ethnic conflict and the continued ethnic element in much tenancy in Africa. In any case, it should be realized that tenancy reform is often a critical step in a <u>political</u> process and that rather than being a pallative, it generally releases energies which result in tenant demands for a more thoroughgoing reform.[59]

* * *

Though they may be exaggerated, there is a kernel of fact within each of the concerns about indigenous tenure, and they deserve to be borne in mind by those planning agricultural development projects and strategies. However:

1. For any given indigenous tenure system, only some of the concerns traditionally expressed about indigenous tenure will be relevant;

2. When one of them is relevant, a careful examination is necessary to determine how serious it is in that specific transitional economic and social context; and

3. Insofar as a particular facet of an indigenous tenure system is perceived as posing difficulties in respect of one need of farmers, it is important to examine whether it is not meeting another need, perhaps equally or more important to the farmers.

Where indigenous tenures have been seen as so inadequate that major tenure reform was required, reform has taken many shapes. What are the basic models for land tenure reform, and how have they proved out in practice?

4. TENURE REFORM MODELS

4.1 The Variety of Tenure Reform

As suggested in the introduction, land tenure reform is a matter of changing not the distribution of land among persons and classes but of changing the terms and conditions on which it is held. Rights are thereby redistributed among the individual, the extended family, larger social units (such as clan, village and tribe), and the State.

Land tenure reform may on one hand be seen primarily as useful in facilitating evolutionary processes, organizing and hastening a transition caused by fundamental economic forces. The value of reform lies in shortening the painful and economically damaging confusion of expectations which accompanies such fundamental change. Land tenure reform is seen as a social midwifery. Others hope that it is possible, by changing the terms and conditions on which land is held, to encourage more efficient land use, to influence future patterns of land distribution, and the shape of society in the future. Tenure is seen as one of several manipulable and mutually dependent variables, as one lever among others. There is no significant body of discussion as to how effectively in African circumstances reform of land tenure, itself affected in its evolution by so many factors, can be used to alter general directions of development.[60]

In any case, it is a tool to be used with considerable caution. Bohannan has warned that "There is probably no single force greater than rapid change in 'land tenure' for creating anomie by establishing new factual situations in neighborhoods and local groups, while not affecting greatly the values of kinship and neighborhood." While land tenure reform can contribute to agricultural development, it is also a powerful force for social disintegration. Badly planned reforms can end by promoting only such disintegration.[61]

The extent of experimentation with land tenure in the immediate post-independence period has been remarkable. It is explicable only in terms of colonial administrations having handed over power to a new, educated elite which had few vested interests in the indigenous tenure systems. Those new elites have often felt threatened by traditional elites which derive a part of their influence and legitimacy from indigenous tenure systems. The reforms have often been motivated at least partially by a desire to undermine traditional elites, and to create a new base of support and legitimacy for the new elites. Nonetheless, the reforms have assumed remarkably diverse shapes. The anlaysis below is organized in terms of five basic directions in tenure reform: (1) individualization of tenure; (2) cooperativization of production; (3) "reinstitutionalization" of indigenous tenure; (4) reform of the rules of inheritance and their consequences; and (5) nationalization and bureaucratization of land administraion. The first two can be seen as attempts to dramatically simplify the complex situation under "communal" tenure, in which production is very much an individual affair but the community exercises significant authority over land. In the case of individualization of tenure, this is done by bringing the tenure system into line with the production arrangements; in the case of cooperativization of production, by altering the production patterns to

correspond to a group title. Both these approaches clearly reflect the conviction that land tenure is a variable which can be manipulated to alter the rate and pattern of economic and social development.

The third direction, "reinstitutional- ization" of indigenous tenure, reflects the viewpoint that indigenous tenure systems are not inherently incompatible with agricultural modernization and their defects can most cost-effectively be handled by a certain amount of creative tinkering and fine-tuning, rather than more dramatic reforms. "Reinstitutionalization" attempts to deal with defects through relatively modest changes in tenure rules, reorganization of land administration machinery (often altering its legal basis and legitimacy), and creation of new, supportive linkages with national and regional institutions. The fourth approach focuses on inheritance rules and their consequences, an aspect of indigenous tenure systems which is critical because the roles of clans and lineages is so significant in indigenous tenure systems. The third and fourth approaches may be fairly characterized as incremental, and may reflect a "midwifery" viewpoint, with these approaches seen as the most appropriate ways to support essentially evolutionary processes of tenure change. They are equally compatible, however, with a viewpoint which sees greater potential in tenure reform but assesses skeptically the ability of "soft states" to effectively carry out more dramatic reforms. The fifth approach, called here "nationalization and bureaucratization of land administation" involves nationalization without radical redistributive or collectivization objectives, simply to assert a public interest in the land and to gain some control over its administration, particularly in the project context.

4.2 Individualization of Tenure

"Individualization" will mean somewhat different things in different contexts, but at least in the African context the consistent element in all programs of individualization is a reduction of community controls over land use and distribution, enhancing the rights of the individual landholder/farmer. The term is not felicitous, in that it suggests that indigenous tenure is not already "individual," but it accurately indicates the direction in which the balance shifts. Individualization may come about as the spontaneous, evolutionary response of an indigenous tenure system to pressures exerted by a market economy. It may equally be initiated, or seen through and consolidated, by a tenure reform.

Most Western analysts discussing the future of indigenous tenure systems assume explicitly or implicitly that they will develop in the direction of private individual ownership, whether by evolution or forced march. In the absence of a firm policy decision to the contrary, this will presumably be the trend in countries with private enterprise economies. If the economic forces of society are organized along those lines, a compatible form of property will tend to develop. It may not resemble private individual ownership as we know it in all respects, but there will be a strong family resemblance.

Many commentators see this as natural and positive. Parsons has summarized the discerned benefits as follows: individualization would "(1) increase the security of investment, (2) support the economic mobility of land, (3) allow for technologically efficient increases in farm size, and (4) attract

innovative entrepreneurs."[62] Individualization is seen as the remedy to the concerns about indigenous tenure systems noted earlier in this paper. It is the creation of a property form which will mesh more easily with the other economic institutions of emerging private enterprise economies, a property form which allows land to be treated as a commodity. To accomplish this, it is thought, the rights or competences of groups with regard to the land must be extinguished and fuller control vested in a landowner. This owner need then only consider such restrictions as may be placed on his behavior by the national state.

Individualization, however, is a mansion with many rooms. Tenure may be individualized on a sporadic, parcel-by-parcel basis (at the option of the holder of a particular parcel), or on a systematic, compulsory basis. Conversion to individual tenure may be a national program, or limited to certain regions or project areas. It may involve a conversion to freehold but may also include conversion to leasehold, which enhances the security of tenure and exclusivity of control for the farmer but limits that tenure in time. Given that the State always retains certain prerogatives to control land use, there are in practice only degrees of individualization, never complete individualization.[63]

The best-documented African experience in systematic, compulsory individualization of land tenure is that of Kenya, where a sustained effort over a quarter century has registered in private individual ownership most good farmland (and much other land) throughout the country. It was seen by those who initiated it, initially in the Kikiyu areas as a counter-insurgency measure, as consolidating changes in Kikiyu indigenous tenure which had been underway for some time. It was explicitly intended to foster the emergence of an African yeoman farmer class, with holdings on a scale which would be "commercially viable," in the interests of political stability. This reform has been implemented through systematic, compulsory conversion from indigenous titles as a field operation. The program's greatest strength has perhaps been its clear perception that tenure reform is not simply a matter of changing land law, but a matter of changing and establishing facts on the ground. Rights have been adjudicated, owners determined and registered, parcels surveyed, and fragmented holdings consolidated. This has been done at little overt cost to the landowner, but considerable cost to the country. The newly individualized titles have been registered under a system which confers great security of tenure because it gives the register entry conclusive legal effect. The system is designed to facilitate land transactions by provision of simple forms which permit transfers in the registry offices.[64]

The program has been expensive, but effective in that tenure has been individualized over great areas. The 1960s, the early post-reform period in Central Kenya, was a prosperous time for smallholder agriculture. Some authors have claimed a causal connection; others dispute it.[65] It is difficult to know how much of the success to attribute to the reform, as distinct from all the other new government programs underway in the immediate post-independence period. The careful monitoring of impacts called for by such a significant experiment was simply not done, and probably no amount of scrutiny after the fact will ever resolve the question to everyone's satisfaction. There have, however, been a number of micro-studies of the reform. Though they have limitations methodologically (in particular, lack of good

baseline data), they have produced consistent evidence of certain important trends:

(1) The creation of individual ownership involved not just the extinction of group rights, but elimination of many use rights of other individuals. This impact was not limited to members of the nuclear family, but they have been most affected. The owner's enhanced freedom of alienation affects their prospects very directly. It also affects economic decision-making in the household. The registered landowner attains a new position of dominance. Most adversely affected have been the owner's wife or wives. The process of tenure conversion has generally made the husband the owner, untrammeled by the protections which wives enjoyed in their use of family land under indigenous systems. Women continue to do a large part of agricultural labor but have reduced economic security (see Insert 23).[66]

(2) Critics saw the program as potentially leading through market transactions to a more skewed distribution of land and the development of a large landless class with none of the security in subsistence opportunities provided by indigenous systems. Concern was expressed that landlord-tenant relationships might proliferate as distribution patterns changed. The evidence to date does not support this scenario on all points. There is much land in large holdings in Kenya, but these appear to be primarily due to policy decisions concerning the manner of the breakup and distribution of the settler holdings, and land-grabbing by those in positions of influence during the process of consolidation and adjudication of holdings. Transactions in land have, so far at least, contributed less than these other factors to land concentration, though their potential to do so remains. What does appear to be happening is the creation of new landlessness through transactions, some increase in tenancy, and major rural-urban migration, the latter developments in part stimulated by the increased landlessness. Sale appears to frequently be an act of financial desperation on the part of the sellers. Most of the landless do not appear to be moving into tenant or agricultural wage-labor roles, but leaving agriculture generally as the remaining farmers employ more labor-efficient methods. In the 1960s it was arguable that those leaving the land would find employment in developing industrial and agro-industrial sectors. In light of patterns of development in Kenya since independence, that is now clearly a chimera. The eventual political consequences of the new landlessness are cause for serious concern.[67]

(3) The purchases which are taking place do not appear to be resulting in "economically viable" holdings. Sellers frequently sell only a portion of their holding (to avoid landlessness), and the result is that holdings which grow by purchase are formed in a fragmented state. In addition, studies indicate that most purchasers are buying land as an investment, to use as security for loans, to be farmed under tenancy, to be held for speculative purpose or with the buyer's children's eventual need in mind. Most purchases have been by those with income from non-agricultural sources, not potential yeoman farmers seeking to expand their holdings. Land transaction control mechanisms put in

23. The Extinction of Family Rights in the Kenyan Reform

By far the most important class of customary land rights that require to be protected by the adjudication authorities consists of family interests. It is their failure to protect such interests that has led to a considerable number of land disputes in the Central Province in the years following land registration . . .

A household-head may decide that all the land over which he has rights should be registered in his name. The adjudication authorities are unlikely to make any objection, even though such a step may well have the effect of extinguishing the rights of members of his family. Much more commonly the household-head takes these rights into account by adopting one of two courses of action. In the first place, he may have himself registered as the owner of the land jointly or, more usually, in common with one or more, but not more than four, members of his family. However, the registration of co-proprietors is discouraged by the adjudication authorities and is not very common in practice . . .

Alternatively, the household-head may allot plots of land to members of his family to be registered in their names, a simple and more satisfactory way of protecting their interests than registering them as co-proprietors. This course of action is frequently taken . . . One point is clear: it is extremely rare for a woman to be registered as the owner of a plot of land; only 6 percent of holdings in East Koguta are registered in the names of women, and in the majority of these cases the household-head had died leaving a widow with a young family . . .

All that needs to be stressed here is that insofar as the process of land adjudication is designed to produce a record of existing land rights in a particuar adjudication area, it has not been particularly successful; indeed it often has the effect of conferring on some people more extensive rights than they formerly enjoyed, while depriving others of their customary rights. As it is seldom clear at the time that this is what is happening and the people concerned lack legal advice and have themselves only the vaguest understanding of the implications of land registration, it is usually some time before disputes break out.

Simon Coldham, "The Effect of Registration of Title upon Customary Land Rights in Kenya," Journal of African Law (1978): pp. 91-111, at pp. 99-102.

place by the reform do not appear to have had much impact on these trends, except insofar as the Land Control Boards reluctance to permit sale of the farmer's total holding, leaving his descendents landless, may be contributing to the rate of fragmentation (see Insert 24).[68]

(4) Where the economic opportunities for which land tenure conversion is to pave the way do not materialize, owners tend to continue to treat the land as they have done before. This is particularly true as regards inheritance patterns. In a situation of already small holdings, the Kenya program has attempted to enforce minimum registrable sizes, whether such parcels are created by transactions or inheritance. Many heirs have declined to register successions either to avoid the impact of these restrictions or simply because they perceive no urgent need to register. The land remains in the name of the deceased and is informally divided among the heirs according to indigenous rules. Individualization of title has removed the constraints of the lineage's rights from the parcel, but these soon begin to re-establish themselves, with the first registered owner becoming the head of a new lineage. The tenure reform legislation made no attempt to alter the indigenous rules of inheritance. More recently such an attempt has been made, but its impact is not yet clear. In addition, many sales appear to be taking place "off the register" (see Insert 25).[69]

The Kenya program has been very ambitious, quite successful as an implementation exercise, but less clearly successful in its economic objectives.

It has already been noted that it is almost impossible to disaggregate the impacts of tenure reform and other programs implemented in the post-independence period to promote agricultural growth. It is also difficult to evaluate tenure reforms because they do not prove conclusively in ten years or even twenty. Still, it must be said tentatively that Kenya's experience with national, systematic and rapid individualization has disclosed some important problems with that model. It may be questioned whether the results have justified the expense involved. More gradualist approaches deserve serious consideration.

The 1979 Land Act of Lesotho offers an interesting alternative to the Kenyan model. It provides that agricultural land is owned by the nation, but allows for individualization of land tenure through long-term leases which are made by the Commissioner of Lands, removing the land from under traditional land administration. These leases are to be applied for by holders of traditional allocations, in response to felt needs. The Act is only now proceeding to implementation in rural areas, and important terms of tenure still await specification in regulations. The lease term has not yet been set, though policy discussions to date have favored very long-term leases with a rent low enough not to discourage conversions. In addition to voluntary conversions, the government has the right to systematically convert tenure to long-term leasehold in Special Agricultural Areas, where development efforts are focused.[70]

24. Fragmentation and the Land Market in Embu District, Kenya

Contrary to the hopes of Swynnerton, agricultural development on holdings of "economic" size is not necessarily the goal of land accumulators, and more than half of the fifteen land purchasers in the sample have under cultivation (by themselves or by borrowers) less than two-thirds of the total land they own.

(Are) land accumulators acquiring fragmented holdings or the consolidated farms that were the goal of the Swynnerton Plan? Among the sample land purchasers with holdings over fifteen acres in size, one has seven separate parcels, another has six, another has four, two have three, one has two, and none has a holding consolidated into a single parcel.

Nonpurchasers with more than fifteen acres of land have slightly less fragmented holdings; but, even in this group, only two out of eleven households have single-parcel holdings. Eight have two parcels, and one has three parcels.

In short, although land is being accumulated by the few, the data do not suggest any trend toward accumulation of the large consolidated holdings that were the intent of the Swynnerton Plan. Land accumulators can seldom purchase consolidated parcels, particularly in densely settled high potential areas, since buying more than a few acres requires purchases from several separate individuals. Subsistence-sized fragments are highly valued by the majority for just that purpose and are not easily bought and sold. Moreover, directly contrary to the planners' original assumption that smaller landowners would gradually be bought out by an emergent class of large-scale farmers is the policy now that district land control boards prevent individuals from selling land that would leave their families either landless or with a holding below the minimum subsistence acreage officially defined for each ecozone. A free market in land has not been allowed to develop in Kenya. That access to subsistence plots should now take official precedence reflects the failure of wage employment to expand at the high rates expected by the government twenty years ago. While the state's protection of peasant smallholdings disguises real unemployment and subsidizes low formal sector wages in the short term, rapid population growth and the accumulative tendencies of the wealthy and influential are likely to extinguish the benefits of this protection in the longer term.

Angelique Haugerud, "The Consequences of Land Tenure Reform among Smallholders in the Kenya Highlands," Rural Africana 15-16 (1983), pp. 65-89, at pp. 83-84.

25. The Effectiveness of Compulsory Registration in Kenya

Not surprisingly, customary law continues to determine the way in which a household-head divides his land among his family, so that a single piece of registered land will be sub-divided on the ground between the registered proprietor and the members of his family. As such subdivisions are rarely registered, these members will be mere licensees liable to be evicted at any time by the registered proprietor. In spite of such subdivisions the land register remains an accurate record of title upon which a prospective purchaser may rely. Unregistered sales and successions do pose a serious threat to the registration system and there is evidence that they are occurring on a large scale. Thus in one area studied by the present writer at least 30 percent of all land sales and at least 96.5 percent of successions took place off the register. As this was a relatively "advanced" part of Kenya, there is no reason to believe that the system is working much more effectively elsewhere. Such figures should give the authorities considerable cause for concern, since they suggest either that people are not aware of the need to register their dealings or that they do not see the advantage of doing so. Admittedly, in a country where the legal profession is small and concentrated in the big cities and where there is no tradition of employing experts to handle conveyancing, it is not surprising that unregistered dealings occur. Of course, there are Kenyans who appreciate the need to register dealings and the relatively high proportion of sales registered may be attributed to the fact that the purchasers were generally men of education and experience. Moreover, it is not clear why people should perceive cooperation with the system as being to their advantage, particularly where, as in the case of successions to land, they are dealing with relatives or friends. There is simply no incentive to spend time and money observing the complex procedures laid down in the Registered Land Act 1963 for the ascertainment of heirs and the registration of successions.

Simon Coldham, "Land Reform in Kenya, Some Problems and Perspectives," in Law in Alternative Strategies of Rural Development, by International Third World Legal Studies Association (New York: INTWORLSA, 1982), at pp. 88-89.

This alternative, individualization in response to landowner demand, is the approach most commonly taken in French-speaking Africa. Survey costs under such an approach have usually been borne by the landowner. On a one plot at a time basis, they are often quite expensive. Rates of registration are typically very slow. There is another possible problem: does individualizing tenure on one parcel of land, without sorting out how rights over it relate to rights over other parcels in the locale, run a greater risk of an unfair determination of ownership than a more systematic approach?

The Lesotho case also highlights another important choice: individualization may be to leasehold, or to full ownership. An individualization to leasehold title takes authority over the leased land from the chief or other traditional land administrator, but vests residual rights in the State, the lessor. In the Lesotho case that power is vested at the national level, in the Commissioner of Lands. That need not be the case: it can equally be vested in a local institution, as is the case for commercial leases and, in the near future, residential leases in rural Botswana. The power to make such leases is vested in the Tribal Land Boards, which are local but non-traditional institutions. It would also be possible in some situations, one supposes, to have leases made by a traditional, local land-administering authority.[71]

Zambia has used long-term individual leaseholds extensively, both as the primary tenure on State Lands (the former Crown Lands, previously occupied by white settlers) and as an alternative, on a very small scale, to indigenous tenure in the areas of traditional cultivation. The State lease is an attractive option for moderate socialist governments in that State ownership of land is asserted but use and management are vested in individuals. A long-term leasehold can provide very substantial security for the cultivator. In Zambia there has been problems with low-intensity use, probably partly due to nominal rents, but with a system of modestly graduated rents to create a cost for land use and a recognition that land does have value, the Zambian system would appear much more viable.[72]

4.3 Cooperativization of Production

Cooperative production has been seriously pursued through tenure reform by two African nations, Tanzania and Ethiopia. Tanzania has characterized its venture in cooperative production as "African socialism," Ethiopia as "scientific socialism." In both cases the cooperative production program was or soon became a "top-down" exercise, promoted heavily and coercively by government in the rural areas. In both cases new local institutions were created to manage cooperative production, rather than utilizing traditional institutions.

In Tanzania, pursuit of a policy of African socialism led to the abolition of freehold tenure shortly after independence in 1961. All land in Tanzania became State-owned, and freeholds were converted to 99 year leaseholds. After several years of successful experimentation by TANU and its youth wing with voluntary cooperative production, the Arusha Declaration of 1967 endorsed a policy of ujamaa, for the creation of a Tanzania of consolidated villages farming collectively. Two processes were required: villagization, aimed at bringing rural people together in villages where they could more effectively be provided with new services, amenities and production assistance by the

State; and collectivization of production, which was considered consistent with African values of cooperation and mutual assistance, as well as the most efficient way to utilize scarce and costly capital items and limited expertise.[73]

In spite of major promotional efforts by government and party, by 1973 only 10 percent of the villages and 15 percent of Tanzania's farmland had been collectivized. The ujamaa villages displayed considerable variety: some were organied completely on communal lines; others had both communal and private holdings, while some consisted entirely of private landholdings. Large scale capitalist production waned and largely disappeared by 1974; small scale commercial producers were tolerated. In 1974, a major push for villagization got underway, sometimes involving coercion. In that push, cooperativization of production was frequently postponed, and treated as a stage which would eventually follow upon villagization.[74]

By 1979-80, before this later stage could be reached on any major scale, Tanzania found itself in a serious economic crisis. The war in Uganda was a factor, but one aspect of the crisis was a shortfall in food production, and this has in part been due to the failure of cooperative production. The Tanzanian government now admits that cooperative farms have produced less efficiently than private farms, and this has been particularly evident in areas where cooperative farming replaced privately-operated commercial farms (see Insert 26).[75]

The poor performance of cooperative farming is clear, but not the factors which account for it. Many commentators dismiss it too casually as due to the inherent unworkability of the model. More careful students of the ujamaa experience differ over the relative importance of a number of factors: (1) poor administration and the top-down nature of the program; (2) the poor returns to labor in the collective farms; (3) the special problems of organizing communal work in those villages which were ethnically heterogenous; (4) the production cooperatives' dependence on defective government channels for the supply of inputs and for marketing; (5) the absence of a party capable of imposing discipline effectively; (6) conflicts between labor requirements on individual holdings and the labor requirements of cooperative production at the peak of the traditional production cycle; and (7) lack of clear land tenure arrangements for land farmed individually, and even that farmed communally. As regards tenure arrangements, Tanzania in the 1970s treated them as beside the point. The mode of production was being changed, and tenure arrangements were derivative of the mode of production. Inattention to tenure issues was the rule as regards farms outside ujamaa villages, the landholdings of the ujamaa villages, and land held by villagers from their ujamaa villages. No law or regulation specified what these tenure relationships should be.[76]

Whatever the relative weight of these contributing factors, the proximate cause of the poor performance was the rejection of the program by many of the rural people whom it was meant to serve. Hyden has written persuasively of an "uncaptured peasantry," unmoved by government strictures and still more oriented to a traditional "economy of affection" than the socialist (or capitalist) economic sector.[77]

26. The Effects of Tanzania's Ujamaa on Production

The first five years of ujamaa did not have any significant impact on agricultural production in the peasant sector. It remained resource-based and as exposed to the whims of weather as before . . . Nor did the ujamma policies improve productivity of the land. By initially stressing the primacy of hoe cultivation in the villages, the authorities left the productive forces untouched, with the exception of work organization. Since the principle of communal work was difficult to accommodate within the peasant mode, its demands were generally ignored. Virtually all studies of ujamaa production conclude that productivity on the communal farm was considerably below that on the private farms.

Subsequent government efforts to offer ujamaa villages the assistance of mechanized equipment also failed to improve productivity. Peasants developed a parasitic relationship to the machines. They allowed them to do the work which they would otherwise have done but they did not--or were not trained to--develop a capacity to service and maintain the machinery. When the tractor developed a mechanical fault it was often abandoned by the villagers. There are many rusty pieces of farm machinery in rural Tanzania which bear witness of the costs of its patronage politics, developed to induce peasants to achieve higher levels of production on their communal farms. The effect was often the opposite, as we have noted above: the machinery gave the peasants a greater opportunity to take care of their own private plots . . . Tanzanian peasants remain largely uncaptured, and a revolutionary socialist starts from as difficult premises to achieve his ends as the capitalist does.

Goran Hyden, Beyond Ujamaa in Tanzania: Underdevelopment and an Uncaptured Peasantry (Berkeley and Los Angeles: University of California Press, 1980), at pp. 119-121.

The economic crisis of the early 1980s, plus pressure from IMF and other donors, have led to a rethinking of land tenure policy. In 1982 a Task Force on National Agricultural Policy recognized the higher productivity of the private farming sector and urged that government provide titles of a minimum of 32 years duration to individuals and subsidize surveying and mapping costs to speed allocation of titles to private holdings. In 1983 a new Agricultural Policy Paper set lease terms at between 33 and 99 years. Villages would get 99-year leases with the option to sublet for 33 to 99 years to individuals. Implementation of these changes is only beginning, and deserves careful monitoring.[78]

Ethiopia embarked upon cooperative production under very different circumstances. Southern Ethiopia, conquered by highlanders from the North in the last century, had been parcelled out among military officers and the nobility of the empire. These territories had rapidly evolved from administrative regions to the status of private property, establishing a tenure pattern radically different from the "communal" tenures of the Ethiopian highlands. Vast estates were farmed by their earlier occupants, first as serfs and later as share-croppers.[79] In 1974 a military coup opened the way for a major land reform. In 1975, all land was nationalized. For the most part, former tenants remained on the land they had been farming and simply ceased paying rent. Lacking the capability to administer a major reform, the military government delegated powers to local peasant associations, created to administer the reform. These associations were to administer the land, allocate it to farmers and settle disputes among members over land. In most cases, these associations do not appear to parallel traditional groupings. Students played a major role in the organization and mobilization for the associations.[80]

Initially, cooperative production was adopted only on nationalized private commercial farms, in an attempt by the State to keep these farms in commercial production at existing scales. But in the years following the coup, the military government increasing adopted Marxism-Leninism as its political and economic philosophy. Cooperative production became a major element in settlement schemes and the long-term objective, at least in theory, of all peasant associations. Peasant associations embarking on the path to cooperative production are expected as a first step to equalize the size of holdings among their members. If those holdings are too large they are expected to admit landless peasants as new members. The cooperative would then pass through three stages, the first involving parallel individual and cooperative production, the second reducing individual cultivation to kitchen gardens, and the third relying exclusively on cooperative production. (For a more detailed description of these stages, see Insert 27.)

In fact, few associations have been willing to take even the first step of equalizing holdings and accommodating landless peasants. It was recently estimated that only 2 percent of cultivated land was farmed by producer cooperatives. Individual farms are proving more efficient than production cooperatives, especially if the heavy subsidization of the cooperative production is taken into account. Farmers working individual holdings of land belonging to peasant associations are experiencing the same uncertainties as regards their tenure as did many ujamaa villagers in the 1970s.[81]

27. Production Cooperation in Ethiopian Agriculture

There are three stages of producer cooperatives, allowing orderly progress toward collectivization. At the first stage, malba, members retain their own oxen, implementers, and a small piece of land for household production. Here only land use is pooled and income is distributed according to the contribution of labor, oxen, and tools. Not all association members are in the malba. A second stage known as welba where members transfer all their animals and implements to the cooperative, farm a kitchen plot of one-tenth hectare if agreed to by the general assembly of the cooperative, and receive output distributions based on the socialist principle "from each according to his ability, to each according to his work." The highest stage is weland. Here all means of production are collectivized, all association members must join, and only labor contribution is used to calculate income distribution. Ideally, a weland is a higher level cooperative created by merging several welbas and approximately 4,000 hectares and 500 households in size. The welba are converted in the consolidation into habres or brigades. Welands are envisioned as using advanced technological development based on large-scale mechanized production.

To induce steps toward this collectivization, the government offers credit subsidies, tax advantages and priority access to farm inputs and extension advice. As of 1982, the government reported 1,006 malba cooperatives, with 60,000 member households; of which 67 were registered. As of this date, no cooperative had reached the weland stage. For comparative purposes, this means about 1 percent of farm families belonging to peasant associations are in producer cooperatives. An estimated 150,000 hectares or 2 percent of cultivated farmland are worked by members of producer cooperatives. Despite this slow start and constraints described elsewhere the government has set a goal of having one-half of the country's cultivated land worked by such cooperatives in 1990 . . .

It appears that the capacity of peasant associations to promote cooperative development efforts--much less land equilization, distribution, and collectivization--is limited. Analysis of the only systematic study done on land reform since the revolution suggests that in the three areas surveyed, peasant associations have played an insignificant role in production, communal activities have steadily declined since the early days of mobilization, land allocated to communal plots is of lower fertility than private plots, labor contributions are inadequate, and output is misused. Other reports suggest that pressure has increased in a number of peasant associations to redistribute lands previously allocated for communal or group farming.

(continued)

(Insert 27 continued)

Such moves appear to be caused by both the inability of the government to provide services and subsidies to such farms and the interest of peasant association leaders to increase their land base.

In quite general terms, it appears that surplus-producing smallholders wish to follow individual rather than collective farming patterns. Reports suggest that most Ethiopian farmers appear to want to hold their own plots and are strengthened by the new security of tenure and the apparent "ownership" that the reform granted. After visiting reform areas in 1975, an experienced observer noted that, "for the moment, at least, the dream of most Ethiopian cultivators seems to be to become a kulak." There is still no evidence to conclude that this position of Ethiopian farmers has changed.

John M. Cohen, Agrarian Reform in Ethiopia: The Situation on the Eve of the Revolution's 10th Anniversary, HIID Development Discussion Paper No. 164 (Cambridge: HIID, April 1984), at pp. 22-23 and 46-47.

Many of the peasant associations have proved capable of resisting pressures for cooperative production, and at least at the moment, cooperativization of production is being promoted by persuasion, heavy subsidies, expanded investment and other incentives. The cooperativization of production has been predictably unpopular with former tenants whose great aspiration was to own their own land. In Ethiopia, with its commitment to Marxism-Leninism, one cannot exclude the possibility of a forced collectivization campaign under the newly formed Ethiopian Communist Party, raising the possibility of a direct confrontation with the membership of the peasant associations. But to date, cooperativization of production, it should be noted, remains in quantitative terms a relatively minor theme of the Ethiopian land reform, which has so far resulted primarily in household-operated holdings.[82]

The notable lack of popular enthusiasm for cooperative production in the Tanzanian and Ethiopian cases calls into question the common assertion that there is an African predisposition toward such cooperation. Traditional cooperation is normally among those with ties of kinship or other long established social affinities. Moreover, it is usually quite selective, aimed at meeting a special, urgent need (as in the case of the illness of a farmer at plowing time) or performing some task for which cooperation has clear returns (watches to keep animals out of crops). It is not so readily generalizable as has been imagined. Programs of cooperativization will continue to go badly awry to the extent that planners rely on such a predisposition instead of having a hard look at what economic and other incentives exist for farmers to cooperate.

In conclusion, it is important to note that both the Tanzanian and Ethiopian experiences involve government-promoted efforts to institute communal production through new local institutions which are treated as part of the state machinery. It remains uncertain whether cooperative production initiatives voluntarily undertaken and managed through more autonomous, perhaps traditional institutions would suffer the same fate. There has been little or no experience in serious pursuit of such a strategy in Africa.

4.4 Reinstitutionalizing Indigenous Land Tenure

Both the reform models examined so far involve dramatic departures from indigenous tenure systems. Both break the link between traditional social organization and land tenure. In the case of Kenya government has accepted a more atomistic social condition; in Tanzania the ujamaa villages were to provide new social foci.

Only a few countries have been disposed to take such an apparently irrevocable plunge. The result is to destroy the economic basis of the traditional society. The alternative is to preserve the fundamental framework relating society and tenure and to proceed through specific, narrowly focused reforms directed at problematic facets of a tenure system. These changes may sometimes amount to little more than fine-tuning a basically sound tenure system; at other times they may involve a fundamental change in one facet of the system. This approach seeks to adjust the tenure system in response to changes in the economic and social environment in which it operates. In a predominantly market economy moving from subsistence to commercial agriculture, for instance, the changes made in the tenure system are likely to move it in the direction of individual ownership. How does one then distinguish such a model of reform from incremental individualization? By the clear decision to retain an element of kin group or other community control over land use, to preserve the basic relationship between tenure and the traditional society, to retain a "communal" tenure dimension to the system.

The task of framing modest modifications in substantive rules of tenure to meet specific new needs of farmers is challenging. Some of the possibilities have been noted in reviewing the asserted deficiencies of indigenous tenure systems, and will be examined again when we consider how to deal with tenure issues in the project context. They will vary from one circumstance to another, but the overriding challenge of this approach is how to create an adequate institutional framework for such change. Traditional local land administration institutions may not be able to meet new needs, or in some cases not even to deal with their traditional tasks under changing circumstances. For example, land allocation becomes increasingly difficult for the allocating institution as pressure on land increases and disputes over land rights multiply. Government policy may have undermined the legal authority, or economic bases for authority of the institution. The institution may need reorganization, strengthening and new, supportive connections with the concerned ministries or the judicial system in order to effectively carry out its tasks. This is the process referred to here as the reinstitutionalization of indigenous tenure systems. There are complex choices to be made, between utilizing existing institutions and replacing them with new institutions, between vesting these with essentially private or public character, between recognizing local particularity or insisting upon national uniformity, between developing such institutions out of local models or attempting to force them into the mold of roughly analogous western institutions.

This paper has reviewed earlier the complex ways in which land-administering local institutions in Africa evolved under the pressures of colonialism. Some levels in the land administration hierarchy, usually lower levels, and those lower levels based on descent, came to be viewed as having a "private" character and holding tenure in land: "communal" tenure. Upper levels, and especially upper levels based on common residence such as the village, tended to be recognized as having a "public" character, and as having no tenure in land but only dispute-settlement functions with respect to land in their area. Often the legal character of particular levels was left obscure.[83]

Given this background, let us examine some examples from the broad spectrum of experience of African countries as they have sought to reinstitutionalize indigenous land tenure systems. As noted earlier in this paper, in English-speaking West Africa, and particularly in Nigeria and Ghana, the courts developed a common law of "family land" out of a variety of tribal lineage-ownership systems. How was custom reinstitutionalized in this case? Jurists seeking to give recognition to such a system generally fell back on analogies in English law: joint ownership and ownership in common.[84] The courts permitted transactions in family land, with the consent of all those interested. This required a clear definition of the "family," those persons whose participation was required for an effective transaction. Even if the definition had been so lucid as to be free of any ambiguity in application--and it was not--it was as a practical matter difficult to pull together all the necessary signatures. Again, resort was had to a western legal model, the trust. Several persons would be registered as trustees for the lineage, clan or other group. This model was introduced in Western Nigeria in 1959, and adopted in Kenya in 1968.[85]

The Civil Code of pre-revolutionary Ethiopia contained a chapter on ownership of land by agricultural communities which, though never implemented, drew attention for several unique characteristics. These communities were given legal personality and recognized as owning the land they controlled. The Code conferred substantial freedom on them to organize themselves as they chose, rather than setting out a standard pattern. They were expected to reduce their customary laws to writing and were competent to amend them from time to time. Government never encouraged rural people to take advantage of these provisions or even advertised their existence. The reluctance to implement the provisions appears to have been based largely in a fear of the political potential of any grassroots organization, particularly those organized along traditional, ethnic lines.[86]

In Botswana a system of Tribal Land Boards was created shortly after independence, shifting powers over land allocation from chiefs to boards composed of indirectly elected and ex officio members. Chiefs remained as members, sometimes as chairmen; later they tended to drop out in pique over their diminished powers. Ownership of land remains vested in the Tribe, which is neither clearly a public nor a private institution. The Land Board, however, which administers the land in trust for the Tribe, could be described as quasi-public. Its secretary is a civil servant; it must take orders from the President (through the Ministry of Local Government and Lands), and appeals from its decisions are in the first instance administrative appeals within the Ministry, not to the courts. The Land Boards are in danger of institutional schizophrenia, as cases arise in which their trusteeship role is not easily

reconciled with following orders from above. On the whole, however, the approach is intriguing. It has involved reconstitution of the administrative authority for a tenure system which has remained for the most part traditional in substantive terms. One problem has become increasingly clear in recent years, however. The Land Boards were created on too high an administrative level to carry out village-level functions, outside major villages, and thus have had to rely heavily on traditional headmen. Cooperation from such headmen is uneven, and they often allocate land without the Land Board's approval.[87]

This review has dealt with a range of private to institutions, all recognized by the State as having a tenure role. It is interesting, however, that one option for reinstitutionalizing traditional group ownership, the land corporation, remains unrepresented in Africa. In somewhat analogous situations in the Pacific, particularly among the Maori of New Zealand, the corporation has been used as a model for group landownership. The model is historically suspect in that a major incentive for its introduction in New Zealand was to permit effective alienation of land to Europeans, but variants of the model are being experimented with in Papua New Guinea and Niue. (See Insert 28.)

There is obviously a private to quasi-public continuum involved in these examples, but so long as one is talking about modest change in indigenous land tenure systems, the clear public extreme of the continuum remains empty. States do not generally take direct control of local land administration unless they are anxious to drastically alter or replace the indigenous tenure system.

The major attraction of this third model, reinstitutionalization of indigenous tenure systems, is its promise of relatively cost-effective reform with a minimum of social dislocation. It raises a number of serious questions, however. In multi-ethnic societies, insofar as it perpetuates ethnically-based differences in access to productive resources, it may be seen as retarding national integration. In such situations, the reinstitutionalization process must be planned to move tenure systems toward greater uniformity in the long term, rather than simply confirming diversity. In addition, this model will not be acceptable to reform-minded elites if used to preserve a role for traditional hierarchies which are viewed as reactionary or tenure arrangements viewed as exploitative. Nor should this model be confused with romantic notions about traditional societies and their preservation. It begins with the assumption that tenure change is necessary and desirable, seeks financial and social economies in change by building on existing institutional arrangements to the extent which this is practical, but recognizes that both modest changes in tenure rules and new local institutions may be necessary.

4.5 Reforming Inheritance and Its Consequences

Because indigenous inheritance rules have played a major role in undermining some tenure reform programs (e.g., the Kenyan case), it should be asked whether it is they, more than other aspects of indigenous tenure systems, which require reform. Inheritance regimes are on the one hand central to the workings of indigenous tenure, which is the spatial expression of systems of

28. Land Corporations in the Pacific: An Approach Untried in Africa

The Maori Affairs Ordinance is the first attempt at statutory recognition of traditional landholding groups. It dates back to 1953. The aim was not for total land reform but an instrument to facilitate the disposition of traditionally owned land to Europeans . . . The objective of the Maori land corporation was therefore limited. This model has had very little influence on the land group corporation in Papua New Guinea.

For the latter one would need to go to the Report of the Commission of Enquiries into Land Matters which recounts numerous requests of the people for recognition of their corporateness and secured boundaries to their land. The Commission in turn recommended registrable group titles . . . The draft bill, without the regulations, ran to one hundred and fifteen sections. Its size was an indication that the general purpose corporation concept has lost any claims to provide a "simple" and "flexible" structure for family ventures.

The notion was discarded and in its place legislation was enacted to permit the incorporation of recognized land groups, business groups and companies with Division 4 status. It is with the former, the Land Group Act 1974, that I am mainly concerned. The Committee which drafted the legislation adopted as a guiding principle that the machinery must provide for recognition of customary practices, not their modification. The aim was simply to improve the chances of people participating in economic activities by registerable group titles. The group would however regulate the management of the dealings in their lands and resolve disputes in their traditional informal manner . . .

Although the corporate personality theory has been elaborated in the literature with reference to the traditional African societies and only quite recently to societies in this region (Papua New Guinea), it is in the latter that attempts have first been made to modernize the land tenure system by the formal recognition of traditional groups.

R.W. James, "Land Tenure Reform in Developing Countries: From Westernization to Indigenization," East African Law Review 9 (1976): pp. 1-46, at pp. 17-18.

kinship and inheritance, and on the other regularly neglected in reform efforts. The neglect perhaps reflects not so much an ignorance of their importance but an appreciation that inheritance rules are deeply internalized and not easily changed.

In fact, attempts at reform have been extremely rare. In Kenya the attempt to limit the subdivisive impact of indigenous inheritance systems appears to have failed, and led only to evasions which undermined the registration system as a whole. It is difficult to say whether changes in basic inheritance rules--as opposed to an attempt to limit a negative impact of those rules--would have fared any better. In 1978, Kenya did legislate in this area, creating a uniform national set of rules for succession in cases of intestacy, which can be varied by will. Customary rules may be made applicable by will, and in any case it will apparently still be feasible for those who wish to avoid the new rules to decline to register successions. When all those considered heirs at custom, and in particular those designated as heirs by law agree to evade the legal processes, it can generally be done with impunity.[88] In Zambia, reform of inheritance rules is under serious discussion, having reached the stage of a legislative proposal. In that case, there is a specifically anti-matrilineal impetus behind the reform, based in part on the assumption that matrilineal systems (and indeed the extended family generally) are on the decline (see Insert 29).[89]

The intention here is not to belabor the reader with the many and complex choices involved in reforming indigenous inheritance systems. Such reforms will in all likelihood move inheritance systems in the direction of greater predictability and continuity of cultivation. The question of women inheriting land will also arise, and in either formerly patrilineal or matrilineal systems, the objection will be that having both male and female heirs will increase the rate of subdivision of holdings and, as husband wife bring their land together in a household, increased fragmentation of household holdings. It should be noted that bilateral systems do not necessarily involve male and female issues inheriting from both father and mother, but can have male children inheriting from fathers, and female children from mothers, or some similar arrangement to reduce the rate of subdivision and fragmentation.

There are two basic approaches to reform of indigenous rules of inheritance. Reform can either institute freedom of testation, allowing the holder of land under indigenous tenure to make a will, or restate the law of intestacy, governing successions where there is no will. Freedom of testation is permissive and will bring change only gradually. On the other hand, there may be relatively few farmers who feel a need to alter the way in which succession works. Should the rules for all be changed to accommodate those few, and how could such a change be enforced in the face of widespread non-compliance? Increased freedom of testation appears the sounder approach. Complete freedom of testation is however subject to abuse, and there may need to be limits on the power in the interest of the testator's immediate family.

Inheritance reform is sometimes very sensitive because of the extent to which inheritance systems embody basis principles of kinship organization and community values. Often, the consequences of inheritance systems which are viewed as detrimental are addressed, rather than the system which contributes to them. Several reform programs in Africa have had consolidation of holdings

29. Flux in Traditional Land Inheritance Systems in Zambia

I carried out research investigations in Chipata District (Eastern Province); Mazabuka and Gwembe Districts (Southern Province); and Chavuma (Northwestern Province). The ethnic communities involved are the Ngoni, Tonga, and Luvale, respectively.

I chose the Ngoni for being patrilineal; the Tonga for being matrilineal; and the Luvale as a variant of the two although they, too, are matrilineal . . .

Although the Ngoni still retain patrilineal descent, there is evidence of a shift in the customary laws of inheritance in all the three communities. The Tonga and Luvale customary laws evidently reveal a shift in matrilineal to patrilineal inheritance, also affected among the Tonga is the composition and role of the mukowa (a group of kinsmen who can trace descent from a common maternal relative. An heir comes from within and is elected by this group).

It will be noted that the Ngoni pattern of patrilineal inheritance persists, but appears to be shifting in favor of widows' rights. This is particularly so in instances where the deceased is survived by minor children.

It appears quite conclusive that the dislocation of extended family as a social unit accounts for changes in the law. The extended family continues to be replaced by the immediate family. The latter can be described as a relatively small group of persons closely related to one another in descent as well as location. This collection of relatives is more interested in the well-being of its immediate members than of the dispersed and displaced extended family. Hence if there is any conflict in interests between the two families such as in matters of distribution of a deceased's property, the immediate family would rather protect the interests of its members. This is so even when it means a departure from what has hitherto been established tradition.

The Luvale situation is equally illustrative of the emerging role of immediate family and its impact on the law of inheritance. In all the instances where there was a noticeable move to patrilineal inheritance, the initiating factor was the immediate family.

Mphanza P. Muvenga, "Law and Social Change: A Case Study in the Customary Laws of Inheritance in Zambia," African Social Research 28 (1979): pp. 643-654.

as a primary or major objective, in a wide variety of relations to tenure policy. Consolidation took place on a major scale in Kenya in connection with individualization and registration of title; in Senegal, on a pilot basis which did not involve major change in a title derived from the state; and in Swaziland on a modest scale, with the consolidated holdings remaining under customary tenure. Some of the results of the Kenya exercise, both positive and negative (including increased landlessness), were noted in the influential Lawrence Commission Report (see Insert 30). There are, however, few respectable studies of benefits deriving from consolidation. Given the very positive aspects of some fragmentation, benefits lost as a result of consolidation equally deserve study.[90]

4.6 Nationalization and Bureaucratization of Land Administration

Post-independence Africa saw a rash of national legislation declaring all or most land owned by the State. In some cases land has been nationalized as a first step toward major programs of cooperativization of production (Tanzania and Ethiopia, Benin, Mozambique, Angola, Guinea Bissau and Madagascar). In other cases State and tribe are contiguous, and a state claim to a paramount right in land has amounted to a ratification of customary tenure systems (Lesotho and Swaziland). But in most countries (Guinea, Senegal, Sudan, Mali, Nigeria, Zambia, Cameroon, Bourkena Faso, Zaire, Uganda, Somalia and Zimbabwe) the nationalization had more ambiguous effects. In some cases, e.g., Zimbabwe, Uganda and Zambia, it involved the State taking over administration of former freehold land under a leasehold system. Such administration has not been without problems, including low-intensity land use of valuable land use to negligible costs of access to State land, as in the case of "land without value" in Zambia (see Insert 31). In other cases, freehold was excluded from such a takeover (Senegal and Sudan).[91]

In this last group of countries the extent of any intended intrusion upon indigenous land tenure systems has varied considerably. Certainly a potential for such intrusion is created when the state asserts a title, but in many cases it appears only to have been intended to be utilized when and where projects are established, permitting ready creation of a new tenure system of state land allocation in some project areas. In the meantime, indigenous tenure systems continue in most of the rural sector, outside of such project areas. This is the case in indigenous tenure areas of Sudan, Zaire, Cameroon, Senegal, Zimbabwe, Uganda, Zambia and Somalia. In Nigeria a more serious, better funded attempt appears to have made greater headway, perhaps because a larger part of the country was "projectized." In Mali and Guinea, the State attempted to reorganize land administration at local levels to give government greater control over land allocation, but with relatively little effect.

The failures in this area are worth noting, because planners seem to consistently and seriously underestimate what is required to replace a traditional system of land administration. The workload is underestimated, so new institutions charged with bureaucratic administration of the land are understaffed and underfunded. There are at least three levels at which government can intervene in these processes. The first, most modest and most manageable, is to take over appeals from decisions made in the traditional system, and attempt to alter its functioning by the way appeals are decided. Second, government may attempt to take control of both appeals and new allocations,

30. The Experience with Land Consolidation in Kenya

The effects of consolidation are obvious and easy to separate from the effects of other processes. In Nyeri, farmers finished up with one holding in place of an average of six fragments and in Kiambu with one holding in place of ten fragments. The mere act of consolidation here must have resulted in more efficient use of labour by obviating the need to walk to scattered plots and must have brought more land into production by reducing the number of paths and by bringing under cultivation small plots formerly neglected because of their distance or size. Indeed the benefits of consolidation are so obvious that officials often tend to assume that consolidation is invariably necessary whenever farms are fragmented in any way. Consolidation will, however, only result in benefits if the fragmentation is positively harmful. We would not, for example, see any benefit in consolidating a plot of coconut trees with a fairly large acreage of arable land merely for the sake of having the whole holding in one piece. Coconut trees do not require much attention and little time is therefore wasted in walking to the plot. We would certainly not suggest as one officer of Government did, that all land in such areas should be consolidated and the coconut trees cut down and replanted on the new holdings.

The criticism that consolidation initially creates unemployment and landlessness is a valid one. In the Central Province the landowner possessing many fragments was frequently unable to cultivate all of them and so allowed tenants (ahoi) to cultivate the least desirable and more remote of these fragments. At the time of consolidation the ahoi's cultivation rights were extinguished and they found themselves landless and with little hope of immediate employment; for the act of bringing together into one parcel several dispersed fragments leads in itself to more efficient use of labour, and the owners found less need to seek outside help to manage their new holdings. This state of affairs is likely to persist until such time as the labour demands of the developing holdings outstrip the capacity of the farmer and his family, at which time some of the landless will be absorbed as labour.

It must also be remembered that although consolidation as carried out in Kenya has cured the problem of fragmentation of holdings, it has not affected the problem of sub-economic parcelization. Thus in Nyeri district 34,500 out of 43,200 holdings are of six acres or less.

Republic of Kenya, Report of the Mission on Land Consolidation and Registration in Kenya, 1965-1966 (Nairobi: Republic of Kenya), 1966; at p. 19.

31. Land Without Value in Zambia

There is a fundamental issue concerning State Land which deserves continuing thought and evaluation, and which can be characterized as the problem of "land without value" in a mixed economy. With the Land (Conversion of Titles) Act of 1975, all freehold land was converted to leasehold. When leaseholds change hands, improvements are valued and sold, but the land itself is transferred from one leaseholder to another without any compensation. Thus, one is frequently reminded that in Zambia land has no value, only improvements have value. Land is not sold, only improvements.

The fact that land is not sold (i.e., it is given in leasehold and only improvements are evaluated and sold) does not mean that land has no value. Far from it! When State Land along the line of rail becomes available and is advertised, such a piece of land may have a hundred or more people applying for the leasehold. People are attracted to this land from far and wide because of its location, the infrastructure to which it has access, the greater State services available, the reliability of such services (relative to those in the more remote areas), the better soils in many cases, and the relative certainty of leasehold tenure. Thus, there is evidently a scarcity of that kind of land and anything that is scarce in relation to human demands has value. Value does not appear or disappear as a result of legislation converting freehold to leasehold or declaring that land has no value. The value attributed to this "desirable" land could be diminished by legislation to tax it or to increase the rent on it. In an active and functioning land market, such a tax (or rent) would reduce the value (the price to be paid) for such land. The tax would in effect raise the cost of holding such land and also the cost of production of whatever products are to be produced. By increasing the tax the market would discount and lower the value of such land. Such a tax would also encourage more intensive use of the land or its transfer to another owner who would use the land more intensively.

Whenever there is a resource (or economic good in general) that is more highly valued by individuals than the price at which it is made available, there is a need for some system of rationing. In any rationing situation the setting exists for a possible dual market in the good in question. Such a dual market (the publicized and the unpublicized one) could not exist without the participation of government officials who, in this instance, control the power to ration and allocate that land to one among many who seek it. This is certainly not to say that this occurs with respect to land trans-

(continued)

(Insert 31 continued)

actions in Zambia. It is well to be aware of the fact, however, that the setting does exist where this can occur. And it is hardly necessary to suggest the several points in the transaction process where such dual market behavior could occur, to the detriment of clean and honest government. The issues posed by State Land "without value" are, in our judgment, the most important State Land tenure issues.

John W. Bruce and Peter P. Dorner, Agricultural Land Tenure in Zambia: Perspectives, Problems and Opportunities, LTC Research Paper, No. 76 (Madison: Land Tenure Center, University of Wisconsin, October 1982), at pp. 20-21.

without attempting to fully assume control of land matters. Third, it may seek control of land previously allocated, regulating inheritance and perhaps introducing land use planning. Even at the point of assuming control of new allocations, however, the new institution must know which land has and has not been allocated, and to whom. A need for land records arises, for cadastres and registers and all the paraphenalia of bureaucratic land administration. To create these is extremely costly. Without them, the new institution must depend on traditional authorities, who are the institutional memory of the older system, to say where and to whom land may be allocated.

The general situation described in this section, that of indigenous tenure systems governing use rights on a State landownership base, is probably the most common tenure situation in Africa. It extends to pasture, even more than farmland, and can create serious range management problems (see Insert 32). The interplay between State ownership and use rights has, however, rarely been seriously studied. In most cases the State's role in a given area seems to be either non-existent (if a major project is not underway) to extremely intrusive (where a major project is underway). One would suspect that the state's authority to confer new titles in the project context must generate a certain degree of insecurity in areas not so far "projectized."

4.7 Understanding Choices Among Tenure Reform Models

It is one thing to evaluate whether a given reform model has attained its stated objectives in a given case, and quite another to evaluate in a comparative fashion the relative merits of the models, or why a given country has chosen a given model. The choices involved are fundamental in determining the shape of society, and are in practice determined more by reference to basic values, ideology, and political survival than by reference to technical factors. A free enterprise economy requires certain things of its land tenure system; a socialist economy has quite different requirements, and a society seeking to conserve traditional values will have yet other priorities. The

32. Range as State Land in Mauritania

Traditionally, the range was divided into definite grazing zones that were established by conquest and negotiation. Control over grazing was exercised through control over watering points. A particular group reserved by dint of force the exclusive right to dig wells in an area. Outsiders made use of the wells only by permission. The situation was never completely stable, but changes began to accelerate after 1930. In 1934 the French colonial administration passed a decree that all unowned, that is, unimproved or not part of a village, forest resources were national land. While the decree did not specifically include range, it did open the possibility that some resources were owned by all. Since Sahelian herders cut tree branches for animal fodder in the dry season, trees are part of the livestock management strategies and are part of grazing land resources. Still, up until the mid-1950s, the competition was mainly between Moor groups. After this date, the Peuhl began to enter into formerly exclusively Moor pastures (Wadoud, RAMS report). In 1960 a law was passed making all vacant or unimproved land state land (Law 60, 1939: Article 1). This law is consistent with Islamic precedent. Range is Ardh Mawat (dead land) and is open to all because it is made productive by rain which belongs to everyone. Range management projects find themselves in a dilemma trying to discover some sort of principle of exclusivity of range use just after such a system, with all its attendant inequalities, has ceased to operate and to try to do so with a range and herd composition completely altered by the drought. The Livestock Division (Ministry of Rural Development) estimates that sheep and goat populations have fully recovered their pre-drought numbers. The difference is that they are using a smaller range and are owned largely by sedentary groups. Some form of policy will have to be developed defining rights to range resources, with all the competing historical claims, before anything in the way of development can take place.

USAID/Nouakchott, "Project Paper: Mauritania Land Tenure Project (AIP 625-0937)," 1981, at p. 15, discussing the experience with USAID's Renewable Resources Management Project No. 682-0205.

land tenure system of a country cannot be dealt with in isolation, but must mesh with other economic and social institutions. Because most African states are in transition between social and economic models, decisions on tenure reform must take into account both current realities and aspirations.

In seeking to understand why a given reform model has been adopted, it is important not to rely too exclusively on the rhetoric used by government to justify the choice. Some of the ends served by a reform, ends of a political nature and important enough to affect decisively the choice of the model, may never be explicitly stated. For example, Country X embarks upon a major program of individualization aimed at, among other things, the creation of a free market in land. It will help to understand that choice if one notices that the ethnic group which dominates politics in Country X is land-hungry, entrepreneurial, and has the capital and access to credit to participate heavily as buyers in that land market. Country Y embarks upon a major reform of its local land administration institutions, creating a new system to replace traditional leaders. That choice is more readily comprehensible if one realizes that the educated elite obtaining power at independence in country Y feel threatened by a strong traditional leadership, and are seeking to undermine the economic basis of the traditional leadership's authority. Country Z presses forward with a program of tenure reform, one of the objectives of which is to obtain a uniform national tenure system, and in the process seems willing to incur costs well beyond those justified by any immediate economic benefits. It will help if one realizes that Country Z is deeply fissured by ethnic divisions which seem to the new national elite to threaten the very being of the nation, and that the elite see regional tenure differences as an expression and bulwark of tribalism.

Tenure reform models are chosen as much to maintain and enhance power as to realize lofty social and economic objectives.

* * *

So far, this paper has concerned itself with land tenure and agricultural development on a fairly broad front. In the chapters which follow it focuses specifically upon land tenure issues in the project context.

5. LAND TENURE AND PROJECT IMPLEMENTATION

Indigenous tenure systems are not of primarily antiquitarian interest. They continue to dominate African agriculture, and development planners and workers may well be dealing with indigenous tenure and its mutations for generations to come. While there are no very reliable figures on the point, perhaps 80 percent of African cultivators hold the land they farm under indigenous land tenure.[92]

The context in which development planners usually confront this persistent phenomenon is the "project" context. The meat of their work is projects and

so far as land tenure is concerned, their primary interest is how it affects the success or failure of projects. This part of the paper attempts to examine the relationship between land tenure and project success or failure, and to analyze the options for response available as tenure issues come to attention in project design and implementation.

Projects come to grief over land tenure because they are designed on incorrect assumptions--explicit or implicit--about land tenure in the project area. A given land tenure situation is at the project identification stage pregnant with both opportunities and constraints. A project develops land tenure "problems" only if it is unrealistically designed, with constraints ignored and opportunities overlooked. We should be clear at the outset that in talking of land tenure problems in projects we are dealing with poor project design, usually project design which focuses too heavily on the new practices or techniques to be adopted and too casually on the process of adoption. The task of realistic assessment of the opportunities and constraints posed by a land tenure situation is a part of the more general task of adequate assessment of the socio-economic environment of the project. It is a particularly important part because it deals directly with land, the resource on which all agriculture is based.

This section of the paper seeks to identify some of the common causes of project failure or shortfall due to neglect of land tenure issues. The intent is not to list all the possible ways in which land tenure may impinge on the achievement of project objectives, but to identify several categories of error in project design and to illustrate them with concrete examples of particular tenure "problems." Four categories have been identified. The first two involve failures to frame a project consistent with existing land tenure realities, while the third concerns the failure of new tenure arrangements created for project beneficiaries. The fourth concerns problematic land tenure situations created by project activities.

5.1 Neglect of Social Constraints on Farmer Behavior

Inadequate understanding of existing land tenure arrangements can cause project planners to neglect social and institutional constraints which prevent farmers from responding to opportunities posed by the project. For example:

(A) A program which attempts to introduce a maize hybrid requiring early planting fails because custom provides that the community's stock graze freely on the stubble in the fields until a fixed date each year, too late for planting the new maize. Few farmers use credit which is available for fencing because the first few farmers who erected fences found them pulled down or cut at night.[93]

(B) A project intended to improve range quality seeks to enclose a pasture for a local grazing association but the association finds itself threatened with legal action by occasional users from other villages.[94]

Examples (A) and (B) involve either a simple lack of knowledge of constraints posed by customary norms or underestimation of their durability and persistence. In both cases the mistake is to assume a greater exclusivity of

use and management by possessors than is the case. For an example from an agroforestry project, see Insert 33. Sometimes a customary constraint is ignored due to erroneous reliance on a formal legal position. Such reliance can create grave problems (see Insert 34).

5.2 Miscalculation of Farmer Incentives

Inadequate understanding of existing tenure arrangements can cause project planners to misjudge the incentive effect of project-created opportunities, and result in farmers rejecting those opportunities. Again, two examples:

(A) A project introduces animal traction, which it assumes is cost effective for farmers, based on the assumption that the plow and animals will be relatively intensively used during peak cultivation periods. In fact, for a large number of the intended project beneficiaries they are used only half as intensively as anticipated, largely because of time lost in moving the cultivator between the several parcels which make up the family's fragmented holding.[95]

(B) A project offers an investment opportunity to farmers who hold under a tenure system which generates a high level of land litigation among claimants. The risk of loss of land due to such claims is great enough to discourage major investment in the land, in part because an investment may increase the likelihood of a claim against the land.[96]

Example (A) involves a failure to understand the impact on farmers' incentives of the physical configuration of holdings created by the tenure system. Example (B) involves a lack of appreciation of risk and insecurity generated by the tenure system, which discourages investment. For an example of a failure to appreciate the lack of incentives involved in a food-for-work program on someone else's land, see Insert 35.

5.3 Inadequate Framing of New Tenure Arrangements

There are projects in which the need for new tenure arrangements is appreciated, but those arrangements are poorly conceived or implemented. For example:

A settlement project bases size of holding upon family labor figures which assume that settler families devote all their family labor to the project holding. Instead, they continue to have access to land outside the project for grazing and family labor is diverted to herd management. Projects which provide land to beneficiaries often make the incorrect assumption that beneficiaries have moved outside the traditional land tenure system and no longer have access to land under that system.[97]

For a case where a land tenure change crucial to a range management project did not produce the reactions anticipated, see Insert 36. For a discussion of poorly framed tenure arrangements in irrigation projects, see Insert 37.

33. Tenure Constraints on the Introduction of Alley-Cropping

Since the deliberate establishment of new alley-cropping or other, functionally similar, intercropping systems may represent a substantial investment of labor and other resources, security of tenure becomes an important precondition of adoptability. This does not necessarily mean that the benefits of multipurpose trees chosen for the purpose (see FAO 1984:32 for selection criteria) could not conceivably be shared by claimants with different land and tree utilization rights (see the background paper by Fortmann), but it is obviously the case that the incentives for adoption of these more-or-less permanent improvements would be more effectively concentrated if exclusive use rights were vested with the innovating management unit, although (as discussed below) it might be advantageous to allow controlled grazing by livestock (which may be owned by pastoralists or other farmers) during the dry season. Insofar as the planting of trees establishes a legal claim to the land on which they are planted, the management unit in question will in most cases also have to be the landholding unit. This latter point was brought home to me in the course of conducting farm trials of alley-cropping systems in Nigeria, where some of the participants had to drop out when the kin-group steward of the land "borrowed" for the trials learned that trees were to be planted and withdrew the usufruct rights.

J.B. Raintree, "Agroforestry, Tropical Land Use and Tenure," Background Paper for the International Workshop on Tenure Issues in Agroforestry, sponsored by the International Council for Research in Agroforestry, held in Nairobi, Kenya, May 27-31 1985.

34. Formal Land Law and Reality in Project Design

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. 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." 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." 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." 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 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.

Raymond Noronha and Francis J. Lethem, Traditional Land Tenures and Land Use Systems in the Design of Agricultural Projects, World Bank Staff Working Paper, No. 561 (Washington: World Bank, 1983), at pp. 2-3.

35. Beneficiaries and Incentives: Tree-Planting in a Food-for-Work Program

In the provincial program in Tigre Province, Ethiopia, political response took place but fell short of mutation because the program was not aimed at redistributing income but at increasing returns to the holders of scarce resources, land and water. The program is relatively new and results from the initiative of the politically powerful and influential provincial governor. The governor gave the road construction program his personal supervision and took ultimate decision and administrative responsibility himself. He was interested in action and results and, though short of funds, got both through "voluntary" contributions of capital, supplies, equipment, and labor. The program is a clear product of the governor's drive and ambition, and serves the development of the province, which is one of the most densely populated and arid in Ethiopia, and has the lowest per capita income. The focus is on asset creation not employment or distribution, and the results reflect this emphasis.

In this case, low income groups are neither the target nor the real beneficiaries of the program. The real beneficiaries are the owners of land served by the roads and those on whose land conservation and water management projects are carried out, and the distribution of landownership is highly skewed. The small farmers, tenants, and landless laborers are expected by local leaders and authorities to work on road and reforestation projects, and have been paid (only in grain provided under the U.S. Food for Peace Program) an amount about 25 percent lower than the current wage rate. In several reforestation projects where laborers were terracing and planting trees on land that was not their own, trees were planted upside down. This phenomenon occurred with enough frequency that it can only be assumed to be a deliberate attempt to subvert the program's goals by those being forced to work at wages lower than a minimum acceptable standard on projects from which they gained few benefits. This action forced authorities on some projects to pay a cash wage in addition to grain payments, a precedent which will undoubtedly have to become standard practice if projects are to continue. As a result of this process, returns to labor will be increased but the primary beneficiaries will remain the local elite who control scarce resources.

John Woodward Thomas, "Employment Creating Public Works Programs: Observations on Political and Social Dimensions," in Employment in Developing Nations, ed. Edgar O. Edwards (New York: Columbia University Press, 1964), at p. 307.

36. Land Issues in the Masai Livestock and Range Management Project, Tanzania

USAID involvement in Masailand began in 1962 when AID financed a study that helped form the basis of the Range Management and Development Act of 1964. This act provided the legal basis for the establishment of ranching associations and in the same year the Masai Range Commission was established to administer the Act and register associations in Masailand . . .

From a sociological and development point of view the most interesting aspect of the Masai project has been its attempt to understand traditional Masai social organization and to build on it to create new organizational units, ranching associations, which would facilitate greater Masai participation in Tanzanian economic and political life . . .

On the negative side, all agreed that the Masai were afraid there might not be enough water and dry season pasture available to permit more sedentary or concentrated settlement, and that the Masai were afraid of being forced to give up their traditional culture. More specifically, Masai complained that resettlement would make it hard to optimize the use of outlying wet season pastureland, that it was ecologically unsound to create all-year settlements on dry season pasture and that it would not be possible to stay in the settlements in dry periods when local water supplies or pasture were exhausted.

On the positive side, Masai household and boma heads favor resettlement to the extent that they believe it will give them secure rights of occupancy in land and water, reduce conflict (in some cases physical) with agriculturalists who are encroaching on their land, and give them a larger role in local self-government. They also are willing to resettle if doing so will help them to obtain more water, cattle dips and veterinary services. While the idea of compulsory education is certainly still seen by many as a threat to the maintenance of a Masai way of life, there seems to be growing recognition in areas where there has been encroachment and conflict that education and literacy are valuable tools for dealing with the administration.

Tanzanian officials place greater emphasis on the Masai desire to obtain new services, and the Masai seem most concerned with rights of occupany. All observers agree, however, that the Masai are asking for range management plans which, at present, are clearly valued more because they confer rights of occupancy than for their range management value.

Allan Hoben, Social Soundness Analysis of the Masai Livestock and Range Management Project (Dar es Salaam: USAID Mission to Tanzania), October 1976, 85 pp; at pp. 40-41 and 59-60.

37. Framing Tenure Arrangements for Irrigated Perimeters in Senegal

In the early 1970s SAED (the regional rural development agency) experimented with different degrees of security of plot holding. In a well-documented experiment, discussed in OMVS (1980), several perimeters in the Delta were organized in such a way that farmers were rotated from plot to plot every year. The motive for doing this was to be as equitable within the perimeter as possible: since land varies in quality and reliabiity of water, farmers should be permitted to have equal access to the better land. The results were disastrous, however. Yields fell as farmers paid no attention to leveling, weeding of the bunds and canals, and maintenance of soil fertility. After two or three years the condition of the plots which were rotated in this way was abysmal, and required rehabilitation. Some of the small village perimeters near Podor also shift farmers around from year to year or from season to season, although there the reallocation process is controlled locally rather than by SAED. There are no data available to verify whether or not rotation leads to the difficulties faced in the Delta, but anecdotal evidence suggests that the village perimeters have thus far not experienced major trouble. When the village perimeters expand from 10-30 ha to 150 ha or more, as they are in the process of doing at many locations in the middle valley, the increase in plot and scheme sizes may introduce a lessening of feelings of solidarity, and hence a larger desire on the part of individuals for more permanency of tenure.

Most other irrigation perimeters in the valley permit more security than this. SAED does not establish official relationships with individual farmers, but rather with groupements de producteurs (GPs, or producer groups). The GP, not the individual, signs a contract with SAED, and is therefore responsible for fulfilling the obligations it contains. Nonpayment of debts, to use the most frequent case where contract problems arise, may result in SAED suspending or removing land use rights from the GP (as happened in Sénoudébou, where SAED shut the village perimeter down). Tenure security thus depends on behavior of the group, rather than that of each individual.

Peter Bloch, "Senegal," in Land Tenure Issues in River Basin Development, draft (Madison: Land Tenure Center, University of Wisconsin, 1985).

5.4 Tenure Problems Created by Project-Induced Change

Projects themselves sometimes create new situations which give rise to land tenure problems. Some of these affect quite directly the success of the project in question. Others create side effects which, even if they do not always hinder the achievement of project objectives, may interfere with other important public policies and objectives. First, some examples of impacts on the projects themselves.

(A) An irrigation project is located on formerly marginal land, to which the intended project beneficiaries appeared during the project planning exercise to have uncontested rights. But a year after the project is in operation, members of another ethnic group, politically dominant in the region, bring suit and obtain a ruling that the beneficiaries use the land only by their permission. They begin charging the beneficiaries a share of the crops. The position of the "beneficiaries" is no better, and perhaps worse, than it was before the project.[98]

(B) A food-for-work project creates a series of rainwater retention dams. The intended extension of cultivation does not materialize, however, because of conflict over rights to the land to be irrigated from the dams. The dams fall into disrepair.[99]

(C) A project aims at assisting a tribe of pastoralist-cultivators to expand their cultivation and move towards a more sedentary way to live. The new fields and fences create barriers to the annual southward migration of a neighboring nomadic people, who had ranged through the beneficiaries' territory as part of their dry season grazing. Several bloody clashes between members of the tribes take place, and project activities are seriously disrupted.[100]

Examples (A) and (B) illustrate the problem of beneficiary displacement, also known as "project hijacking." It usually takes place due to a combination of project-generated appreciation in value of land which was marginal and ambiguous or insecure title on the part of the beneficiaries. The beneficiaries' use of the marginal land was uncontested until its value increased. Then other, more powerful claimants come forward. In example (A) the intended beneficiaries are displaced and there is a stalemate preventing anyone from benefiting from the project. This appears to have happened with water catchment dams in Mauritania (see Insert 38). In (B) the other claimants "hijack" the major benefits of the project. Claimants in beneficiary displacement situations can be local individuals or groups, other ethnic groups, or members of national elites (see 6.5 below). In example (C) the problem arises out of a change in land use which does not involve a major increase in land value but which renders impossible the continued serial use of the land by different groups.

These examples involve cases where the investment or change in land use took place and resulted in the displacement of the intended beneficiaries. Where the prospect of inceased land value and productive opportunities is clear in advance of project activities, beneficiary displacement may be pro-

38. Tenure Issues on Water Catchment Dams in Mauritania

Dam projects to improve recessional agriculture have grown in importance since the drought and subsequent years of lower rainfall. The purpose of the projects is to harness more available water resources by building small dams across dry steam beds (oueds) that fill with rainwater runoff following the rains. Such dams are traditional in certain areas. The French colonial administration tried to encourage improvements in the way they were built, but since livestock rather than agriculture was the mainstay of the majority of the population, the response was modest. However, the decimation of livestock by the last drought forced people to turn to cultivation. The interest in dams is high, but not without conflict.

It is recognized on all sides that there are numerous land and water tenure rights that must be determined before there is hope of general success. For instance, dams that have been recently built have created a shortage of water for those using the land downstream. There is a need for a policy of spacing of dams, based not only on a general rule (now being that 12 km must be left between sites), but on a careful site-specific determination of water flow and needs. Site-specific ownership must also be established. Some dams that were built by the French have been allowed to deteriorate because of the insecurity over who controls the new land that is brought into production. It is not difficult to find a village behind a neglected and washed out structure, farming about one-tenth of the area it could farm if the system were in full operation. There is a further problem that is found in existing sites and that concerns the policy on grazing rights in the newly watered areas as the dams lengthen the growing season and because powerful herding families often hold residual grazing rights to the village's lands.

It should be noted that a very limited use of community contracts in a development context already exists. This may be possibly one element in an approach to resolve land tenure questions in a rural development project context. Regional authorities regularly make contracts with communities specifying what they will contribute in terms of labor and money in return for government assistance in such actions as small dam construction and well digging. The USAID Rural Land Reclamation Project (682-0203) will extend this to help specify the rights of particular beneficiaries to assure equitable distribution of gain in dam-based recessional agriculture communities. While such actions indicate the progress and potential of the community contract approach, they require extensive expansion to help deal with more complex issues like resource management, and more sophisticated analysis to deal with the majority of problematic social situations that characterize many communities which are now ignored because no administrative capacity to deal with these issues presently exists.

USAID/Nouakchott, "Project Paper: Mauritania Land Tenure Project (AIP 625-0937)," 1981, at p. 12.

spective, with occupiers of the land expelled when plans for the project become known. Where the beneficiaries are supposed to actually participate in projects which raise dangers of beneficiary displacement, they may refuse to do so.

Several further examples follow which concern tenure problems generated as side effects of project-induced change. In these cases the side effects may not directly interfere with the achievement of project objectives but may interfere with other important public policies and objectives.

(A) In example (C) in the preceding section, the impact of the project on the access to land for the nomadic group was clearly negative. While that group was not expected to benefit from the project, the fact that it has suffered from the project is an unanticipated side effect which presumably runs contrary to public policy.

(B) A land registration project aims to terminate all group rights over land and vest full title in individuals. Perhaps partly by virtue of the fact that the adjudication committees determining titles are all men, almost all the new titles are vested in men rather than women. Moreover, many traditional rights which a wife had with respect to her husband's land are not entered in the register, and the enforceability of those rights is now open to question.[101]

(C) A project aimed at conversion of a communal grazing area into commercial ranches grants 99-year leases to large cattleholders. The power to exclude which is conferred by such leases provides the basis for expulsion of hunter-gatherers from the ranches, an impact which seems predictable enough but had not been foreseen by the donor.[102]

Example (A) illustrates how intensification of or changes in land use can exclude some users. Examples (B) and (C) show how attempts to increase security of tenure for one group of right-holders will mean eliminating rights of others, sometimes in ways not clearly anticipated. Project activities may also affect land rights between groups and also as between family members, such as husbands and wives (see Insert 39).

6. CHARACTERISTIC TENURE ISSUES BY PROJECT ACTIVITY

Different types of project activity confront characteristic land tenure issues, and in this section an attempt is made to examine tenure issues by type of project activity. First, an attempt is made to cover some common components of broad agricultural development programs, or the agricultural side of integrated rural development projects. Later more specialized activities, such as irrigation and range management, are considered. A word of caution at the outset: it is possible to identify tenure issues which are likely to be relevant, and sometimes to suggest general angles of approach, but not to prescribe specific solutions. The factors which will determine the appropriate solution in a particular case are complex and varied, and to be more prescriptive would be to mislead.

39. Project-Created Tenure Change in Lofa County, Liberia

For some, such as women, the project has offered a new means of gaining access to cash, particularly through tree crops. Since the project has limited the amount of area which an individual farmer may develop with project assistance, many men have chosen to increase their household-registered land by placing additional plots in the names of their children and wives. These plots, especially those held by women (and this is an important change for some groups), will allow the women to obtain cash from the sale of their crops which they then can use as they wish, usually without having to consult their husbands. For some women, particularly those whose husbands have too many other family members to worry about, this may provide either the necessary means of supporting themselves and their children, or it may serve as a means toward financial independence.

There is, however, a legal problem. Under traditional law, a wife married by dowry has limited rights to property in her own name. She herself is in essence the property of her husband's patrilineage, and only upon the return of her dowry and an additional "damage" fee is she released from this obligation. However, so long as a woman remains married to a member of her husband's patrilineage, she will maintain her right to the use of any farms which she has either developed herself or that are in her name. The latter is, of course, the case with plots developed with project assistance. In this sense, women gain some additional financial independence and can shape to a greater extent their personal destinies and those of their children.

Whether this new form of landholding registered in the names of women will have any impact upon future land tenure patterns, and more particularly on inheritance patterns, remains to be seen. But it is probable that since the process has now begun, women will begin to argue in time for their private ownership of the land, free from that of their husbands and their husbands' patrilineages. The pattern is already recognized for women within the statute law system of Liberia. Clearly the question raised is fundamental to the social fabric of the customary society, and it is an area that has to be reconciled.

Svend E. Holsoe, "The Upper Lofa County Agricultural Development Project: Its Impact as an Agent of Social Change," at pp. 4-5 of Appendix F to John W. Harbeson and others, Area Development in Liberia: Toward Integration and Participation, AID Project Impact Evaluation No. 53 (Washington, June 1984).

6.1 Components of Broad Agricultural Development Programs

Here we have in mind programs which deal with farmers on their own holdings and try to help them move from subsistence to commercial production. The components of such programs have been broken down into four categories: (1) new crops, inputs, and practices which require only modest investment; (2) major investments in the holding; (3) mechanization and other labor-saving investments; and (4) credit components.

New Crops, Inputs and Practices

Some examples of innovations aimed at increasing production but not requiring major investment are improved crop varieties, new crops, fertilizers, pesticides, and zero tillage. Commonly a project includes several of these in a package for smallholders. These changes in farming practices are modest compared with some to be discussed later but they can raise tenure issues. Land distribution patterns will affect the introduction of new crops which are primarily for market rather than for home consumption. A small size of holding due to maldistribution may constrain a risk-adverse farmer, who will be reluctant to cease production of subsistence crops to produce a new crop for the market. In addition, even though the investments required for these inputs are short-term and modest, it is important to consider whether the farmer bearing the costs of the investment will receive the full benefit of his investment--or must share it with other rightholders in the land. If the latter is the case, he may not make the investment.

There are also ways in which new crops, inputs or practices change land use patterns and ultimately affect land tenure systems. A longer or different growing season, for example, may conflict with existing patterns of serial land use by primary and secondary right-holders. If project planners incorrectly assume that a primary user has exclusive rights to his parcel, it may lead to serious problems. One instance involves innovations inconsistent with continued use of farmland as community pasture outside the growing season. When the community presses its claim, it can for instance prevent adoption of a new hybrid which requires planting before fields are traditionally closed to animals. The issue may generate considerable heat; community leaders may feel that the principle of community control of land is at stake. Attempts to erect fences may be viewed as further threatening that principle. Such conflict may arise not only within a community but between communities and ethnic groups, where they have been involved in serial land use patterns and overlapping tenure rights. The issue in this form can have serious political implications.[103]

The land tenure issues raised by these project components can be magnified if the new inputs facilitate the transition from shifting to stabilized cultivation. Disruption of serial land use is one potential consequence, as noted above. But there are other problems as well. How will the community cope with new stability of landholding and provide secure tenure, in fallow land, for instance? Once agriculture begins to stabilize, relatively intense competition for the better pieces of land can develop quite rapidly. Do there exist adequate institutional resources to cope with dispute settlement, either in the indigenous system or in the modern court system? Inheritance of land

will have been an undeveloped area of customary law under shifting cultivation. How can one ensure elaboration of a law of inheritance of land which avoids uncertainty? Other new legal mechanisms may also be needed as land holdings stabilize, such as land borrowing or leasing to adjust temporary disparities between household landholding and labor supply. A project which aspires to initiate or further this very fundamental change in agriculture should be aware of these needs and monitor their impacts.

Major Investments in the Holding

The innovations covered in this section require major investments in the holding, both in capital and labor. Examples include wells and smallholder irrigation, clearing, de-stumping, fencing, leveling, and terracing. These innovations involve an intensification of land use and potentially raise all the tenure issues discussed in the previous section, including elimination of serial use, the attendant conflict within and between communities, and special problems in the transition from shifting to stable cultivation.

But major investments in the holding also raise special tenure issues both because of the magnitude of the investment and because the investment is "fixed" in the land. First, the large amount invested makes any risk more serious. Second, the large investment often means that costs can be recouped out of increases in production only over a number of years. In the case of trees, the investment may be long-maturing. The period of exposure to risk is increased, and risk is more difficult to calculate in the longer term. Third, vulnerability to risk is created by the merging of the investment into the holding--it cannot as a practical matter be satisfactorily separated from the holding if the holding is lost. Moreover, risk of loss of the holding may be increased because of the increase in the value of the holding due to the investment, inviting competing claims by the powerful.[104]

Such insecurity can thwart project objectives in two ways. The farmer may decline to make the investment in his holding, considering the risk too great. Alternatively, he may make the investment and then find himself displaced by more powerful claimants, attracted by the value of his improvements. Permanent improvements in the holding can antagonize traditional authorities under some indigenous systems because the improvements seem to assert a permanency of right in the parcel in derogation of the community's right to allocate, and also because such investments portend the growth of a competing class of "big men." As noted in the discussion of insecurity of tenure earlier in this paper, this antagonism may find expression either directly through reallocation of the land or more commonly indirectly, through harassment of various kinds.[105] Whether the farmer errs on the side of caution or initiative, the impact of insecurity of tenure on the project can be very negative.

Mechanization and Other Labor-Saving Investments

Mechanization and other labor-saving investments do not raise the same security of tenure issues as do major investments in the holding. The farm machinery is detachable from the land and so not at risk with the land. Nor does its use on a piece of land so substantially increase the value of the land as to attract competing claims. The introduction of mechanization does, however, intensify land use and thus raise tenure issues similar to those

raised by new crops, inputs and practices. It has obvious potential for disrupting serial or other overlapping land uses. The uncontrolled expansion of tractor farming into "public lands" in semi-arid environments in Africa has displaced many low-intensity users and, perhaps in part because tenure is very temporary or non-existent, has involved land mining and environmental degradation on a serious scale.[106]

But it raises some special issues as well, some of which originate in its capital-intensive, labor-saving character and others of which stem from the fact that to be economical, farm machinery must be employed on a certain scale. If Africa's food problems are to be solved, it is clear that the productivity of labor engaged in agriculture in Africa must be increased. Mechanization does this, by increasing the efficiency of labor in agricultural production. Rather than simply permitting the expansion and intensification of cultivation, however, it also sometimes results in the displacement of significant amounts of labor. This is not a necessary concommitant of mechanization. It may not be the case where it is introduced together with other changes in farming practices and inputs which generate increased demands for labor. And it may not be the case where mechanization is on the "appropriate technology" model, e.g., hand-held tractors. Such displacement is most serious in situations of badly skewed land distribution, which is fortunately relatively rare in Africa. But it has occurred on a significant scale in a few parts of Africa, such as southern Ethiopia in the 1960s and early 1970s (see Insert 40).[107]

In situations of skewed land distribution, mechanization tends to simplify tenure structures by making unified farm operations on very large holdings possible. It thus eliminates the need for tenure institutions like tenancy which involve independent management of the tenanted holdings within the larger owned holding. It substitutes wage labor and in the process, because of the increased efficiency of labor, labor is sometimes displaced. While badly skewed land distribution is uncommon in Africa, where it does exist, the tenancy patterns tend to be very different from the free-market model. They may have their historical basis in tribal conquest and subjugation and the "tenancy" may be a codification of the terms of that historical accommodation rather than a bargained-for agreement. Participants in such an arrangement do not react to opportunities and problems in the same way as the Western agricultural lessor and lessee.[108]

In deciding whether and how hard to promote mechanization and in what form, planners must consider not only efficiency in terms of the farm but the consequences of labor displacement. Much will depend on the labor absorptive capacity of other economic sectors. In addition, the impact on those retained as farm labor needs to be considered. Tenancy plays a great variety of roles in different social contexts and a transition to wage labor status is sometimes a step down the economic ladder.

But what of the introduction of mechanization into an agriculture dominated by smallholdings? While mechanization does not require large holdings, it often encourages and permits them. If land is plentiful, the enterprising tractor-farmer will generally not have too much difficulty, at least initially, expanding his holding. If land is under pressure, the tenure system may develop (if it does not have them already) tenure arrangements that permit the tractor-farmer to lease in or borrow the land he needs to fully employ his tractor.

40. Mechanization and Tenant Eviction in the Chilalo Agricultural Development Unit, Ethiopia

Although there was some commercial farming in Chilalo prior to CADU's arrival, it was probably no more than 20 percent of the present levels. By 1972 some 150 landowners were operating more than 250 tractors and 50 combines on approximately 30,000 ha of land. While no 1974 figures are available, it seems clear that this trend has continued at the same rate. This rapid increase in mechanization is due to government policies stimulating commercial land development, but particularly it is due to CADU and its message to formerly traditional landowners and provincial elites that agriculture can be profitable with appropriate inputs and to the lack of government legislation protecting tenants who had previously farmed the land. These inducements are attracting merchants, government officials, soldiers, lawyers, and other central and provincial elites into the commercial exploitation of Chilalo's agrarian promise. Landowners, now convinced of the success of a mechanized venture, are now removing their tenants and either farming commercially themselves or renting their land on long-term leases with fixed, high-rent schedules to other commercial farmers or elite inventors whose primary profession is not farming. These latter contractors frequently live in Addis Ababa where they join with friends and hire farm managers out of the nation's agricultural schools.

Tenant Insecurity and Eviction. Despite the importance of tenancy to this study, it is difficult to arrive at a figure for the number of landowners and tenants. Surveys of the area prior to CADU vary. A 1966 study by the central government set the tenancy rate at 48 percent while a 1971 local government study found 63 percent of the farmers to be tenants. Swedish and Ethiopian statisticians at the CADU project generally conclude that 50 percent tenancy prior to 1968 is a fairly accurate estimate.

The eviction problem is proportional to the amount of land suitable for mechanization. Chilalo was ideally suited for this pattern of production, and since CADU's arrival an enormous number of tenant households have been evicted. The figures are unclear, but one study in the northern part of Chilalo, where the project has operated the longest, estimates that as of 1971, 20-25 percent of the pre-CADU tenant population had been evicted. In a more recent study of a northern extension area where land is suitable for mechanization, the 1968 proportion of tenants to all farmers was 46 percent; in 1972 it was 12 percent and eviction was continuing. In 1972 the best estimates placed evictions at about 5,000 tenant households since 1966.

John Cohen, "Effects of Green Revolution Strategies on Tenants and Small-Scale Landowners in the Chilalo Region of Ethiopia," Journal of Developing Areas 9 (1975): pp. 335-358, at pp. 348-349.

Alternatively, the tractor-owner may plow other farmers' fields for hire. There is also potential, however, for the purchasing-in of land by tractor farmers, resulting in increasing landlessness. The project may decide that it wishes to organize the introduction of mechanization in ways which allow scale of use to be obtained without changing scale of ownership. Tractor pools, tractor rental systems, and contract plowing operations are all approaches that deserve consideration, though project-run tractor pools are notoriously difficult to manage well.

It was suggested at the beginning of this section that labor-saving investments do not raise all the problems raised by major investments in the holding. There is one problem in common, however. All else being favorable, mechanization may permit the production of a marketable surplus and a sizeable profit. Commercial farmers of mean origins may become "big men," viewed as threatening the traditional authority structure, and be subject to harassment. (For an example from Swaziland, see Insert 41.) This may include demands for use of farm machinery for community purposes. A successful commercial farmer will usually become skilled in balancing such claims, meeting some but not all of them. To do so, however, he needs as much security of tenure as possible on his holding, a need he shares with those who make major investments in their holdings.

Credit

Many of the project components noted above require some investment, and because small farmers often have no savings, projects often make credit available. The first part of this paper contains a discussion of the relationship between land tenure and access to credit, a relationship based on land's potential as security for a loan. It was suggested there that: (1) land security is not necessary for a wide variety of minor investments, which can be handled through crop loans or other devices, nor for farm machinery, which can itself serve as the security for the loan, but can be essential for major investments in improvements on the holding; (2) use of land as security for a loan requires security of tenure on the part of the borrower and marketability of the land, to permit the lender to foreclose on the security and convert it to cash; (3) marketability requires both legal transferability of title and a market for land; and (4) security for a loan is only one of several criteria which a small farmer may have difficulty satisfying in seeking commercial credit.[109]

The last point above may be of less consequence in this context; we can assume project credit targeted on small farmers, for which they do not need to compete with other borrowers. Security of tenure and means for creating security of tenure have been discussed earlier in this paper, as has marketability.[110] It should be repeated that indigenous tenure systems almost never have any objection to land security arrangements for loans, possessory mortgages until repayment being fairly common. The objection is to the irrevocable transferability required for foreclosure and sale.

In the credit context, even a small degree of uncertainty about marketability of a title offered as security is usually fatal. A clear legislative mandate in favor of sales and mortgages of land under indigenous tenure is, of course, helpful from the point of view of mortgagability, but it is not likely

41. Insecurity of Tenure in Swaziland

While actual banishments are rare, the possibility of being banished is always there. It is, in fact, the ultimate sanction making for conformity to locally approved social norms. If a man becomes too rich, he may arouse the envy of his Chief, and be banished. If he antagonizes his neighbours, they may seek his banishment. The reputation of being a "person who hates" (umuntfu otzondzako); that is to say, a potential witch, is easily gained by anyone who fails to make sufficient concessions to reduce interpersonal tensions existing between himself and his neighbours. Therefore, the twin fears of being accused of witchcraft and of being banished provide a strong incentive to strive to reduce these tensions, rather than aggravating them by a stiffnecked insistence on what one regards as one's rights.

This possibility also colours all other aspects of the traditional tenurial system. Swazi may argue that a Chief has no right to evict a Bantu-Owning Group from any of their arable lands. Yet, if part of these are unused, and another member of the community, or a new arrival requires land, the Chief may suggest a transfer of Bantu-Ownership. Refusal might not lead to immediate banishment, but could start a conflict, which could lead to "hatred" and accusations of witchcraft, and so to banishment. Similarly, anyone who starts to commercialize his land in a manner of which a substantial section of the community disapprove does so at his own peril. Swazi may argue, as they do, that once Bantu-Ownership has been acquired the community cannot take it away; but in practice the community can, simply by banishing the Bantu-Owner.

It is within this framework, and with the ever-present possibility of the sanction of banishment being used by the community to enable it to resume control over any particular parcels of land, that the whole system of land tenure operates. Banishment, as well as being the ultimate sanction, is also in a sense the keystone of the whole edifice. It makes possible the reconciliation of what might appear to be completely contradictory regulations. It provides a constantly available "negative feedback" (if we may use the language of cybernetics), which enables the tenurial system to persist in a state of reasonable equilibrium, and as an effective system for allocating land rights between different members of the community.

A.J.B. Hughes, Land Tenure, Land Rights and Land Communities on Swazi Nation Land in Swaziland (Durban: Institute for Social Research, University of Natal), 1972; at pp. 148-149.

to be forthcoming in many cases. One alternative is to convince the community to provide commercial farmers with a tenure which is long-term but ultimately limited in time (e.g., a 99-year lease) and which leaves untouched the community's long-term interest in the land, giving it a right of reversion at the end of the lease. A very long-term lease is a legally mortgageable interest and--at least in the first years--has a cash value virtually equivalent to freehold. Any concerns on the part of the lending institution about the community's role can be dealt with by involving the community as a party to the mortgage.[111]

6.2 Settlement and Irrigation Projects[112]

Settlement and irrigation projects raise special land tenure issues because they tend to be implemented on land owned by the State. In most settlement schemes the land already belongs to the State as vacant and unutilized. In some irrigation project situations the position is similar, but if it is not, the land is usually compulsorily acquired. State ownership of the the land gives the project the freedom to radically change land use, constructing dams, canals, perimeters, etc., and to plan and allocate new landholdings. The project is free, within the limits of national law, to frame a tenure system for the project, creating titles derived from its own ownership of the land and conferring them on allotees.[113] At least four sets of issues arise: (1) land acquisition issues; (2) allotee selection issues; (3) terms of tenure issues; and (4) plot size issues.

Land Acquisition

Often in the settlement scheme context, the land is considered vacant under national law which ignores seasonal, possibly brief but essential use by pastoralists. In irrigation schemes, there is more obvious displacement. Land near rivers and streams is generally desirable and relatively intensively used by cultivators, but even cultivators obviously displaced are sometimes dismissed as having had "only use rights." Project planners often seriously underestimate the attachments of both individuals and groups to particular areas of land. Commonly neglected entirely are those outside the project area whose land use will be seriously affected by changes in water availability, and those who will lose income due to interruption of farming by construction activities on their land.[114]

The decision as to what land is to be acquired for a project will be affected by both engineering and other considerations. Land tenure problems can often be avoided or minimized by careful site selection, and this can only be done effectively through research and consultation with the communities concerned. While consultation with local people and their participation in the planning process is difficult and time-consuming, it is essential. The process has consequences far beyond the physical planning for the scheme; it can help legitimize the land allocation policies adopted by the project.[115]

Where displacement does occur, compensation is a critical issue. As a matter of national law the land may belong to the State and it may be possible to displace cultivators and other users without compensation, or perhaps only compensation for improvements. The consequences of ignoring rights under indigenous land tenure systems can, as suggested by Mary Tiffen, be serious and

destroy the credibility of the project administrators at the very outset of the project (see Insert 42).

Should donor representatives insist upon fair treatment for those affected even when it exceeds what is required by law? To do so would absolve the donor of accusations of having promoted the confiscation of property without compensation, but in those circumstances the donor may be requested to bear the costs of such fairness. It is not surprising that donors generally accept the legal position as outlined by the government.

Fairness can in any case be elusive for project planners working in cultures other than their own. A necessary first step is a reconnaissance to land tenure patterns in the project area and then a detailed survey of who owns and who uses each portion of land whose use will be affected by the project. Any compensation program must be based on meticulous recording of existing rights. Not all compensation need be in cash, but can take the form of other land or employment opportunities. In order to create a new balance in land use perceived as fair by the local people, land use planning must be able to deal with not only the most directly affected areas but also their environs. It is in the end the local people's sense of fairness which needs to be satisfied, and what it requires should be an explicit point of inquiry in pre-project research. The Sudan, with an enviable record in settlement and irrigation projects, is distinguished by the meticulousness with which it has treated pre-scheme land rights. Whatever form compensation may take, compensation delayed is often compensation effectively denied: its timeliness is quite as important as its form or amount.[116]

Allotee Selection and Plot Allocation

Selection of allotees to receive land is an issue which cannot be isolated from the purpose of the scheme. Settlement schemes based on rainfed agriculture try to serve a wide variety of objectives and involve settlers with very different levels of farming experience. Those objectives may include resettling people displaced by a disaster or a dam, opening up new lands to relieve pressure on land in other areas, finding alternatives for streetboys and other urban "undesirables," or for soldiers when an army must be disbanded. In the resettlement case, little selectivity as among potential settlers is involved. The land tenure situation in the area of previous residence will be relevant if government has taken that land and is committed to replacing the lost individual or family holdings with comparable land. In the other cases, in which the aim is to provide employment to settlers from outside agriculture, previous tenure is irrelevant.

In irrigation schemes, however, there is a strong connection between pre-project land tenure and allotee selection. Small irrigation initiatives (small pump schemes, for instance) may be planned to involve everyone who previously farmed the unirrigated land. In larger irrigation schemes, allotments become an important form of compensation for land lost to the schemes. Equivalences need to be worked out between traditional holdings lost and irrigated allotments. Arrangements need to be made for integration into perimeters of those who have lost land (i.e., to a reservoir) but will have no perimeters in their own areas. Where irrigated areas will accommodate more than those who have lost land, as is likely to be the case unless the reservoir displaces

42. Displacement and Compensation for Land in Irrigation Projects

Available literature on resettlement does not seem to have been fully considered by the planners responsible for recent large schemes in northern Nigeria . . . The position has been complicated by differences of view amongst the farmers concerned and Federal authorities (the River Basin Development Authorities--RBDAs) on whether land was individually owned. The RBDAs' view was enshrined in the 1978 Land Use Act, which asserted ultimate government ownership and gave State governors the right to revoke "customary rights" and to grant leases, after compensation for standing crops and improvements. The farmers, and local politicians and entrepreneurs, knew that tenure had evolved towards something close to freehold, and that land was commonly bought and sold in the belief that such transactions conferred permanent rights . . . In the Bakalori operation farmers were supposed to, but did not, receive compensation for seasons when they could not farm due to construction works. This issue, plus the issue of compensation (also delayed) for those who lost land outright, led to physical obstruction organised by farmers and their traditional village leaders, close together physically and socially. This had to be quelled by military methods. At the cost of many deaths they finally received monetary compensation. After construction, the farmers were supposed to be reallocated their own land; this proved so difficult when landmarks had been destroyed that the task had to be handed over to traditional leaders, who eventully got some farming restarted.

Is it politically possible to ignore a situation in which people for many years have acted as if they owned land, bought and sold it, believed securely in their rights to pass it to their heirs, etc., on the grounds that traditionally the local ruler "owned" it and the peasant has only usufructuary rights? As a president of a rural council said in Senegal: "Au Fouta, il y a la loi sur la domaine national, mais il y a aussi les faits." In Nigeria local realities had to be recognised, at the cost of unexpectedly high levels of compensation. It is never enough in feasibility studies to accept the assurances of central governments on the state's legal rights without also ascertaining on the ground local views, though there are obvious diplomatic difficulties.

It is necessary to incorporate provision for compensation and the cost of resettlement in the initial economic and financial plan. This is often not done, either because it may adversely affect the calculation on economic viability, or because it is felt to be the responsibility of the national government. As a result, money is simply not available, or arrives in very delayed fashion, for farmers who are in immediate need because they have lost their livelihood.

Mary Tiffen, "Land Tenure Issues in Irrigation Planning, Design and Management in Sub-Saharan Africa," Paper for USAID's Water Management Synthesis Project, 1985, at pp. 20-23.

exceptional numbers of people, then the issue arises whether those who have not lost land, but have had their land use significantly affected (e.g., pastoralists) should be included in allotments. Groups to be accommodated must be identified, and households from those groups selected. The integration into schemes of allotees who do not belong to the group which has traditionally held the land of the perimeter is always especially problematic.[117]

These are fundamental decisions which will affect the success or failure of the project and which, involving as they do relations between ethnic groups and between subdivisions of groups, can be highly conflictive and political. Hard decisions will need to be made. Some landholding groups may hold on sufferance from others, and master-serf relationships may be found, as well as more conventional landlord-tenant arrangements. Will those who previously held on sufferance receive allocations? Often different groups may use the land seasonally, for different purposes. While we may incline to favor right-holders who are intensive users, local standards of fairness may well emphasize the greater antiquity of the claims of less intensive users. Women may be excluded from landowning, and there may be other landless castes. Plot allocation may be dominated by elites, creating new landlessness (see Insert 43).[118]

Projects do not generally set out to overthrow existing social relations in the project area, but they may well undermine them. Where traditional land relations are profoundly inequitable, inclusion of the disadvantaged as allotees can provide the basis for their emergence from a disadvantaged position, and is a legitimate objective. In addition, there will be pressures for access to land for civil servants and entrepreneurs. Some make better than average farmers, partly because their capital and other resources permit them to use parallel markets and to rely less exclusively than others on sometimes unreliable project services. More often, however, their intent is merely to place share-croppers on the land. Only a very limited number, with strong management and agricultural skills and serious intentions as farmers, should be given allocations. Obviously, screening for these qualifications is not easy. Residence requirements and probationary periods are means commonly adopted.[119]

There are no easy solutions to these land allocation issues. The possible will differ from site to site, and detailed guidelines are unhelpful. The matter involves not only the project and local communities, but the national government with its social objectives. Balances must be struck in negotiation with local communities, but matters will proceed more smoothly if donors and government have agreed-upon objectives, on the basis of which to negotiate. To accede to "local communities" on all points may lead only to replication of stultifying social and economic structures.

Terms of Tenure

In rainfed settlement schemes, at least those which do not experiment with production cooperation, there is considerable consensus on the optimum situation in terms of land tenure. Settlers should receive land on probation initially, but as soon as the probationary period is successfully completed, they should receive the maximum security of tenure allowable under national law. This should be an integral part of de-projectizing settlement schemes and turning assistance to farmers over to the regular extension service. (See Insert 44 where Scudder summarizes the experience.)

43. The Dynamics of Plot Allocation on a Sudanese Irrigation Scheme

Prior to the resettlement of Halfawis on the New Halfa Scheme, a population and land-holding survey was carried out among them, and the information obtained provided the basis for allocation of tenancies and the assignment of free-hold lands. Such a survey was not carried out among the Arab pastoralists of the Butana. Among them the allocation of Scheme tenancies was left to the Native Administration. The Nazir provided a number of tenancies to the shaikh khats, who divided them among their 'umdas, and the latter redivided them among the local shaikhs. At the local level fewer tenancies were available for distribution than the number of potentially eligible households, and some had of necessity to be excluded. The process by which some families were selected for inclusion in the Scheme and others left out involved the application of locally understood values . . . Favoring a stranger over a relative would be viewed as a repudiation of the obligations one has to family; favoring a political opponent or neutral over a political supporter would be madness. And not using the power to allocate tenancies to generate new ties and supporters, as well as to reinforce the ones that already exist, would be interpreted as foolishness. Thus the benefits of Scheme participation through the allocation of tenancies were largely absorbed by the elite Shukriya themselves, and within the elite to those families who were closely allied, by ties of kinship and politics, to the chiefs of the Native Administration. Since, in principle, the rule of "one man/one tenancy" had to be observed, assignments of tenancies were made to children, persons who were absent, and even to the dead.

. . . The non-tenant settlers became an agrarian proletariat that provided cheap and immediate labor for their more fortunate "brothers" who, because of the large number of tenancies they own, could not rely on family resources for labor.

Muneera Salem Murdock, "The Impact of Agricultural Development on a Pastoral Society: The Shukriya of the Eastern Sudan" (Binghamton: Institute for Development Anthropology, 1979), at pp. 20-21, 44.

44. Land Tenure Preferences in New Lands Settlements

No generalizations are possible as to the relative merits of individual versus communal control and cultivation of land. Rather the key factor is working out a form of tenure which provides sufficient security to the settler family to encourage members not only to maintain their allotment but also to make permanent improvements, and to develop a form of cultivation which the settlers support. Within these limits many possibilities exist--including family cultivation and control of land, family cultivation and settlement agency control of land, family cultivation and communal control of land, and communal cultivation and control of land. There is little doubt, however, that the majority of settlers in the tropics and subtropics prefer family cultivation and control of land. So do the majority of settlement scholars who expressed themselves on this matter.

Settlement agencies, on the other hand, tend to shy away from granting titles to settlers (even where promised), prefering tenancy type arrangements based on annual or longer term leases which theoretically can be terminated at the discretion of the settlement agency. This preference for tenancy arrangements and for long term purchase options can be largely explained in terms of two government concerns. The first is a concern for maintaining certain agricultural production goals--goals which the settlement agency fears will not be met if settlers have full title to their land. The second is concern that settlers will sell their land to speculators, hence interfering with social equity goals--or they will subdivide it among heirs, hence interfering with production goals.

Both of these concerns appear exaggerated when compared with the problems associated with lack of settler security over land tenure. Productivity, for example, is more apt to suffer where the settler has a disincentive to produce and to make permanent improvements because of tenural insecurities, while subdivision may occur because of inability to obtain credit--many institutional donors requiring land title for collateral. Finally, on a disproportionate number of the more successful settlements, settler families own their land.

For such reasons as the above, settlement scholars tend to favor granting land titles to settlers. While they also suggest that safeguards be institutionalized to reduce land sales and subdivision, I suspect that the best measures are ready availability of credit and the development of nonfarm employment for absorbing the second generation.

Thayer Scudder, "The Development Potential of New Lands Settlements in the Tropics and Subtropics: A Global State-of-the-Art Evaluation with Specific Emphasis on Policy Implications; Executive Summary" (Washington, DC: USAID), AID Evaluation Discussion Paper No. 21, September 1984; at pp. 29-30.

In irrigation schemes, particularly high-cost schemes, governments are much more reluctant to part with control. Retention of land rights by the project is generally justified on the ground that projects must be able to compel compliance with a common management plan through the threat of loss of tenure. This is argued to be necessary (at least for a few years) as part of the learning process for allotees, who often have no significant experience with irrigation or the new crops. A second, longer-term objective is to enforce farmer behavior which will permit recovery of capital costs either directly or indirectly, through realization of the benefits to the economy as a whole expected to flow from the project (e.g., import substitution and foreign exchange savings). Control over access to land is thus commonly used to enforce what would otherwise be economically self-abnegating behavior, which participants cannot be expected to "learn" on their own. Typically, it is used to compel production of a crop which is not the most profitable crop for the farmer. Or it may be used to enforce marketing of the crop through state marketing channels which offer lower, controlled prices to the farmer. Or it may be used to enforce compliance with a scheme of common management to obtain economies of scale which may or may not exist and which, if they do exist, redound to the benefit of the project, not the farmer.[120]

These problems appear to have been in part generated by the cost/benefit analyses and rate-of-return calculations for major irrigation projects, which have often stated potential benefits without careful analysis of their compatibility, especially as between macro-level benefits to the economy and incentives for project participants. Project justifications are framed in terms of benefits which are irrelevant from the viewpoint of the farmer, and analysis of the farmer's with-and- without-project positions tends to be weak. Compulsion is thus substituted for incentives. Frequently, there is a striking lack of mutuality of obligation as between the farmer and the project. The project can act very directly against the farmer's tenure if, for instance, he fails to comply with the common management scheme. He, however, has no sanctions against the project if the project fails to deliver water and other inputs in a timely fashion. One option is to create project-farmer agreements which do create a mutuality of obligation. To the extent that the project fails in its obligations, the farmer could be released from certain of his obligations and the project's cost recovery from the harvest could be reduced. The problem is finding a honest broker between the parties.[121]

It is compatible with such an approach to handle recovery of project costs as a share in crops rather than a fixed fee in cash or kind. Project management errors or shortfalls thus directly affect project income and not just farmer income. Once the system is working well and confidence in the system is established, farmers will perceive that there would be benefits in a fixed rate set at a reasonable level. Conversion to a fixed rate is best done in response to the request of the farmers in the scheme.[122]

In terms of general directions to be pursued, in recent years there have been increasing demands that security of tenure be enhanced, and that tenure should be used more as an incentive than as a sanction. In complex schemes with farmers inexperienced in irrigation, where conditionality of tenure is seen as necessary initially, it should be minimized and later reduced. Instituting greater security of tenure also has a role to play in scheme rehabilitation. The range of possible innovation is considerable. For instance,

the small private pump schemes in northern Sudan involve a private entrepreneur providing the pump, fuel and maintenance, and landowners paying a share of their harvest to the pump-owner. Where small perimeters are planned and farmers already have some experience in irrigation, such a model might be replicable. In larger schemes, non-tenure controls over land use such as water control have been not used as imaginatively as possible, nor has sufficient consideration been given to turning residual regulatory and maintenance functions over to private associations of plotholders, such as water user associations. In light of the frequently mediocre performance turned in by government and parastatals as irrigation project managers, a period of experimentation with such approaches seems both inevitable and desirable.[123]

Plot Size

Plots sizes appropriate in a particular case will be determined by production objectives, competing opportunities to invest labor, allotees selected, common service levels, and crops. Very small plots can play a role in the learning process but there will be minimum sizes necessary for either a sound subsistence opportunity or for serious commercial production. Plot sizes must be decided on the basis of carefully thought-out income targets. There should also be maximums as an equity consideration.[124]

Complicating the issue of appropriate plot size is that of off-scheme land rights. It is one of the more common errors of planners for irrigated (and rainfed) schemes to assume that allotees will devote all the labor of their households to the irrigated holding. They plan plot sizes accordingly. In fact, risk-spreading instincts will disincline farmers to give up any prior holdings which have been left untouched by the project, whatever they may promise to project management. Moreover, they retain access to their community's commonage. If cattle or small ruminants have formed an important part of their economic activity in the past, they will certainly seek to maintain some livestock. Restrictions on such activity are very difficult to enforce. It has been suggested that it is preferable to accept this and plan for allocation of small holdings initially, providing opportunities to expand holdings after a few years when experience has been gained and the income-producing potential of concentration on the irrigated holding have become clear.[125]

Inheritance and sub-division are usually seen as problematic, especially on irrigated schemes. Sub-division into postage-stamp holdings obviously threatens viable opportunities and invites division of effort between the irrigated holdings and other economic activities. This is generally considered incompatible with intensive exploitation of the irrigation opportunity. On the other hand, regulation of sub-division is difficult. Successful restriction of sub-division sometimes produces co-ownership in small shares by co-heirs and complex arrangements for management of the plot and division of the production. This is perhaps less detrimental than extreme sub-division, but also dilutes incentives for those actually farming. An approach which requires designation of a single heir and trusts that heir to assert and protect his or her own interests seems attractive, but it should be appreciated that that heir may choose not to press his claim but to accede to informal arrangements agreed upon by the family.[126]

There is one theme concerning project design that runs through the above discussion. Different project objectives have different requirements in terms of tenure, and project objectives must be clearly prioritized to permit adequate framing of tenure arrangements. What is important is the identification of a reasonably attainable and internally consistent set of objectives for the project and for allotees. Insofar as large irrigation projects may have mixed objectives, perimeters at least should have simpler objectives.

This section has dealt primarily with projects which involve substantial numbers of people and a project role in allotment of land. Where irrigation takes place on existing holdings, as from a borehole, the land tenure issues are those associated with long-term investments and improvements in a holding, discussed above earlier. There may also be intriguing issues as regards common management of the well and pump, but those are beyond the ambit of this paper.[127] In the case of small-scale, gravity flow irrigation from streams, security of tenure issues can arise because of the relatively valuable nature of the land, and the issues again tend to be the same as those associated with long-term investments in holdings. Such irrigation, of course, is not created by donor-financed projects.[128]

6.3 Range Management[129]

It is generally accepted that livestock projects in Africa have not done well. Abandoning early attempts to blame pastoralists for not responding to opportunities, more recent analysis has focused on failure of project planners to take into account the unfamiliar incentive structures of pastoralists. Early livestock projects tended to be run like extractive industries, concerned primarily with ensuring a steady supply of meat for urban consumers and export, and hardly at all with creating a better life for pastoralists. A major rethinking of these projects and their objectives has been underway for some time.[130] What role does land tenure play in their success or failure? Much of the literature on pastoralist development has focused on problems of overgrazing and range degradation. Tenure solutions are among those most commonly proposed. It is with respect to range management projects, or range management components of more general livestock development projects, that land tenure is most relevant.

While there is considerable variety in tenure arrangements for livestock and pasture in Africa, the recent literature has been preoccupied with one model of limited relevance: Hardin's "tragedy of the commons." The model postulates an unregulated commons and individual ownership and management of herds, then suggests that in such a situation overgrazing and pasture degradation are inevitable. It does so on the ground that voluntary restraint exercised by one herd manager to avoid overgrazing of a commons produces no benefit unless other managers exercise similar restraint. To exercise such restraint when others do not is to act against one's own interest. So, the model concludes, such restraint is not to be expected. The solution is most often seen as major tenure reform--breakup and individualization of the commons so that costs and benefits of management decisions made by herd managers are internalized.[131]

The model is correct given its assumptions, but the relation of those assumptions to reality is open to question. Commons are not usually "open

access" situations and the very notion of a commons implies a community which controls access to it, though the extent and effectiveness of the control varies greatly. In Africa, a tribe's grazing territory was commonly broken down into exclusive areas for tribal subdivisions and clans, with the size of grazing areas depending upon reliability of water and pasture. Where large herds were moved over long distances, they were sometimes required to pursue particular routes, spreading the burden on the land and avoiding conflict with other herds. Chiefs could in some cases assign herds to particular areas of pasture, or close certain overgrazed areas to animals. While stocking quotas were unusual, in some areas access to scarce pasture near a village might be limited to cows with calves, or to oxen during plowing season.[132]

If the tragedy of the commons is far from an accurate rendering of the traditional situation on African commons, it must be added that events in recent years have been moving pastoralists in some parts of Africa in the direction of the tragedy of the commons. As veterinary medicine has increased herd sizes, pressure on resources has increased. As pastoralists have developed a market orientation they have tended to intensify resource use and become more abusive. In addition, traditional controls have weakened. In some former French colonies, tribal grazing areas have been abolished as archaic and exclusive, an affront to the spirit of nationhood. In some countries bent on rigorous enforcement of Islamic law, which holds that occasional use does not create ownership, the result has been the same: creation of a free-for-all not unlike Hardin's commons. In other cases the authority of traditional leaders who once controlled pasture use has weakened as economic change has diluted the once exclusive reliance of the people on traditional structures and institutions. In yet other cases, the loose controls which worked under lesser pressure on resources have simply collapsed in the face of intensified and increasingly competitive use. Finally, the droughts of the last decade have forced major and apparently lasting shifts in grazing territories. The necessary new institutional arrangements and understandings will only be established gradually, if at all.[133]

The tragedy of the commons model points only one direction away from the conflict it sets up between individually owned and managed herds and pasture held and used in common. That tension can be resolved by moving in the direction of individual ownership of pasture, but it can equally be resolved by moving in the direction of communal management of the herd. This may increasingly be an option in the future, as pastoralists are by virtue of education able to move into the national labor market and the old way of life begins to break down. At the moment, however, it will usually be impractical because of strong opposition from the pastoralists themselves.[134]

There is also a failure in the model to recognize that individually owned pasture can also be subject to abuse and degradation. Where an individual pasture holding is too small to support the stock a household must have for draft purposes, overgrazing can result. Where there are alternative low-risk investments which offer a better rate of return than livestock, a pasture-owner may abuse the resource to maximize short-term profits and get out of livestock and into the alternative low-risk investments.[135]

Perhaps most important, the model does not recognize the benefits derived from communal pasture in certain circumstances. In an arid and variable en-

vironment, such as many of Africa's pastoralists inhabit, the ability of herds to range widely and freely is essential. In situations where grazing and water resources are scattered and seasonal, such movement can be an effective strategy for long-term exploitation of the range. It is also the key to pastoralists' strategies for crisis management in periods of drought. In some ecological zones mobility must be maintained, and individualization of pasture is clearly impractical. Wells can of course be bored, but the costs associated with the individually-owned ranch, such as well-digging and fencing, simply cannot be capitalized at any reasonable prospective off-take from small herds (see the discussion in Insert 45).

Fewer and larger individually-owned herds could provide an answer, but the individual ranches for those herds would need to be very extensive indeed. This will generally imply the forcing of large numbers of small stockowners off the range. This may not be politically acceptable. And to date, the production experiences on such large ranches have been disappointing.

In Botswana, the Tribal Grazing Lands Policy (TGLP) is an extensive program of enclosure and individualization of tenure for grazing land. The policy is based on classic "tragedy of the commons" arguments, and the example of productive freehold ranches. Between 1975 and 1980 tribal grazing land in Botswana was zoned as commercial (53,411 km^2) or communal (189,829 km^2). The unzoned area was 134,062 km^2. The commercial areas, most of which were in the western sandvelt, were to be demarcated into ranches of 64 km^2 each, to be leased to large cattleowners (usually those who owned boreholes in the area) on fifty-year leases at nominal rents, renewable at the lessee's option. The sandvelt, a very sparsely populated area once used primarily by Bushmen, had been opened to grazing by large cattleowners in the last generation through the introduction of modern borehole technology. By May 1984, 368 ranches had been demarcated, 218 allcoated, and 131 leases signed; 80 ranches were under development with loan capital provided by the World Bank through the National Development Bank. Communal and reserved areas were to be administered as before, as commons, but it was claimed that they would benefit from the removal of large herds from communal areas onto the ranches.

TGLP is at a crucial juncture. It has been criticized on several grounds: (1) that the zoning exercise seriously overestimated the extent of unutilized grazing land and in particular ignored use rights of the Bushman minority; (2) that the distributional consequences are inequitable and foreclose expansion by smallholders into areas they will need in coming years; and (3) that there is a lack of evidence both in precursor projects and under TGLP to date that projected increases in investment and production on the ranches will be realized. (See the ILCA evaluation of the World Bank's Botswana Livestock II Project, implementing TGLP, Insert 46.) The program has not been generally popular. Implementation has been slowed by foot-dragging by some land boards, which have in certain cases re-zoned areas from commercial to communal. A major expansion of the program is currently under discussion between the Government and IBRD.[136]

If in some ecological zones it will likely be necessary to maintain communal grazing indefinitely, how can we deal with the prospect of a "tragedy of the commons?" Stanford has written that "rational men do not pursue collective

45. The Future of Pastoralist Communal Tenure

While tenure policies have tended to emphasize assignment of exclusive rights to discrete land areas, the circumstances of livestock production for the vast majority of cattle producers require maintenance of some form of communal tenure. In fact, in most pastoral economies, livestock production and use of grazing commons are still inseparable for two main reasons, the first of which is related to problems of herd size. The great majority of livestock holdings in Africa are small, fewer than 100 head of cattle (FAO 1975). No single production unit could capitalize a ranching operation including water supply, with such small holdings, especially given the noncommercial orientation of many producers. Of course, the group ranch concept offers the economies of scale necessary to finance ranch development, but in most cases critical issues of asset management and herd disposition have not been successfully resolved.

Second are ecological reasons that militate against imposition of systems of individual land rights to replace communal tenure. Livestock production in semi-arid savannah areas is a land extensive enterprise, typically requiring quick response to highly variable rainfall patterns. Land tenure must take into account the variable environmental base. Hence, we should not be surprised that transience of resource use is a near universal condition as specific land resources can normally only be expected to have use value for limited amounts of time each season. The timing of this use will depend on type of animal, seasonal variation and so forth, which in the Sahel, for example, results in different groups utilizing the same resource base at different times during the year (see Gallais and Boudet (1980) for a project design that explicitly tries to deal with this factor). Transiency will remain de facto an essential component of most tenure systems, if not de jure . . .

The conclusion is that while the number of options for making production more efficient are severely limited, existing circumstances virtually dictate that some form of communal tenure will have to continue at the present time regardless of the tenure reforms proposed. But, we hasten to add that the existing situation, characterized by a virtual absence of grazing controls, widespread land degradation, growing impoverishment and inequality among producers, does not provide the elements of a long-term communal tenure model of great inherent promise. Furthermore, the changes affecting African pastoralism are not well dealt with by the institutional resources of traditional society. In fact, the atrophy of traditional mangement rules

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is but another symptom of the changes that are overtaking the pastoral sector. Thus, new models of communal tenure must be designed to meet emergent circumstances of pastoral production and resources use.

Steven W. Lawry, James C. Riddell and John W. Bennett. "Land Tenure Policy in African Livestock Development," in Livestock Development in Subsaharan Africa: Constraints, Prospects, Policy, James R. Simpson and Phylo Evangelou (eds.), (Boulder, Colorado: Westview Press, 1984), pp. 245-259; at pp. 247-248.

doom; they organize to avoid it,"[137] and the problem of management of the commons is essentially one of how to organize and enforce limitations on pasture use. The task is not insuperable; there are cases of successful commons management, such as communal pastures in the Swiss Alps and traditional communal grazing in highland Ethiopia. Several possible steps are offered here for consideration: (1) reducing the area grazed by a group, so as to obtain a more feasible management area; (2) defining the appropriate group to hold commons rights over the new management area; (3) creating or appropriating the local institutions necessary for effective management; (4) devising means of limiting and controlling grazing; and (5) developing adequate reenforcing, coordinating and sanctioning linkages with institutions of government.

Reducing the Commons Area

A commons is difficult to manage partly because of the difficulty in monitoring use. The larger the commons the more difficult the monitoring and thus the management. Insofar as the creation of new wells and other water points or some use of fodder can reduce the extent of necessary movement of herds, the commons can become smaller and more manageable. Planning should of course be on the basis of bad, not good years.

Defining the Group

One does not define area and group independently. Often a project will wish to work with pre-existing social units and will need to find a match between a manageable size of commons and a level of social organization at which it appears feasible to institutionalize pasture management successfully. If a project uses a pre-existing group such as the clan, it opts for a solution which is inclusive of all stockowners. The group may already be recognized as capable of having an exclusive grazing territory, or this may need to be established. One may also get a leadership which owns large herds and is not especially interested in limiting pasture use. Alternatively, the group can be organized from "volunteers" as with some grazing associations,

46. An Evaluation of Commercial Ranches in Botswana

The failures of TGLP [Tribal Grazing Lands Policy] as a planning guide rather than a simplistic political platform have been noted already, and its curious unwillingness to state priorities have allowed a reversal of its principles (an alternate reading, at least) in which commercial zoning comes first not last. The Senior Rural Sociologist in charge of monitoring TGLP notes that by now some 300 ranches have been demarcated, to go to "over 500 farmers" but at the cost of seriously disrupting "10-20,000 people (who) currently occupy or utilise the land." These figures may in good faith be debatable: a number of ranches get demarcated but never get allocated; farmers who get ranches also have families and dependents and it is not fair to count them merely as individuals if the dispossessed are to be counted in total; the numbers of those affected by ranch demarcation are still very imprecisely known. That does not alter his fundamental point that virtually all persons so far allocated ranches dispossess the people there; that for the ranchers exclusive use rather than commercial use best defines their immediate concern; that dispossessed people will be removed to (definitionally) already overcrowded communal areas; and that for some of the dispossessed (hunter-gatherers) such translocation means total disruption of their way of life and major diminution of their capacity to survive, even though they--like the ranchers who move them out--are also Botswana citizens. This preoccupation with commercial ranches leads also to continuing pressure on unzoned areas, usually as requests for borehole permits, which later can be used as preemptive claims for ranches. By default it also leads to practical neglect of communal areas, since so much attention is concentrated outside them.

The highest cost of commercial ranch development, however, lies in the TGLP assertion that it would be a constructive means to relieve overcrowding of the communal areas; and in the matching LP2 assumption that increased livestock reproduction on privately owned ranches would lead to increased offtake from the ranges and thereby to increased livestock production. These linked assumptions now appear to be false in that they do not occur of their own accord and cannot, in present Botswana conditions, be enforced. In acquiring a commercial ranch, an individual excises part of, but does not give up his rights in, a communal area. Examples already exist from Ngwaketse (and possibly elsewhere) of commercial ranchers overgrazing their own holdings, then turning their animals out onto the communal areas; or following a seasonal strategy of wet season use of communal areas, followed by a dry season retreat to their exclusively owned ranches. Apart from being a wilful abuse of TGLP policy, such actions are totally uncontrollable and not even illegal at the present time. Once again the TGLP White Paper is as much formula for disaster as plan for enlightened resource use.

Solomon Bekure and Neville Dyson-Hudson, ILCA, "The Operation and Viability of the Second Livestock Development Project (1497-BT): Selected Issues" (Gaborone: Ministry of Agriculture, 1982), at pp. 30-31.

including some community members and excluding others. In such a case the project may get a more enthusiastic membership, and one more easily targeted by extensionists and other technicians. But the project must also create an organization from scratch, obtain a recognition that it can hold exclusive land rights, and establish its rights with respect to a particular piece of land. Any one of the three can be difficult, and often a project goes forward with apparently little thought having been given to them (see the evaluation of an AID-funded group ranch effort in Botswana, Insert 47).[138]

Creating Management Institutions

Once the group has been decided upon, a critical examination of its institutions is required to determine their capability and potential as pasture management institutions. In some cases traditional institutions may be able to manage quite well, particularly if they receive the support and assistance which they need from government. In other cases they may have deteriorated to a point where they seem beyond restoration, and thus a new institution must be created. In addition, government may consider traditional institutions in some highly stratified societies so unresponsive to the needs of the majority of stockowners that, however strong they may be, new institutions must be created to replace them.[139]

In creating or restructuring such institutions, particular attention must be paid to the institution's legal capacity to own land and the security of the title it receives in the pasture. The institution must have legal personality and be capable of representing its members and commiting them as a collectivity to enforceable contracts with the outside world. Internally, it must have a sound decision-making mechanism, an effective executive, and means of requiring member compliance with its decisions. Commonly, a range management project will be asked to chose among several institutional alternatives recognized by law (associations, cooperatives, corporations). This may be necessary as an interim measure, but preferably there should be special legislation for grazing associations or whatever other institutional form is preferred.[140]

Controlling Grazing

It should not be assumed that a group with a commons of manageable area and appropriate management institutions will automatically initiate proper pasture management. Sometimes the project and beneficiaries see the purpose of land tenure exercises differently. In East Africa, group ranches were organized by government for pasture management purposes; the beneficiaries, however, appear to have cooperated less out of a felt need to conserve the pasture than out of a desire to establish a clear title to land in an atmosphere of rapidly escalating competition for land. Group ranch members have tended to continue to use commons not yet brought under control of a group ranch, excluding others form their land but avoiding the need to rationalize and intensify use of their land (see the Kenyan experience, Insert 48). This tendency may have one beneficial effect in the long run, in that it places pressure on nearby commons users to themselves form group ranches. This may eventually force the more careful husbandry of the ranches hoped for by government, if ranch sizes have been set realistically. But time will be required, and expectations should be modest.[141]

47. An Evaluation of AID's Group Ranch Effort in Botswana

. . . (T)here could have been much more achieved than was achieved had there been clearly defined government policies . . . To what extent should there be government subsidies when, as it now appears likely, economic analysis indicates that the costs for development cannot be borne by the collective group? What forms should subsidies take, if they are accepted as a principle, to minimize feelings of dependence among the recipients and how should they be mixed with individual and group effort? How may the benefits of ranch development be spread to the whole community when many village members do not own cattle? How should government deal with ranch development problems for a community where arable agriculture is of significant proportions? What legal and statutory requirements are there for implementing programs when these matters of policy are defined? These are some of the questions that require resolution and agreement. During our interviews it was evident that no consensus existed on these matters among GOB officials . . .

There has been considerable uncertainty as to whose responsibility it is to organize groups. Is it the team's responsibility, the rural sociologist, or that of field service (extension) staff? This uncertainty has led to a lack of continuity in the development of group organizations. The team lacked the expertise in group formation and relied upon the Regional Agricultural Officers and their staff who were uncertain of the role they were to play . . .

In addition to the lack of expertise in group formation there was also a problem of adequate enabling legislation. While this is a legal rather than social issue it does have social ramifications. There is no legislation to give groups legal status except the Cooperative and Company Acts, neither of which is suited to large communal areas with a great number of people and limited assets. Communal ranch organizations need a system where farmers can organize with a minimum disruption to their traditional ways. These groups, once organized, need representatives to speak on their behalf with recourse to legal action to alleviate the fears that their traditional grazing lands are being whittled away by the large commercial livestock holder.

The failure of the Government of Botswana to provide legislation has certainly hindered ranch development, for without proper legal status loans cannot be approved. It is critically important that the legal problems that now becloud the syndicate form of group organization be clarified. This organizational form appears best suited in

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many ways for small owner participation in communal groups but the present size limitation and the liabilities of individuals under present laws make it inadequate at the present. Companies and cooperatives are clearly fixed in law, but they do not suit all circumstances. Some members of the Preparation Team for Livestock II (World Bank loan) are aware of the needs in this regard and are pressing for resolution of the problems involved, but not all officials we contacted in GOB agree with this need.

Consortium for International Development, "Evaluation of the Botswana Range Management and Development, USAID Project No. 690-11-130-015," 1976, at pp. 16-19.

What are the mechanisms that can be used to limit and control use of a commons? A stock quota for each stockholder entitled to use the commons is one option, attractive for reasons of equity, but quotas are notoriously difficult to design and to administer. They are probably only workable it one is dealing with a relatively small commons. Because the children who have traditionally monitored commons use in many African societies are increasingly in school, monitoring is becoming a more costly activity. An alternative is to close key areas entirely to stock during certain periods, an administratively simpler task than administration of quotas. The Arabian hema system is receiving considerable attention now as a system of resource reserves sanctioned by Islamic law and successfully applied as a planning tool in Syria. A third approach is to implement quotas or other limitations not with respect to the commons as a whole but with respect to specific critical resources, e.g., water sources, or essential dry season grazing. Effective monitoring and control at critical points of access to scarce resources can sometimes effectively control grazing over a much larger commons. Finally, in the case of very large commons on which ecological conditions require continued overlapping use by different groups, it will be necessary to think in terms of tools such as land use planning and coordination of use through government or project-mediated agreements between groups. One model to be considered is the "code pastorale;" an indigenous example is the Dina of the Peul in Mali, which established routes and timing for migrations by sections of the tribe. The Sudan's long experience with government mediation among different tribes of pastoralists deserves careful consideration.[142]

Linkages with Government

Whatever the institution chosen to provide pasture management, it will need the support of the government. Older institutions will often be debilitated, newer institutions frail and uncertain of direction. Their leadership will

48. The Group Ranch Experience in Kenya

(Under the Kenyan Group Ranch Project) Maasai herders were granted freehold tenure to pasture. The planners saw in this action a means of transforming the pastoral production system based on open access to pasture into one in which groups of herders would be responsible for specific areas of pasture or "ranches." The Maasai also favored the granting of freehold tenure, but to them it was a measure to restrict further encroachment by sedentary cultivators on the rangeland. Thus there was a coalition of interest on the means of the project but not on the ends which are to be achieved.

The creation of group ranches composed of persons with freehold tenure to the range led to a number of problems. It was hoped that the freehold land would serve as collateral for loans with which the group ranches might be financed, but it proved politically untenable for these mortgages to be foreclosed and their owners evicted for default. Consequently, there was little debt repayment and loan funds to group ranches ceased to be available. Furthermore, the 60 percent majority required for decision on important matters meant that minority coalitions could form to block group action. The ultimate danger, however, is that freeholders will alienate individual portions of the ranch. While this has not yet occurred, it is a clear possibility, and the loss of a significant segment of the total range would compromise the ability of the ranch to survive. Pastoral herding in low rainfall regions requires a very large territory within which the animals may graze. Pastoralists must have assured access to enormous tracts of land; if these are not provided within the project they will have to find them elsewhere.

Institute for Development Anthropology, "The Workshop on Pastoralism and African Livestock Development," Program and Evaluation Report, No. 4 (Washington: USAID, May 1980), at p. 30.

need support in enforcing policies and, if necessary, in sanctioning violations of rules. Good linkages with both local government and judicial institutions will be necessary. Ultimately, it probably matters less that the institutions created for pasture management have a predominantly private or public character and more that linkages to government be supportive, and yet allow considerable institutional freedom of action.[143]

6.4 Forestry, Fuelwood and Resource Conservation Projects

Most trees are very slow-maturing crops and, at least as regards land tenure issues, this requires that they be treated differently from other crops. Because of the costs often involved in tree-planting (often including significant opportunity costs), because of their long-term nature, and because they increase the value of the land upon which they have been planted, the tenure issues raised by tree planting resemble more closely those raised by digging a well than those raised by the introduction of a new maize hybrid. They will vary dramatically depending on how the land upon which they are planted is held. The discussion which follows is organized according to whether trees are to be grown on individually-held land, on state land, on community land, or on unowned waste land.[144]

On individually-held land, the issues which should be anticipated are similar to those about which planners should be concerned as regards any major investment in the holding. Trees represent a major change of land use, one which will often be prohibitive of other, less-intensive uses, and tree-planting thus has potential for creating conflicts among members of the same community and between communties. In addition, where insecurity of tenure exists it would appear an obvious impediment to a long-term investment such as tree-planting. In fact, the empirical literature on the point is confusing. On one hand, indigenous land tenure systems which confer important land management rights on a lineage or community may create disincentives for tree planting. In some communities, trees may revert to the clan on the death of the person who has planted them, rather than to his or her family. Where tenants or others are using clan or community land by permission, they may be barred from planting trees as an act inconsistent with their precarious tenure. Even tree planting by those with allocations in their own right may be resisted as interfering with the rights of reallocation of chiefs or other traditional authorities, and in some societies prior permission is necessary to plant trees. Not uncommonly, concerned observers conclude that existing tenure systems pose an unacceptable degree of ambiguity and that private rights of landowners in trees must be strengthened.[145]

But the literature is also replete with examples in which, having succeeded in planting trees, holders with temporary or fragile titles have enhanced their tenure, usually at the expense of the group. In some cases, tree-planting seems partly motivated by the desire to create or preserve tenure, to peg down a holding. Commercialization of a tree crop may provide another element of incentive, and the establishment of plantations can be a critical step in the transition from shifting to stabilized cultivation, with trees defining permanent holdings. This process has been well documented in West Africa, where the process took place in spite of the fact that many of the tree-planters were initially "strangers" holding the land by permission. Tree-planers take advantage of the almost invariable customary rule that land

under crops cannot be reallocated, and staggered replanting makes the right virtually perpetual. Tree planting may initially be discouraged by insecurity of tenure but once there emerges a sense that rights in trees will be protected, tree planting can actually produce security of tenure.[146]

This produces some odd results in project contexts. In Ivory Coast, farmers rejected government efforts to get them to intensify cocoa production because land-extensive cocoa production allowed them to claim larger areas of land. In Bong County in Liberia, farmers seized the opportunity to grow project-supplied cocoa and coffee seedlings in part because the trees would clearly establish their use of the land which was technically owned by government, and prevent government from selling it to speculators from Monrovia, and because they assumed the donors would exert pressure to keep the trees in their hands. (See Insert 49 for an example for the Bong County Area Development Project in liberia.) It is perhaps important to remember that if seedlings are project-supplied at no cost, or on credit which farmers do not expect to repay, the tenure "risk" is absorbed by the project and only the potential tenure gain remains. The issue is one that clearly merits careful pre-project investigation in the particular local context, especially because the balance between tenure disincentives and tenure incentives for tree planting may be fairly fine and potentially influenced by project educational and other promotional activities.[147]

It should also be noted that tree-planting projects can have important distributive impacts. Because tree-planting can in some circumstances create tenure, distribution of seedlings in large numbers to a relatively few people can result in land-grabbing with trees. When there have been share-croppers on the land, plantation forestry can result in serious displacement. Where holdings are very small, the introduction of tree-crops may be difficult for smallholders who need to keep a good part of their land in subsistence crops. Agroforestry fortunately offers opportunities for integrating the introduction of trees with continued production of food crops. Distributional impacts may occur within the family as well. If the seedlings are given to men to plant, their products can become men's property even if women have traditionally controlled use of tree and forest products in that society. Rights to tree products and wood as between men and women can also be affected by the land use niche in which trees are planted; e.g., trees planted in women's house gardens will most likely belong to women. Distribution of cash income from tree crops can be directly affected.[148]

A final caution is required. Much of what has been said so far assumes that trees belong to the person upon whose land they grow, and at this point it is important to indicate that that assumption will not always be valid. In Western law, trees are "fixtures," "permanently affixed" to land and assumed by law to belong to the owner of the land unless there is a contract specifying the contrary. But it is not unusual for indigenous systems to recognize "tree tenure," at least partly distinct from land tenure. A tree may be owned by someone other than the owner of the land, usually the person who planted it, or it may be co-owned by the land-owner and someone who provided the seedling and planted it, and someone whose pump has watered the tree. This is the case with date-palms in the northern Sudan, and the Islamic rules of inheritance can often result in co-ownership of a tree by several dozen persons, only a few of whom have any claim to the land on which they stand. In addi-

49. Insecurity-Encouraged Tree Planting in Bong County, Liberia

More generally, an apparent deep and far-reaching reservoir of intergroup distrust impedes the task of promoting cooperation in the interests of rural development, distrust reflected in part in land tenure relationships. This is particularly the case in Lofa where five distinct ethnic communities retain a strong sense of their respective cultural identities. For example, the team learned indirectly after its farm-level interviews in Lofa that even though our respondents fully understood what we said were the reasons for our visit, they nevertheless wondered if we had really come to assert a claim to their lands. One village group we spoke with, apparently expecting that we would offer some token of appreciation for their granting us an interview, resolved among themselves during the interview that they would accept no such gratuities. They apparently feared that to do so would be taken by us as compensation for access to their lands. How much greater must be the distrust in Bong where the loss of land to "big men" from Monrovia has been so much more extensive than in Lofa!

The increasing land scarcity resulting from steady population growth can only intensify distrust stimulated by land tenure insecurity. In the absence of effective policies to reform and regularize land tenure practices, villagers may be taking matters into their own hands while undertaking project-supported agricultural development. One reason that villagers have chosen to plant new coffee and cocoa trees is that such "permanent" tree crops represent a more secure claim to land than does shifting rice cultivation. A certain level of insecurity and distrust may induce entrepreneurial initiative, but beyond a certain point it can also lead to profound and destructive social disintegration. The objectives of rural development in areas such as Bong and Lofa must be to recognize villagers' motivations for what they are and, through such measures as land reform, channel them toward developmental objectives rather than allow the chaos that might otherwise occur.

John W. Harbeson and others, Area Development in Liberia: Toward Integration and Participation, AID Project Impact Evaluation, No. 53 (Washington, June 1984), at p. 6.

tion, different tree species may be identified by custom as "men's trees" or "women's trees." (Insert 50 catalogues the problems which can result from ignoring tree tenure.)[149]

What are the implications of tree tenure for projects? First, where tree tenure distinct from land tenure exists, it can have significant impacts on the distribution of the benefits of projects. Second, in a situation of insecure tenure it may offer an alternative basis for security in trees and may be a potentially valuable project design tool. On the negative side, insofar as it involves co-ownership of trees it can dilute incentives for both tree planting and good husbandry and provide a fertile source of disputes.

On state-owned land the nature of tenure issues will vary depending upon the extent of the state's claim. It may assert exclusive tenure and direct management, or it may assert only a residual right to land unused, unoccupied, etc., recognizing use rights but not full ownership by traditional cultivators. If the latter is the case the situation of the farmer seeking to plant trees will be that of most farmers of individually-held land, though his tenure may be less secure because the state may reserve the right to take the land with little or no compensation for project or other purposes. Where investments are protected, trees may be used to enhance tenure in land against the state in much the same way it is used against the community in indigenous tenure contexts.[150]

The state is also interested in the growing and preservation of trees in forest reserves, national parks, game preserves, biosphere reserves, etc. These are areas where the state actually manages, or at least seeks to manage, the use of the land. Creation of parks and reserves often involves displacement of traditional users, and this must be planned for and ameliorated. This may involve changes in indigenous tenure systems in the surrounding area, to provide those displaced access to alternative land. Another option is to provide employment for some or all of those so affected on the reserve. Under taungya systems, farmers are allowed to grow crops in combination with seedlings of economic trees, generally abandoning food crops when the trees reach a certain point of maturity, and moving on to new areas which require replanting. The system can be exploitative, however, and consideration should be given to variants which provide participants with greater security of tenure and economic expectations generally.[151]

When trees are grown on commons areas (land of lineage, clan or villages which has not been allocated to individuals or households), complex tenure issues arise. Such tree planting falls under the broad rubric of "community" forestry, and usually involves planting of rapid growing species on modest tracts of common land, perhaps as village woodlots, or on margins between fields or along roads. Often their initiation is government-assisted, with little initial investment required of the community.

Such projects have a poor record. Sometimes the community-owned seedlings have been neglected because a duty of care on the part of the community has not been translated into a duty on the part of someone in particular, with no individual having an adequate incentive to care for and protect the trees (see Insert 51). Arrangements for eventual use and distribution of benefits from the trees have in some cases been painfully vague, and the uncertainty of

50. Tree Tenure and Agroforestry Projects

In any agroforestry system tree tenure issues must be carefully examined to avoid the following problems.

1. The loss of rights may result from an agroforestry project as a consequence of a number of factors:

(a) The project may disturb or destroy rights to other uses of the land or the trees on it . . .
(b) Certain practices for cultivating and protecting trees may result in the loss of gathering rights.
(c) When the value of trees is increased there is a tendency for both land and tree tenure to shift from communal to private holdings . . .

2. The protection of the trees can be a problem. The ability to exclude others from the use of trees and tree products is essential if tree planters are to reap the benefit of their investment . . While one may have a legal right to prevent others from using resources including trees, in communities based on a system of reciprocal rights and obligations this is often very difficult to do. The personal or institutional capacity to enforce exclusionary rights may be very small indeed . . .

3. Certain categories of users may be unable to participate in the project because they do not have the right to plant or own trees. This is likely to be true of the landless, those with temporary claims to land, and women. In many places, these three categories singly or in combination will comprise the majority of the population. Thus, a project which does not take this into account may end up serving a relatively advantaged minority of the population, or such a project may be destroyed by those who are excluded from it.

4. Because trees can be used to establish rights to land, it is necessary to monitor who is planting project trees where. Agroforestry projects can be used by private individuals to establish private claims to communal land. Similarly, it is necessary to ensure that the community accepts the planting of trees on community land for otherwise disenfranchised people.

Louise Fortmann, "The Tree Tenure Factor in Agroforestry with Particular Reference to Africa," Agroforestry Systems 2 (1985): 229-251; at pp. 240-243.

51. Community Woodlots in Lesotho

In contemporary conservation planning units, as with all conservation efforts in the past, the management of the land upon which trees are planted and the protection of these trees are entrusted to the chief and people . . . (Controls) remain dependent upon the authority, commitment and vigour of the chief and, to an increasing extent, the statutory and ad hoc committees which advise him on land and conservation matters respectively.

The quality of land allocated for woodlots in Lesotho has always been marginal. Trees are the peripheral land use considered only when superior uses - crops, grazing and residential sites - are inappropriate . . . Philips (1973, 23) warned that

> ". . . it must be borne in mind that the establishment of woodlots enjoys little or no priority; that cultivated and cultivatable land holds priority for its retention for field crops and that, according to the local setting and pressures of live-stock, communal pasturage possesses a particular significance in the tradition of the people."

Although almost all the land put forward to the LWP by villages has fallen into Bawden and Carroll's (1968) "unsuitable for agriculture" category and is viewed by the project as unsuitable for grazing (P.W.T. Henry, pers. comm., 1984), there is little doubt that despite its marginality it is often viewed as a grazing resource by part, if not all, the community. When dissension arises (see below) over the expropriation of land for woodlots, this is the principal cause.

. . . Damage to woodlots has been a continuous, but not overwhelming, problem in the operation of the LWP. It has mainly taken the form of grazing, to date. Woodlots are mostly fenced, and the fences are sometimes cut. There has been some debate within LWP as to whether fencing is necessary, given that in Lesotho animals are always herded, fences are easily cut and grazing damage is almost always intentional rather than accidental (Baines. 1981, 36), but the current policy is that it is. At a later stage in tree growth grazing is beneficial, as in keeping the grass within the woodlot down it reduces the fire risk. The problem of unathorized cutting of wood will presumably increase as more woodlots reach maturity. Most of the current damage is by individual stock owners and herdboys seeking grazing for their animals and unimpressd by the need to protect the woodlot. This is exacerbated in drought years like 1983. There has

(continued)

(Insert 51 continued)

also been some more premeditated damage. In some communities woodlots are established in the face of considerable opposition, usually from stock owners who resent the reduction in grazing land caused by the establishment of a woodlot. This opposition is usually contained, but occasionally leads to the destruction of fencing and of young trees.

S. D. Turner, "Land and Trees in Lesotho," (draft) (Roma: Institute of Southern African Studies, National University of Lesotho 1984), at pp. 14-19.

returns have led the community, with a sense of skepticism soundly based in experience, to regard the whole exercise as unrealistic. In other cases, the benefits of a successful project have been appropriated by the wealthy or by community leaders.[152]

We have already seen that the decision to plant trees on individual holdings does not eliminate the relevance of the community (in the form of the land administrating groups). In addition, there will be situations where (1) individuals cannot for reasons of landlessness or other reasons plant on their holdings, and forestry on commons is the only option for reaching large numbers of farmers, (2) the trees are of species that require frequent and complex care, perhaps special equipment, more easily handled by a few trained individuals representing the community, or (3) it is specifically desired to generate income to fund needed community activities. And even where trees are to be grown on individual holdings, the nursery may well be on a commons area.

In these circumstances project planners must think in terms of (1) development of institutional arrangements for protection of the trees, (2) clear provisions on benefit distribution in the long term, and (3) short-term incentives for good husbandry. The issues with respect to institutional mechanisms for the management of a commons are similar to those raised in the section of this paper on common pasture. (They are somewhat simpler the because trees as well as the land are community property, subject to a single management, and because monitoring of use is easier.) Much community forestry has worked with existing social groups, often by default because little thought has been given to what the "community" responsible for the trees may be. Recently, it has been suggested that there is a need for more attention to utilization of institutions in which membership is voluntary, or in which certain selection criteria are employed and certain commitments of labor or funds are required. (In these circumstances the group may need to obtain land from the commons on an arrangement such as a lease or at least a special allocation.) However the group is organized, the manner in which trees will eventually be disposed of and benefits distributed must be very clearly spelled

out, and clearly legally binding. In the experience with community forestry to date, there is a strong strand of peasant skepticism that they will even derive any benefit from what they often perceive as the government's trees, and even a concern that government tree-planting is an attempt to take from the communities concerned the land on which the trees are planted. The purpose of short-term incentives for protection of the seedlings is to avoid the consequences of such uncertainty about returns on the project in the mind of the community, which may be difficult to dispel except by experience. These should be incentives for individuals selected by the community to care for the trees, and can involve mechanisms such as a cash premium for a high rate of seedling survival.[153]

The most important point to make about forestry activities on waste or unclaimed land is that they almost invariably involve a serious misconception as to the status of the land. Almost all land, however marginal, is used in some way and thus subject to customary rights. The displacement of these activities and their consequences should receive careful consideration, particularly because they often involve women and the poorest members of the community. Apparently unused land which is not clearly community owned or state-owned is an anomaly which should be approached very cautiously. Often some group has an arguable if dormant claim and will come forward if the land becomes valuable. Continuation of such an ambiguous legal situation as the project goes forward will only invite claims by the powerful, and can result in the "hijacking" of the benefits of the project. All possible efforts should be made to clearly establish title to the land in the community, the state or preferably the beneficiaries before moving ahead with a project on such land.[154]

6.5 Other Project Contexts

Interactions between project activities and indigenous land tenure can turn out to be important even in project contexts where the relevance of land tenure is not readily apparent. Two cases are offered as examples here: market road construction and in agricultural demonstration and on-farm research trials.

AID evaluations of rural road projects, usually planned with marketing objectives in mind, have shown that new rural roads have generally led to increases in land values, with land nearest the road increasing in value the most. Where tenure insecurity and poor access to transportation and extension services made it hard for small farmers to compete with the wealthier farmers and entrepreneurs, there have been desirable shifts in land ownership. Where poorer farmers had secure tenure and were able to compete with larger farmers for agricultural inputs and services, displacement did not take in spite of major increases in land value. This was apparently the case in Kenya, but significant displacement took place in both Liberia and Sierra Leone. (Insert 52 is from the Liberia evaluation.)[155]

The Liberian experience is described in an excerpt from the evaluation. The land-grabbing it describes seems likely to be widely associated with rural roads in Africa because the land tenure situation described is common: holders under indigenous tenure on land whose ultimate ownership is claimed by the State (see section 4.6). The State has the power to distribute such of that land as it determines is unutilized, and it is this power combined with corrup-

52. AID Rural Road Building and Beneficiary Displacement in Liberia

When a new road is constructed in a previously isolated area, local farmers are initially elated. They can now more easily send their crops to market, their children to school, and their sick relatives to hospitals. However, as soon as roads are announced--or even rumored-- speculators rush to obtain deeds. After the more recent AID-financed Rural Roads III project was publicly announced, for example, local people reported that large parcels in the Bopulu area were quickly deeded, primarily to outsiders. A growing number of those private purchases as well as some large government plantations, especially near the older A.I.D. roads, are displacing small farmers who had land near the roads.

Politically prominent individuals from the coast have historically been the most aggressive land buyers, particularly in Bong County which is most vulnerable because of its proximity to Monrovia. Even in more distant areas, coastal people now use their positions to pressure local farmers and chiefs into selling them land. In one case a chief who refused to allow a "big shot" to buy hundreds of acres of tribal lands along a road was evicted from office by high officials who trumped up charges against him: one of which was that he was "against development."

However, because such tactics are heavy handed, outsiders prefer more subtle persuasion methods whenever possible. One strategy used by coastal people is to claim tribal ethnicity. Many of these claims are indisputable, but bear a certain irony because until recently, people with aspirations of social mobility vigorously denied their tribalness as they strove to blend into "civilized" society.

Another strategy is for an outsider to tantalize villagers with the possibility of building a road if they allow him to purchase land in the area. This, of course, is strong bait. Officials with ties to the county government, the Ministry of Public Works, or international donor agencies are especially likely to arouse the interest of villagers with such promises. We heard of many cases, moreover, in which chiefs actually offered land to important national officials from whom they sought powerful patronage ties, justifying their actions to fellow villagers in the name of "development."

Richard Cobb and Others, Liberia: Rural Roads, USAID Project Impact Evaluation No. 6, June 1980, at pp. 13-14.

tion and poor administration that makes such land-grabbing possible. The problem could be dealth with by requiring a moratorium on sales or allocations of land along the route, and confirmation of the titles of existing users. Major infrastructural projects other than roads have a similar potential for affecting land values and causing displacement.

There are also some important interactions with land tenure in both agricultural demonstration exercises and in on-farm research trials. Extension staff have long sought assiduously to ensure certainty of tenure over their demonstration plot. Such plots are often taken on lease or some other unfamiliar arrangement from unallocated community land. One of the effects of this, of course, is to create an atypical tenure environment for the demonstration which limits its validity as regards eventual replication on farmers' fields. On-farm trials do sometimes raise tenure issues, a point which has recently been highlighted by experience with on-farm alley cropping in Nigeria.[156]

7. DEALING WITH LAND TENURE IN THE PROJECT CONTEXT

How can we increase the likelihood that tenure issues are recognized early in the project design process? And supposing we recognize tenure issues and want to plan for them, what are the options for dealing with them in the project context--as opposed to the national land policy context?

7.1 Recognizing Land Tenure Issues

Project planners cannot plan in ways which deal effectively with a tenure issue unless, first, someone recognizes that the issue exists. It not only needs to happen but needs to happen quite early in the project design process, preferably at the project identification stage. Tenure insights identified later, for instance, in social soundness analyses at project paper stage, tend not to be integrated into project planning. This is sometimes due to poorly managed and integrated project preparation teams; the social scientist and others go their own ways, consulting quite different sets of people, and no one ever really integrates what they have learned. The social soundness analysis becomes an appendix to the project paper, and is often quite literally an afterthought. By the time it is prepared a project idea has acquired a good deal of momentum both in the USAID and in the minds of host country officials with whom it has been discussed.

Who is responsible for recognizing tenure issues? In most cases, the burden of noticing in the first instance that a project has tenure implications rests with the one or two people in USAID who have primary responsibility for the project idea. If the project is large and the project identification exercise more complex, others will be involved, but it is not likely that they will include a tenure specialist unless the responsible officer in the mission asks for one.

Sensitivity to land tenure issues varies considerably among AID staff. Because land tenure is an interdisciplinary study, the variance is explained

more by accidents of experience than by differences in training and professional background. For instance, AID staff who in the 1960s or early 1970s were posted in Ethiopia, with its acute and complex tenure problems, are in general more acutely aware of land tenure issues than their colleagues. In AID and other donors, an attempt is being made to increase awareness of tenure issues (see Insert 53).

If a project idea involves potentially serious land tenure problems, the responsible AID officer may hope that alarms will be sounded by officials of the concerned ministry or host country professionals working with USAID. Their comments can be invaluable, but there are two problems that need to be noted. First, AID staff responsible for agricultural development projects often deal quite exclusively with the Ministry of Agriculture. This may not present a serious problem if there is a Lands Division or Land Tenure Section within that Ministry with responsibility for tenure policy, as is sometimes the case. But at least as often, responsibility for land tenure policy and the relevant implementation capacity reside elsewhere, in a Ministry of Local Government and Lands, a Ministry of Lands, Mines and Natural Resources, a Lands Division in the Ministry of Interior, or even in the Office of the President. A USAID's familiarity with these other ministries may be sketchy and easy access to relevant local expetise thus limited.

Second, local counterparts and colleagues can be reticent on land tenure issues. The degree of reticence differs from place to place and depends on the nature of the tenure issues. The reticence has several sources. A local colleague may feel awkward about raising a tenure problem which has its basis in conflict or competition between ethnic groups. It may strike him as embarrassing, or "political." In addition, he may have a responsibility for encouraging the funding of the project. If he suspects the tenure issues will seriously complicate achievement of the project objectives, he may decide not to raise them before a funding decision is made, and hope they can be sorted out during implementation. Finally, there is sometimes a reluctance to raise tenure issues with a foreigner just because the national considers it unlikely that their subtleties will be appreciated. There is a fear of a bull-in-the-chinashop reaction.

Often, the reticence is fortunately only a reticence to <u>raise</u> the matter. Once it is raised, these local informants are likely to be the project planner's best and often only source of information in making a threshold decision as to whether a tenure problem is serious enough to justify calling on specialist expertise. But it is often necessary to ask, and sometimes to ask insistently, to get a frank assessment.

If so much hinges on early recognition of tenure issues in a project, how can we increase the likelihood they will be recognized? Sensitization of project and other USAID staff to tenure issues is the only real long-term solution, because they are often the only ones on the spot early in the project identification process. This paper is intended to increase that sensitivity, though a great deal more usefully can and hopefully will be done in this direction over the next several years. Once a problem of serious dimensions is recognized, specialists in land tenure can make useful contributions and should be called upon as soon as possible in the project design process.

53. Land Tenure and Project Design in IBRD Projects

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." The results of this experience were succinctly summed up in 1978: "Compounding the technical problems 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.

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 or 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 . . .

Raymond Noronha and Francis J. Lethem, "Traditional Land Tenure and Land Use Systems in the Design of Agricultural Projects" (Washington DC: World Bank Staff Working Paper No. 561, 1983), at pp. 5-6.

Finally, it must be recognized that once tenure issues are recognized, there is sometimes a reluctance to grapple with them. There are a number of reasons for this reluctance, some of which can be regarded sympathetically. First, the topic is "sensitive," "political." This is often true but in widely differing degrees. Tenure issues are on the whole not nearly so politically explosive in Africa as in Latin America. The polarization of thought along ideological lines, which hangs ideological tags on any move in tenure reform, is not so well developed. Second, the issues are obviously complex and there is a fear that any attempt to deal with them as a precondition for the project would inflate costs and substantially delay the project. In some cases that may be true, but delay, even indefinite delay, should be preferable to a badly flawed project. Third, to deal with tenure issues effectively often means involving an additional ministry, with all the implied problems of turf, coordination and burgeoning complexity.

Faced with these prospects, it is tempting to decide that the tenure issues will not seriously affect the project. We incline to hope that people will change their ways to take advantage of sound opportunities, that culture will bend to accommodate those opportunities. In the long run there is certainly something to this, but it may well prove a vain hope within the time horizons involved in most projects. The changes needed are frequently not just in "culture," but in social structure, and involve vested interests. There is a certain amount of "whistling in the dark" past tenure problems; as an international research center director put it: "I have been glancing back over my shoulder at tenure problems for some time." The fact is that tenure problems are often neither as sensitive nor intractable as they may seem at first glance. What are some of the options for dealing with them in the project context?

7.2 Options for Response

Let us say that we have a project idea and it has become clear to us, fairly early in the project design process, that the project model that we have in mind is not going to mesh smoothly at some important points with the tenure pattern in the project area. What is the range of options available?

(1) Reframe the project activity so that the problem does not arise. That is, find other ways to offer the opportunities, ways which permit beneficiaries to seize those opportunities consistent with existing tenure patterns. This will be the most attractive option in many cases. There is no point in getting involved in tenure change if a little imagination makes it unnecessary (for example, see Insert 54).

(2) Change the land tenure pattern so that the problem does not arise. If the project idea cannot be adjusted to the tenure situation without seriously undermining the project rationale, then this alternative deserves consideration. There are two possible levels of response.

First, it may seem appropriate to attempt to deal with both the tenure issues raised by this project and other problematic aspects of the tenure system in a comprehensive and relatively conclusive manner. This usually implies action at the national level, and often legislation. Land tenure reform may become a precondition for the project or become a major part of the project

54. A Phased Approach to Agroforestry to Avoid Tenure Issues

The problems which can arise in the introduction of alley-cropping into areas with strong lineage rights in land was examined in insert 33 from Raintree. He then goes on to suggest a phasing of the introduction of tree crops as a means of avoiding the tenure problems:

For these reasons, and for reasons associated with the relatively higher labour requirements of the practice (as compared to planted fallows), intensive alley cropping systems are not likely to become very attractive to farmers until the short fallow or permanent cultivation states (3 and 4) of the intensification sequence, when ecological demands and tenure adjustments make it necessary and possible. Again, providing the system is not abused as a way of grabbing excessive amounts of land, supportive tenure adjustments would seem justified.

One way of effecting a smooth adjustment of agroecological and tenure factors associated with alley cropping would be to take a phased approach to the adoption of the system, based on the concept of an "optimal pathway of intensification" (Raintree 1980, 1983, FAO 1984, Raintree and Warner 1985). Starting with a fallow enrichment approach at Stage 2, tree species could be introduced which have both economic and biological fallow improving properties. By planting the selected trees in hedgerows at appropriate between-row spacing (which could be adjusted for effective erosion control on sloping lands), the way would be clear for an intensification of the fallow practice into semi-permanent or permanent alley cropping at Stages 3 and 4. As a final measure of intensification, undertaken under conditions of very high population pressure the the children or grandchildren of the original shifting cultivators, the installed "green manure factories" could be maintained in place and a variety of economically valuable upperstorey trees could be added to the system. In this last phase of intensification the system might come to resemble the architectural complexity and economic efficiency of the multistorey home garden, so often found in densely settled areas of the tropics.

J. B. Raintree, "Agroforestry, Tropical Land Use and Tenure," Background Paper for the International Workshop on Tenure Issues in Agroforestry, Nairobi, May 27-31, 1985.

idea. The project idea may change significantly, and the grounds for its justification may shift. If the project is regional, it may provide a model for tenure change needed on a larger scale.[157]

Alternatively it may seem inappropriate or not feasible, for reasons ranging from political obstacles to limited funds available, to deal with the tenure issues in a comprehensive and conclusive way. The other option is to do just enough to protect the project and its objectives. This approach may prove shortsighted, but in some circumstances it will be the only option.

Often these options (1) and (2) are combined, altering the project idea a little and altering the tenure situation a little--the minimum adjustments needed to achieve a workable accommodation. Such limited change is often best worked out at the project level. (Tenure change at national and project level are discussed at greater length below.)

(3) Avoid the problem by moving the project. Potential tenure problems are often more acute in some localities than others. A recent land tenure project paper from an African country notes the seriousness of tenure problems there and indicates that the AID mission has been able to proceed with its agricultural programs only by "judicious selection of project sites."[158] As that project paper recognizes, however, this is often not the best approach. It may be justifiable if the tenure problem concerned is a problem quite special to the project area first considered. For instance, a project is shifted from District X to District Y because it has been realized that the provincial governor's family owns most of District X and claims more. If this is an unusual circumstance, it is not unreasonable to look for a new project site. But consider another example: In most parts of country Z intense pressure on land has produced a high level of land litigation in a corrupt court system, and there is consequently great insecurity among farmers. A project site is therefore selected in which size of holding is three times the national average, and where the trends noted elsewhere do not yet threaten farmer investment in their holdings. In this case the project is seeking out an atypical situation. Replicability is lost.

(4) Move the project activity to an alternative tenure niche. It has been stressed earlier that a tenure system is a system of tenures, with land serving different purposes or under different uses being held under different tenures ("the horizontal dimension: multi-tenure systems"). Often a potential tenure "problem" can be avoided by shifting the project activity to land where, for instance, security of tenure is greater, or the intended beneficiaries have traditional rights and are more likely to receive the benefits of the activity (see Insert 55).

Of the above options, the one least commonly resorted to is to change the land tenure pattern. Tenure reform presents some special problems and operates within some special constraints in the project context. Because it is problematic and because the particular concern of this paper is land tenure, the remainder of this part of the paper is devoted to the discussion of circumstances in which and means by which tenure change may be accomplished. The following two sections discuss the advantages and limitations of change on two levels: action by national government for tenure change, and project-level approaches.

55. Women and Tenure Niches in Agroforestry Projects

While there are no niches universally used and managed by women, there are some spaces which are more often their domain. Strangely enough the two niches of greatest importance to women are often the closest to home and the farthest away, respectively. Home gardens are located near the center of household activity and common gathering areas (forests, bushland and grassland) are usually peripheral to the home and croplands or to an entire settlement, depending on population density and land use intensity. While the first (intensive land use) is located so as to minimize the opportunity cost of time away from the home, the location of the second (extensive use) minimizes opportunity cost of land and actual labor and management inputs on-site. A closer look at both of these land use types, their relative position in the landscape, and their importance for women, provides insights into general considerations re: spatial and functional niches for women's AF technologies and related needs for tenure and technology innovations . . .

The home garden is uniquely suited for agroforestry projects with women. The limited plot size encourages multistoried systems, while the woman's de facto control and the permanence (or relative permanence) of the site encourage investment in tree crops and site improvement (terraces, manuring, fencing). The small plot size also implies a high ratio of peripheral to enclosed area (Rocheleau), and hence a relatively high proportion of the site production potential could be relegated to multipurpose living fence. The site can also be an ideal place for small livestock such as chickens, or caged rabbits, and may provide residues as feed for hogs or goats confined nearby, or supplementary fodder for a larger milk animal . . .

The communal grazing and gathering areas may be differentiated from the household lands by use alone, if at all. However, this domain deserves special attention re: establishment of tree ownership and land use rights early in the process of land use change. While men may replace their foraging activities with wage labor or intensified agricultural and livestock production, the group may continue to rely heavily on forest and range products gathered by women. Safeguarding or expanding women's tree ownership and rights of usufruct in surrounding forests and rangeland may help to prevent environmental degradation, as well as maintaining women's status and tribal rights to use and protect forest and range lands of adequate extent and quality.

Dianne E. Rocheleau, "Women, Trees and Tenure: Implications for Agroforestry Research and Development," Background Paper, International Workshop on Tenure Issues in Agroforestry, Nairobi, May 26-30, 1985, at pp. 9-12.

7.3 Land Tenure Reform: Action at the National Level

One option for response to a serious tenure problem is tenure change, and one level on which the problem can be approached is the national policy level, seeking a conclusive resolution of the tenure "problem," often through legislation. The project acquires a tenure reform component, dependent on national action, and is vulnerable to a failure on the part of government to take such action. Some questions which need to be asked to test the feasibility of such national action are set out below:

(1) How serious are the political implications of the tenure change? Almost invariably, one is told that land tenure is "sensitive." This is more true in some countries than others, more true as regards some tenure changes than others. Often, in a country which has not seriously focused on land tenure issues, sensitivities will not be high. The same is true of some kinds of limited tenure changes. It is important to remember that at independence in most African countries political power shifted to an elite which had no vested interest in existing tenure systems. This explains some of the openness to tenure reform in Africa. Tenure is more often sensitive in countries which have adopted clear policies and find them under fire, and tenure change which undermines traditional political structures or ethnic power balances is of course profoundly controversial. It is also clear, however, that it is not more, and perhaps less politically explosive than some other areas in which AID is currently involved with enthusiasm, such as elimination of price control on urban food staples. The threshold objection that tenure is "sensitive" needs to be examined critically on a case-by-case basis.

(2) To the extent that the issue is politically sensitive, has government the political will to deal with the issues? Government assertions of the political will to change tenure should be tested against a serious calculation of the economic and political interests of those in power and their record on making and following through on hard decisions.

(3) Can government make the necessary decisions on the tenure issues within anything like the time frame for a normal project preparation exercise? The decisions are of different orders, and may need to be decided at different levels. It will depend on the seriousness of the change proposed. It may be found that the tenure issues are already under consideration, or are the subject of legislative proposals.

(4) Is new legislation necessary, or is the necessary empowering legislation already in place, with only implementation necessary? Reliance upon a legislative process invariably involves delays and some uncertainty, however authoritarian a government may appear. New legislation should be resorted to only if clearly necessary. Those who review project papers should remember that a statement that "Government has a legislative program under consideration to deal with these tenure issues" often means little more than that government is wondering what to do about the problem, or worse, is going through a donor-appeasement ritual which will fade away once the project is approved.

(5) Even assuming that government acts promptly, is there reason to believe that the steps which government takes will alter behavior in time to

contribute to the success of the project? Law can at lease in theory be changed overnight, but the same is not true of behavior. In general, it is only tenure reforms which involve field operations to change facts on the ground which can have such a prompt impact.

(6) Does government have the staff and administrative capabilities required to implement the tenure change? Such requirements will vary greatly depending on the nature of the change, and in particular the extent of the field operations necessary to accomplish it.

(7) Does the change create continuing demands on resources for system maintenance which are beyond the capabilities of government? This question is most important in the case of reforms of systems of land administration, particularly those which attempt wholesale replacement of traditional institutions with bureaucratic systems of administration.

(8) If the project is a regional rather than a national project, is government willing and able to consider promoting tenure change on a regional basis? Is government willing to contemplate a different tenure policy in the project region than it has elsewhere, or will it view this as a particularism which runs contrary to the building of national unity? Regional change may only be palatable if either (a) the tenure problem is clearly unique to the region, or (b) the tenure change in the project region is considered a pilot, generating a model for tenure change applicable elsewhere.

The above questions need to be asked to determine the feasibility of building a needed tenure reform component into an agricultural development project. Most of them would also be asked if a strictly tenure reform project were under consideration. The last question, which deals with the feasibility of tenure reform on a local or regional level, is however uniquely important in the project context and requires fuller discussion.

Most agricultural development projects are not implemented on a national level. They are more commonly regional or area development projects, and this may be due to one of several factors: (1) the project is only appropriate in certain geographically limited resource situations; (2) the project is experimental, seen as a pilot effort; (3) the project is expensive, and therefore implementable only in limited areas in the immediate future; and (4) services needed to complement the project, for instance marketing infrastructure, are unavailable in other parts of the country.

The non-national scope of most projects becomes problematic in the tenure reform context because frequently a critical component of tenure reform is law reform. In many cases it is a necessary first step in the reform process, altering rights and duties between persons over resources, setting out a plan of implementation to realize the new rights and duties and creating administrative machinery and institutions to pursue that plan.

Legislation is almost exclusively a national prerogative in Africa. Land tenure, on the other hand, varies with ecology and agricultural technology, but especially with ethnicity. In multi-ethnic states, which include most states in Africa, different tribal areas may have different tenure systems and tenure problems. In addition, even if tenure systems are relatively uniform,

conditions creating a need for reform may exist only in limited areas, as where a project creates that need.

It is technically feasible to frame a tenure reform in a way which recognizes and is sensitive to the particularity of tenure systems. Regionally applicable legislation would meet with no fundamental jurisprudential or constitutional objection in most African countries. But such a legislative proposal may run into political difficulty. That difficulty has two sources. First, a program which adjusts itself to or seeks to address directly the particularities of a tribal land tenure system may be seen as pandering to and reinforcing tribalism, or at least perpetuating divisive particularity. This is a concern at the level of the national political elite. But there is a second reaction, which may come from the people directly affected by the project and their political representatives. Tenure reforms are generally greeted with some suspicion by those directly affected, especially by the political represenatives of those affected. Those suspicions grow if they realize that they are being treated differently from others in the nation. "Why us?" they ask; paranoid scenarios proliferate.[159]

Legislation can be framed which seeks to meet such objections. For example, the empowering legislation can be framed in relatively general terms nationally, with considerable authority given to government to prescribe by regulation different rules for different localities. This will be a workable approach in some situations but it is subject to one disadvantage: rights based on regulations, which can be changed by government at will, are not so secure as rights created by the law itself. Alternatively, the empowering legislation may enact a national program but provide for its implementation only in particular areas gazetted from time to time by government as standing in need of the program. This last is obviously most appropriate when emerging tenure issues are the same nationally and the problem is one of geographically limited immediate need. Of course it is possible to combine the three elements: a nationally uniform frame, diversity in detail, and gradual implementation. Whether these approaches to legislative drafting for meeting local needs will be acceptable will differ from country to country, but they have considerable potential in African circumstances.

Finally, a caution is necessary concerning naive assumptions about the power of legislation to alter behavior. Legislation alone is usually not a sufficient condition of tenure reform and its usefulness is enhanced if its limitations are appreciated. Legal scholars have coined the terms "ghost" and "phantom" legislation for the many laws which have no reality beyond the pages of the legislative supplements where they are published. Perhaps as often, they have impacts which bear little relation to the legislators' intention.[160]

Under what circumstances can we expect people to obey a legislated command that landholding "shall" be managed in a particular way?

(a) When many people are already behaving in that way, in violation of existing law or simply in a legal vacuum, and the law acts as a ratification and reenforcement of emerging practice.

(b) Where some people are directly interested in the new rules are motivated to enforce their new rights, and are given effective civil remedies in an accessible and reliable dispute settlement system.

(c) Where the state itself actively monitors and effectively sanctions the breaking of the law, as when criminal sanctions are imposed.

(d) Where the state's administrative machinery directly intervenes to change facts (for instance, replanning parcels and layout, consolidating holdings, creating local administrative machinery), which change so alters the position of most people that they have little choice but to comply with the new set of rules which accompany the new facts.

It needs to be emphasized that it is not law alone that changes behavior, but law which authorizes, organizes and releases other forces which, acting in conjunction with law, change behavior. While they are often discussed discretely, they are commonly effective only in combination. Even in combination they of course do not invariably succeed (see Insert 56, when Coldham comments on the limits of law in the Kenyan reform).

How, given all these complex considerations, does one arrive at a reasoned conclusion as to whether a donor should seek action on the national level for land tenure change to facilitate a project activity? Perhaps the most basic need is to accurately size up the importance of the tenure change in relation to the importance of the project. If tenure change at the national level promises to be difficult and its importance to the project is relatively minor, or even the project itself is of minor importance compared to fundamental tenure changes needed, then at least from the point of view of the project, tenure change at the national level may not be the appropriate route. It will usually not be appropriate from the point of view of the project where the needed tenure change has not already been thought through by national policy makers; where there is neither empowering legislation in place nor even a legislative draft proposed for enactment; nor where necessary administrative machinery for implementation is not already in place (unless it can be developed fairly quickly and AID is itself willing to make the financial commitments necessary to ensure that this happens).

The matter may, of course, be different if not judged primarily from the point of view of the project, for example, where a policy decision has been made by AID that tenure reform needs to be made a national priority. In that circumstance a project may be seen as an opportunity to press for the change or to demonstrate its viability.

7.4 Land Tenure Reform: Minimalist Approaches and Action at the Project Level

It was suggested in the discussion of options for response to tenure issues that where tenure change was deemed to be the appropriate response, or at least a necessary part of the appropriate response, that response could be on two levels. Action on the national level for a conclusive resolution of the tenure issues has been discussed in the previous section. For the complex reasons discussed there, it may not in a particular project context promise to be very helpful. The customary reform perspectives may also be too sweeping to be very useful--the project is not being asked to envisage and create the "efficient" economy or the "good" society, just to effectively promote the acceptance of new specific inputs and techniques.

56. The Limits of Law as a Tool of Tenure Reform in Kenya

The Kenyan tenure reform represents a highly ambitious experiment in the use of law to engineer social change, since it assumes that the statutory introduction of a new tenurial regime will automatically trigger off certain responses from which a number of desired ends (legal, social and economic) will surely flow. However, a study of the working of the programme not only suggests that this assumption is not justified, but also throws light on the complex relationship between law and development. It is simply not sufficient to conclude that the programme provides yet another example of "soft development" and to attribute this to the innate conservativism of the people concerned. After all, we are not dealing with a case of "fantasy law." Far from being a dead letter, the programme has had a variety of consequences, both direct and indirect, and it therefore provokes us to try and identify the factors that enhance or limit the effectiveness of law as a developmental tool.

Even assuming that the necessary information has been effectively communicated to those whose behaviour it is desired to change, it is unlikely that they will conform unless they perceive it to be in their interest to do so, and the greater the changes in behaviour required, the greater the need for measures to induce conformity, Such measures fall broadly into two categories, those that rely on sanctions and those that rely on rewards. The use of sanctions to secure developmental ends has not had a very encouraging record. It is not simply that their use tends to increase bureaucratic power and to undermine the government's legitimacy, but they do not even work very effectively, especially where, as in the case of the land reform programme, considerable changes of behaviour are required on the part of a substantial number of people. The criminal law, in particular, is a singularly blunt instrument and it is not surprising that, as we have seen, the authorities have not resorted to its use to secure conformity with the programme. Enforcement machinery on a scale unthinkable in present circumstances would be required to ensure that landowners register dispositions and successions, that they submit their dealings to the land control board and abide by its decision, that semi-nomadic Masai herdsmen respect the newly-established ranch boundaries and so on.

The rewards strategy is certainly a more appropriate way of attaining developmental goals. Thus, if agricultural credit was more widely available, landowners would have greater incentive to keep their land registers up to date. If membership of a group ranch was seen to confer distinct benefits, the Masai herdsmen might choose to

(continued)

(Insert 56 continued)

respect ranch boundaries and obey ranch bylaws. The problem is that the "rewards" are frequently limited to quantity and also that they are seldom universally appreciated, with the result that their distribution depends on self-selection by a relatively small number of individuals.

Simon Coldham, "Land Reform in Kenya, Some Problems and Perspectives," in Law in Alternative Strategies of Rural Development (New York: INTWORLSA, 1982), at pp. 96-97.

It was noted earlier, in the discussion of response options, that the most practical response to a potential land tenure problem is often to alter the project idea a little and the tenure situation a little--the minimum adjustments needed to achieve a workable accommodation. How does one strike a sound balance, and imagine workable accommodations? This section suggests a three-step process: (a) "distancing, in order to see both systems;" (b) "looking for tenure opportunities;" and (c) "seeing a tenure system as a menu."

The first step seems to be to break out of the mental set which perceives the problematic situation as a "land tenure problem." It was noted earlier that a potential "land tenure problem" in the project context is simply a mismatch between some components of the project idea and some facets of the existing land tenure situation. The planner must take several steps backward, "distancing" him or herself from the project idea far enough so that he can see the problem as the mismatch between the project idea and the tenure system rather than just a tenure "problem." The objective is to make two elements mesh in a functional system to achieve project objectives. To do so, it is essential to recognize that what one is dealing with are not simply some inconvenient tenure facts which stand in the way of a new system of land use and farming practices which the project hopes to introduce, but that those facts are themselves part of another system, one which is already operating and which may be seriously disrupted by their being changed. Many African policy-makers are acutely aware of the need for care in approaching tenure change in these circumstances (see Insert 57).

This distancing helps the planner to see opportunities for reworking certain aspects of the project idea for a better fit with the tenure system. But broadening one's perspective beyond the expected "tenure problem" also has important advantages for looking at the tenure change side of the matter. It permits the planner to see the tenure system not just as a problem, but also as posing a set of opportunities. The existing tenure system, if some element of it poses a potential problem as regards the project idea, may also on closer and more imaginative examination contain the seeds of the solution and the mean to accomplish needed tenure change at costs consistent with the project. Consider the following two examples of tenure change at the project level:

57. A Presidential Commission's Recommendations on Incremental Change

Many Batswana stand today with one foot in the traditional sector and the other in the developing cash economy. New needs exist but old needs persist. Government has sought since independence to accommodate both these needs. In the townships, Government has created new forms of tenure, namely, the Fixed Period State Grant and the Certificate of Rights. For the rural areas and major villages, the Tribal Land Act (Cap. 32:02) provides a new system of administration for tribal land and new tenure forms, such as the common law lease for commercial holdings, to meet the demands of a changing society. It leaves intact, however, the customary rules governing residential, arable, and grazing land. The Tribal Grazing Lands Policy (TGLP) of 1975 provides for the extension of the common law lease to areas of tribal grazing lands which have been designated commercial, to facilitate the development of commercial ranching operations.

The land tenure policy which has been pursued by Government may be described as one of careful change, responding to particular needs with specific tenure innovations. The alternatives would have been a wholesale change in forms of tenure or retention of the status quo. The approach taken by Government has much to commend it. Land is a very special resource, the very base on which the nation stands. The way in which it is administered is a profound expression of national values. Since the economy of Botswana is still largely agricultural, land is the only resource available to most of its citizens from which to earn a livelihood. Land tenure is thus a matter of grave importance and any change required must be made with great care.

"Care" in this context means primarily the close coordination of tenure change with developments in the economy and society generally. The Commission views land tenure change as an important step, but only one change among many which may be necessary to provide new opportunities. If land tenure change runs ahead of the other developments, there is a danger that many citizens will lose their land without gaining the advantage of the new opportunities. Tenure change which could produce landlessness before other economic opportunities are generally available would clearly be ill-advised. Tenure reform can be socially disruptive if not pursued in coordination with other changes in the economy.

Republic of Botswana, Report of the Presidential Commission on Land Tenure (Gaborone: Government Printer, 1983), at pp. 2-3.

(A) Pre-project surveys show a high land litigation rate and very considerable insecurity of tenure and uncertainty. There is increasingly frequent defiance of land allocations made by elected community elders. The defiance is by "big men" from the roadside towns, merchants and some officials, who are bent on major land acquisitions. A "big man" takes possession of a parcel during the fallow period through a tenant, who asserts that he holds it by the permission of the big man, whom he asserts is the allotee. The real allotee is usually willing to sue to defend his allocation but the elders who must appear as witnesses on his behalf are increasingly reluctant to do so. The court is ten hours distant, and attending a hearing is both time-consuming and costly. It involves an overnight stay in town, and frequently the trips prove useless because of the manipulation of court procedure by the merchant's attorney, maximizing "the law's delays" and the advantage they confer on the wealthy. Failing to obtain the needed support from the elders, those whose land has been appropriated begin to perceive that it is useless to sue. Allotees who do sue to defend their allocation almost never have a case decided against them on the merits, but they are usually unable to persist long enough to force the case to a decision on the merits. Cases generally end in dismissal for failure of the allotee or his witnesses to appear at hearings, and a decision in favor of the usurper in possession.

Rather than seeking a major and costly strengthening of individual tenure because of the inadequacy of the existing communal tenure system in providing security, the project provides rides to and from town for the elders in the project vehicles which make the trip daily in any case, and allows the elders to stay overnight for free in a storeroom maintained in town by the project. The project director also speaks to the chief judicial officer for the province, who later sends a letter of reprimand to the local judge about the repeated and unjustifiable cancellations of hearings.[162]

Such an approach may be a return to a modified version of a traditional arrangement following the failure of some more ambitious approach, as was the case in Syria with the hema system. That system has been of interest in African range management because of its acceptance by Islamic law (see Insert 58). Consider also the following example, which highlights the resources offered by the multi-tenure nature of indigenous land tenure systems:

(B) The proposed package of new inputs for a rural development project, which has performed excellently in local trials, is conditioned on timely ox-plow cultivation. Project planners are concerned because only 20 percent of the households in the project area have plow oxen. Over half those households have more than one pair of oxen. Credit for oxen purchase appears a feasible approach but there is one difficulty. The community has a small pasture near the edge of the village, watered by a small spring, which provides limited but excellent plowing-season pasture for plow oxen. The pasture is grazed as commons, but only oxen are allowed on the pasture during plowing season and the pasture is already heavily utilized by existing oxen. The only workable approaches for accommodating additional oxen purchased

58. The Hema System as a Range Management Alternative

The Syrians present a possible solution to resource allocation within Mauritania's various ecological zones and among its various social groups.

Realizing that they did not have the power to constantly enforce new range management regulations, the Syrians returned to the traditional system of range management and resource control. They recognized original tribal boundaries and returned the steppe to the tribes. In return, the government made the following demands:

1. The tribal area was no longer to be considered inhabited by a tribe; instead, the government would treat the area as a cooperative.
2. The cooperative would select a cooperative leader, in their own way, and that leader would receive training in cooperative management and on the new technologies to be made available to the cooperative.
3. Cooperatives which elected to make changes in their agricultural and husbandry programs were given support from revolving funds (set up by FAO) as well as support from the various government ministries through liaisons between cooperative leadership and field representatives. In this way there was localized planning and coordination of institutions on cooperative land.
4. In return for services, the government demanded that cooperative residents maintain good management practices on the land assigned to them, including controlled grazing and participation in environmental restoration programs.
5. Although the government recognized that the land of the cooperative was for the exclusive use of that cooperative and defended that land against intruders in case of a dispute, the Syrians recognized the need of an eventual shift of emphasis from tribal identification, still basic even to cooperative membership, to one of membership identification in the cooperative. Although it was not very far along in 1978-79, the conclusion of everyone was that as the cooperatives be made more successful and as new openings were available on the land or as demands were felt for individuals with special skills, that people from outside the tribe would be allowed to become members of the community itself. This would of course begin with health workers, teachers, and veterinary workers as these became available to the cooperative.

Andrew Manzardo, "Land Tenure and Community Development in the Islamic Republic of Mauritania," (A Report to USAID/Nouakchott). (Madison: Land Tenure Center, University of Wisconsin, January 1981), at pp. 32-33.

> with project credit seem to be: (1) limiting commons use by each household to a certain number of oxen; or (2) subdividing the commons into household holdings. At a public meeting vilagers are skeptical of their ability to monitor use of the commons. After a heated discussion, the majority express support for subdivision. It is agreed that the pasture parcels should be governed by the same rules which govern individual holdings of farmland. The pasture must still be divided to everyone's satisfaction, but fortunately a model already exists, utilized for the distribution of residential sites newly created from wasteland at the edge of the village. The elders demarcate the necessary number of residential sites of a standard size for new households and a lottery is then held to distribute the sites. Once the more controversial decision to subdivide the pasture is made, it is relatively simple for the community to settle on this mechanism for the division of the pasture.[163]

This minimalist change model is rooted not in any romanticism about traditional institutions but, recognizing the necessity and desirability of change, seeks to do so in ways which minimize both direct project costs and social costs. What are the tools which can be employed at the project level to achieve such ends?

7.5 Tools of Tenure Change at the Project Level

One of the tools of tenure reform has already been discussed: national legislation. Here we examine alternative tools of tenure change, tools which can be used at the project level by project managers: (a) community legislation, (b) "the law of the project," (c) contract, and (d) project economic leverage.

Community Legislation

In most African countries government is highly centralized, with what is increasingly an institutional void between the national center and local communities. There are not many opportunities for legislation at, say, provincial level. To find an alternative to national legislation it is usually necessary to go down to community level. "Community" here is used loosely--the intent is to refer to the level of the indigenous society at which key decisions about changes in customary law are made, possibly at clan or village level, perhaps higher. That level will vary depending upon the degree to which the traditional society is organized hierarchically.

It may come as a surprise that there is such a thing as community legislation. There is a prevalent misconception of "customary" rules as deeply internalized, obeyed by ancestors from "time out of mind," a misconception that has been questioned earlier in this paper ("the historical dimension: the pervasiveness of change"). Change in customary law is generally conceptualized as incremental change. Deviance increases until it becomes pervasive and, in time, is recognized as a new custom. The process appears almost unconscious, at least at the social level. Certainly much change in customary rules does take place in this way, but it is not the only way. When confronted by quite drastic new needs, traditional communities (tribes, clans, villages) sometimes purposefully decide on rule changes and, in effect, legislate

changes in their customary land law. Schapera was one of the first scholars of African land tenure to focus on this process (see Insert 59). One strategy that deserves serious consideration is the encouragement of such community legislation. Projects are able to promote such decisions either through simple encouragement or more directly, for instance by preferential treatment of villages which have taken the requested steps.

This approach is often labor-intensive and time-consuming. The response of local communities may be difficult to predict, and may vary from one community to another. In addition, the adequacy of enforcement mechanisms (community dispute settlement mechanisms, the national court system, other institutions?) must be considered. It is in fact more useful for projects to be planned and implemented in fashions which intentionally or inadvertently destroy the viability of indigenous local institutions and their capacity to participate in a positive fashion in tenure adjustments. But an approach which attemps to utilize community legislation has at least three major advantages. First, it involves local people in making decisions that affect them, and thus develops human resources. Second, that participatory nature is good insurance against mistakes, especially project management's failure to anticipate unfortunate side effects of change. And third, it permits a degree of local experimentation with slightly different solutions to the problem adopted in different communities. Example B in the previous section on minimalist strategies (7.4), involving change in the tenure of pasture, is an example of such community legislation.

Community legislation, it must be added quickly, is no more a panacea than any other approach, simply one more option. Several considerations should induce caution regarding its use in a particular circumstance, as where the community concerned has little or no experience in such change, where the change proposed is likely to be highly conflictive and to deeply divide the local community, and where the machinery to implement or enforce such a change does not appear to be available or readily provided.

Contract

Because projects have benefits to offer, contracts can sometimes be utilized as a tool of tenure change at the project level. Contracts can be utilized by projects as a tool for regulating tenure relations as between groups. For instance, a boundary disagreement between groups may be best dealt with through mediation, and the result expressed in the form of a contract between the groups.[164] There are also contracts between a project on one hand and groups and individuals on the other. A project may for instance seek to avoid tenure insecurity with respect to land for housing of project staff by obtaining a long-term lease of the land from the community. Or a project may join as a party to one of the earlier mentioned types of contract, promising assistance to the parties which constitutes the incentive for them to find common ground. USAID's Ada Project in Ethipoia in the early seventies experimented successfully with this approach (see Insert 60).[165]

Contract is valuable to project planners as a mechanism for restricting or requiring certain actions beyond what is required by law, creating additional obligations which will be enforced at law, by the courts. It is in theory a form of legal obligation assumed only voluntarily by the parties, but in fact project planners can sometimes make offers which are so attractive that they are difficult to refuse.

59. Tswana Tribal Legislation

It has long been known that among the Tswana tribes the chief has the power to make laws (go tlhoma melao, "to establish laws"). The people themselves contend that legislation has from time immemorial been one of the chief's recognized prerogatives, and early writers mention it as a matter of course . . . Sometimes he brings them about in his capacity as supreme judge of his people (nowadays, however, subject to the overriding jurisdiction of the official European courts). When a case comes before him, he may decide that the usage in question should no longer be recognized as valid, or that a recently introduced practice should not have the force of law; and he may also establish a new standard penalty for a particular kind of offence. The fact, that until very recently no written records were kept (except among the Ngwaketse) of cases tried by the chiefs, makes it difficult to find many examples of this process; informants were usually uncertain if a specific change had been effected through a judicial verdict or by means of a decree passed in kgotla after public discussion . . .

Other changes in culture are made by the chief in his capacity as executive head of the tribe . . . In theory the chief should consult in turn with all three forms of council before making a law, and only if it has been accepted by the popular assembly can that law come into force. But in some tribes (Ngwato, Tawana, Kwena, and Ngwaketse) the council of headmen is very rarely summoned, and then only to discuss matters of the gravest importance; as a rule, therefore, the chief will refer projected legislation to the popular assembly without first consulting the headmen as a body. Among the Kgatla, on the other hand, considerable authority attaches to the council of headmen, and the chief always tries to make sure of its support before he puts a new measure to the popular assembly. Sometimes, however, he may not have a definite proposal of his own to submit to the tribe. He then merely states the problem, and asks the people to suggest methods of dealing with it. In this way, both the council of headmen (especially among the Kgatla) and the popular assembly contribute directly to the framing of a new law . . . In theory, the popular assembly can even reject a law proposed to it by the chief. Instances are rare, but they do nevertheless occur . . .

The traditional system of land tenure has in the main persisted unaltered, but certain changes were rendered desirable by economic development, especially in regard to the use of natural resources . . . The Ngwaketse chiefs formally prohibited the mingling of arable land and grazing, but they were merely enforcing more strictly a practice that prevails throughout Bechuanaland. Among the Kgatla, on

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the other hand, Isang permitted cultivation (under certain conditions) in areas normally reserved for grazing, and thereby initiated a step that seems essential if Tswana agriculture is to develop beyond the level of subsistence farming. Another radical change was made among the Ngwaketse by Seepapitso, who declared that a field abandoned by its owner for five years or more shall be available for distribution to others. Elsewhere the rule persists that land cannot normally be alienated from its owner without his consent, with the result that many fields have long remained unused despite the growing demand for land to cultivate. A few other rules were introduced among the Ngwaketse by Bathoen I and among the Rolong by Lotlamoreng, but they are of relatively minor importance.

I. Schapera, Tribal Legislation among the Tswana of the Bechuanaland Protectorate: A Study in the Mechanism of Cultural Change (London: Percy Lund, Humphries, 1943), at pp. 3-13, and 44.

Project Economic Leverage

Projects can affect behavior with economic leverage exerted through preferences, subsidies, and a wide range of other actions. These may be used in conjunction with legislation, which authorizes and organizes the economic incentive or disincentive, or with contract, which can be used to create the legal obligation which is the quid pro quo for the incentive. Many of the examples given in this section have involved some combination of legislation, contract and project economic leverage. But project economic leverage can be used in ways which do not involve legislation or contract. This is illustrated in Example A in the previous section on minimalist tenure change strategies (7.4), involving project action in support of elders' allocations.

"The Land Law of the Project"

So far in this part we have been concerned largely with project situations involving a good deal of socio-economic continuity. There are however some project contexts, such as settlement schemes and irrigation schemes, in which such continuity is minimal and land tenure is much more an open question. In settlement schemes, planners are sometimes being asked to create the "good society" and to plan a land tenure system from scratch. This is usually the case when the project area or a critical part of the project area has been State Land or has been acquired by the State specifically for the project. In those circumstances, a project can virtually create a "law of the project." This is done through regulations and standard contracts, often incorporating special development conditions, requirements of compliance with a common plan of management, and even special inheritance rules. Project-developed land

60. Project-Stimulated Tenancy Reform: AID's Ada Project, Ethiopia

USAID's Ada District Development Project in southern Ethiopia, begun in the early 1970s, was an integrated rural development project with a major credit component. The district had one of the highest incidences of sharecropping in Ethiopia. The extension of credit to landlords had led to mechanization and large-scale eviction of tenants in other projects, such as the Swedes' Chilalo Agricultural Development Unit. Legislation to regulate agricultural tenancy was stalled in the Ethiopian parliament, but pressures were building and its enactment was expected within the next few years. The project responded with a strategy stated in the 1971 Capital Assistance Paper: "to develop a landlord-tenant lease agreement following the model leases prepared by the Ministry of Land Reform and Administration and based upon the draft legislation presented to Parliament in late 1970" (a model lease was included as an appendix to the paper).

An evaluation in 1973 pointed out:

> The Ada project, if implemented in full, introduces land and agrarian reform, yet does so in a manner which avoids most of the controversy. The project is a positive approach to bringing social justice to large numbers of people through a program that could, if necessary, be bankable. It could serve as a rallying point for a broadened base of political support for agrarian reform. The project has not been recognized by many of the IEG agencies for what it really is, i.e., an agrarian reform program that is workable, economically sound, and has the potential for obtaining wide-based political support. It is suggested that USAID, project leadership and key IEG officials give increased stress to discussing this aspect of the project.

Consultants' strictures encouraged project managers to persevere in measures aimed to limit evictions due to mechanization. For instance, John Mellor in 1974 warned: "In a situation in which much of the land is in very large holdings, mechanization may be used for breaking overall labor bottlenecks and for shifting from a system of tenant farming to one of large owner-operated units or contract farming. This development may result in the massive eviction of tenants and displacement of labor."

While the model lease program was not without its problems, it was on the whole quite successful. A 1976 Project Appraisal Report is self-congratulatory. The approach taken was imaginative, and while it was no long-term solution--it could only work so long as there was a project with credit to extend--for the time being it minimized tenant evictions due to the project. The hope was that the tenancy reform legislation would be in place by the end of the project; in fact, a much more radical land reform was by them under way.

Sources cited in note 165.

tenure in settlement projects, irrigation projects and sometimes in range management projects relies heavily on these mechanisms. Legally, the situation is one in which the project has almost total discretion. Acting as the agent of the owner of the land, the State can impose a tenure system as a condition of access to that resource.

This approach works best where the land concerned has been previously unoccupied, or its character has been dramatically altered by the project. In the former case there are no settled expectations to disturb. In the latter expectations may more readily be adjusted because of the dramatic physical changes in the resource. When working with long-established communities, however, this authority of the State as landowner should be exercised with considerable caution. Commonly, those farming will not have been told--and be very reluctant indeed to accept--that they have no rights in the land they farm. A heavy-handed approach by the project can create resentment and mistrust, and sometimes be fundamentally unfair.

* * *

The last three chapters have focused on the project context. The next chapter concludes this paper with a shift up to the level of agricultural development strategies, the relevance of land tenure in those strategies, and implications for AID in its programming.

8. CONCLUSIONS, AND IMPLICATIONS FOR USAID

In this chapter an attempt is first made to very briefly assess how changing perceptions concerning agricultural development over the past three decades has affected our perceptions of the role and relative importance of land tenure in agricultural development. Second, major conclusions of this paper concerning tenure reform and the experience with implementation are summarized. Third and finally, the question of appropriate roles for USAID with respect to land tenure in Africa is considered.

8.1 The Role of Land Tenure in Agricultural Development

Land tenure research in Africa during the 1960s and 1970s produced a rich literature by administrtors, anthropologists, sociologists and lawyers. This research decisively undermined many stereotypes about "communal" land tenure, and its insights into the variety and complexity of indigenous tenure systems have still to be adequately absorbed into economic development modelling, in terms of either linkage models or household-firm models.[166]

The need to do so is clear, however, in light of several developments which have increasingly focused attention on the small farmer and his holding. First, labor absorption in agriculture has become a serious concern as industrial employment generation strategies have been seen to fail. Alarming

rates of migration to urban areas are being experienced which have little to do with the pull of real economic opportunities in urban areas or the push of increased labor efficiency in agriculture. The ability of traditional smallholder agriculture to hold large amounts of labor, even if "underemployed" by some standards, is now perceived as one of its major advantages. That ability is directly related to rules governing access to land.[167]

Second, there is a growing concensus that farmers' existing holdings provide a viable base from which to develop African agriculture. Research has indicated that small farms not only provide more employment opportunities for rural people, but are as efficient or more efficient than larger farms in terms of output per unit of land. Economies of scale in tropical agriculture are now seen as much less significant than previously imagined. Toward the end of the 1970s, research in Africa began to produce data relevant to the size-of-holding debate. Early experiments aimed at achieving economies of scale for capital, certainly a very scarce factor in Africa, showed disappointing results whether cast as state farms or production cooperatives. This appeared due at least in part to diseconomies of scale as regards management, also scarce in Africa. As between smaller and larger private holdings, evidence began to emerge from Africa that was consistent with evidence from elsewhere; small farms appeared to both absorb more labor and produce more per hectare. Management problems related to scale may be more acute in the public sector, but it would seem that they are by no means limited to it. The capital-intensive technologies, whose utility was to be maximized on a larger scale of production, instead fell prey to runaway foreign exchange costs and sporadic availability of essential parts and fuels (see Insert 61).[168] In addition, new analyses of the historical evidence from other continents suggest that the size distribution of farms has been a critical determinant of the demand for industrial products in a developing economy, and so for balanced development. A "unimodal" pattern of small holdings has been more effective in promoting sustained development than a bimodal pattern, such as the latifundia-minifundia dichotomy (see Insert 62).[169]

The concern with population absorption in agriculture and the growing perception of the land resource as both radically limited and deteriorating, combined with size-of-holding evidence pointing toward the continuing viability of the small farm, have redirected attention towards the African farmer and his landholding. At the same time, the need for the intensification of production on that holding has become increasingly clear. The vast unexploited land resource imagined in the 1960s has often proven fragile, incapable of sustained production except under very careful exploitation and favorable rainfall. Drought and famine have created a new awareness of desertification, environmental degradation and the ultimately limited resource base. Land tenure factors have increasingly been cited as implicated in land degradation. The shift in perception with respect to land availability has been described as that from a "frontier model" to a "conservation model." It has been dramatic not only in the literature but in the minds of a growing number of African policy makers and in the popular consciousness of a number of countries, such as Kenya.[170]

In the light of these developments, the centrality of the smallholder and of land tenure as an important determinant of his incentive structure have never been clearer. It is not suggested here that land tenure change is <u>the</u>

61. Size of Holding and Economies of Scale

Small operational units are clearly most economic. This is substantiated by the famous "inverse relationship" between farm size and land productivity: small farmers, whether owner-cultivators or tenants, tend to use non-land inputs, and especially labor, more intensively than larger farmers. Albert R. Berry and William R. Cline note that "the special efficiency advantages of small farms tend to disappear" when the opportunity cost of labor is relatively high. Ohkawa reports a narrowing of the inverse ratio in postwar Japan, but he emphasizes that small farms will tend to have an efficiency advantage over large farms as long as labor is relatively abundant and wage rates are low, provided that yield-increasing biological and chemical innovations are available. That tendency may be offset, however, by "differentiating factors" such as a policy environment in which small farmers do not have access to credit or large farmers have access to tractors at artificially low prices. In our view, the most significant implication of the induced innovation hypothesis of Hayami and Ruttan is that the indirect, long-term effects of price distortion on the orientation of research and on the bias of technological change may well be even more important than their adverse effects on short-run, allocative efficiency.

A widespread belief that economies of scale are important in agriculture has been a pervasive force contributing to bimodal patterns of agricultural development. Quite apart from those with a vested interest in preferential treatment of a large-scale subsector, many economists, agricultural scientists, and other specialists assume that only large and fairly capital-intensive farm units can be "modern" and efficient. An emphasis on economies of scale has also been a persistent tenet in Marxist views on agricultural development (Karl Wittfogel; Z. Kozlowski).

In a number of socialist regimes in tropical Africa (e.g., Nkrumah's Ghana, Tanzania, and Mozambique) state farms have been established because of the presumed importance of economies of scale as well as to facilitate purchases of grain for urban areas. Inasmuch as the concentration of scarce resources of capital, foreign exchange, and trained manpower in a subsector of large mechanized state farms is achieved at the expense of depriving the great majority of the farm population of inputs and supporting services, the inevitable consequence is a bimodal pattern of agricultural development . . .

The creation of large operational units, whether for group farming or by private landowners, creates strong pressures to make excessive investments in labor-displacing mechanization. Because of the

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biological nature of the agricultural production process, operations are spread out in time and space. Hence, a big operational unit that relies on a large work force, whether hired laborers or members of a group farm, encounters difficult problems of supervision in seeking to avoid shirking . . . The manager of a large operational unit, whether private or collective, finds it attractive to use capital-intensive technologies to minimize the problems of supervising a large work force; but the social opportunity cost of using scarce capital to displace labor for which alternative employment opportunities are not available is high.

John W. Mellor and Bruce F. Johnston, "The World Food Equation: Interrelations among Development, Employment, and Food Consumption," Journal of Economic Literature 22 (1984): 531-574, at pp. 557-559.

key element, the "bottleneck" preventing increases in productivity. It is simply one important factor in determining how farmers will respond to development opportunities, a factor which has not infrequently been found to be problematic and therefore requires close attention. There are other critical factors which affect farmer responses, such as prices, and in the case of prices, this adjustment may offer greater possibilities for an immediate impact on production. On the other hand, responses to such increases may be disappointing if the non-price, institutional elements in the farmer's incentive structure are neglected. Much of today's priority activities are directed toward amelioration of the African food crisis, and the urgency of this task encourages thinking with relatively short time horizons. Land tenure is not in present circumstances, nor is it ever likely to be a "quick fix." It is however a fundamental and enduring structural issue of pervasive importance, and one which promises to grow more rather than less important as current pricing problems are resolved. Agricultural development strategies will need to increasingly incorporate explicit scenarios concerning land tenure, its evolution and its reform. Donor awareness of land tenure issues in Africa has increased greatly in the last decade. To answer the questions now being posed by development planners, there is an urgent need for expanded inquiry into African land tenure situations, aimed at remedying the paucity of quantitative data on land tenure/productivity interactions, seeking more sophisticated applications of property and other relevant economic models to the transitional condition of African land tenure, and eventually developing more adequate tenure reform models.[171]

8.2 Some Conclusions Concerning Reform

Before entering upon a discussion of the implications of this paper for AID and its agricultural development strategies, it is worthwhile reviewing very briefly some of the more basic observations of previous chapters of this paper.

62. Unimodal and Bimodal Development Strategies

Japan, Taiwan, Korea, and other countries pursuing a unimodal strategy were able to achieve widespread increases in productivity and income within the existing framework of small-scale farm units. They continued to employ labor-using, capital-saving technologies, relying heavily on divisible innovations, such as the high-yield, fertilizer-responsive crop varieties which recently have figured in the "Green Revolution." In Mexico, on the other hand, the increases in productivity and output, especially commercialized production, were concentrated to a large extent in a subsector of large farms which adopted labor-saving, capital-using technologies. Particularly in the case of cotton, technologies in use in America's Southwest were taken up by Mexican producers; the process was facilitated by the transfer of both capital and technical expertise . . .

The experience of Taiwan, Japan, South Korea, and a few other countries is especially significant in demonstrating both the feasibility and the desirability of pursing a unimodal pattern of agricultural development. In a late-developing country, the great majority of farm households inevitably are by-passed when a bimodal pattern of agricultural development is pursued. This appears to be a "hard conclusion." It is a clear implication of the structural and demographic characteristics examined in chapter 2 and is supported by analysis of past experience. When the Japanese and Mexican "models" of unimodal and bimodal agricultural development were compared in the mid-1960s (Johnston 1966), both were commonly regarded as "success stories." There is now general agreement, however, that Mexico's agricultural strategy has made an inadequate contribution to the multiple objectives of development because the great majority of the rural population was by-passed. Even the rate of growth of farm output has declined markedly.

Bruce F. Johnston and William C. Clark. Redesigning Rural Development: A Strategic Perspective. Baltimore and London: Johns Hopkins University Press, 1982.

In the examination of whether land tenure is a development constraint, several concerns about indigenous land tenure systems were examined in turn. The conclusion which emerged was that while in certain circumstances a particular facet of an indigenous tenure system might well be problematic, the criticisms of such systems has been overstated. Perhaps the most common source of overstatement, aside from fairly stereotyped concepts of indigenous tenure systems, has been the misconceiving of the situation in which African farmers operate. There has been a tendency to judge their tenure rules in terms of an economy which is only beginning to emerge in many places in Africa, and forgetting that a farmer still stands with one foot in an older system of society and economy, which he will ignore at his peril. African land tenure systems are in transition, and our need is for models which deal with transitions rather than operations at statis.

While each concern about indigenous tenure originates in a kernel of fact, these concerns have tended to be exaggerated. In any situation it is important to ask: (1) Does the asserted problem exist in the relevant tenure niche?; (2) if it does exist, is it serious?; and (3) if it exists and is serious, is the tenure arrangement also fulfilling some valuable function for farmers?

Where land tenure has been judged sufficiently constraining as to require a major reform, what has been the experience with the various reform models? In general, the results have been disappointing. In the four most closely studied reforms in Africa, the Tanzanian and Ethiopian experiences with production cooperation have clearly been unfortunate in terms of production; in Kenya, and in Botswana's commercial ranching areas, individualization has not negatively affected production, but evidence continues to accumulate that the scenarios under which it was to increase productivity are not playing out as planned. Interesting experimentation is underway with (a) the "reinstitutionalization" of land tenure systems, in which land administration is changed while maintaining its decentralized character and avoiding its total absorption into the government bureaucracy; and (b) reforms of inheritance law and consolidation of holdings. They have not been so well-studied, and it is too early to judge their success. Less promising is the pattern of nationalization and attempts to centralize land administration in the government bureaucracy, which is usually far beyond the administrative resources of the country concerned. Outside of project areas, and particularly in prospective project areas, the result is considerable uncertainty and insecurity.

In considering land tenure issues in the project context, it was suggested that projects can fail or fall short of their objectives because project designers fail to take land tenure issues into account at several levels: (1) social constraints on farmer behavior are neglected; (2) the incentives for farmers to seize opportunities provided by the project are miscalculated; (3) new tenure arrangements for project participants are misframed; and (4) projects have a negative impact on the tenure system. Tenure issues which need to be dealt with in project design were anlyzed in terms of those characteristic of several types of agricultural development projects.

In terms of dealing with land tenure in the project context, several options were discussed: (1) moving the project; (2) changing the "tenure niche" for project activities; (3) changing the project activities so that the tenure problem does not arise; and (4) changing the tenure system so that it is con-

sistent with the project activities. Tenure reform, the fourth option, is the least frequently chosen. It is generally regarded as the domain of national legislation, a process which is sometimes sensitive, fraught with considerable uncertainty, and which often cannot produce results on the ground in time to meet the needs of the project. There are however tools other than national legislation by which tenure change can sometimes be accomplished within the framework of a project: (1) a "land law of the project," where the scheme takes place on state land; (2) legislation by communities involved in the project; (3) contracts between the project and participants; and (4) the considerable economic leverage which can be exerted by selective use of project activities.

What are the implications of these conclusions for how USAID should approach land tenure issues in its projects and programs?

8.3 Implications for USAID

Appropriate Involvements with Reform: The experience to date with the major tenure reforms in Kenya, Botswana, Tanzania and Ethiopia has been troubled. It is clear that creating a new tenure system which works as anticipated is more difficult than might have been imagined. To a surprising extent difficulties with these programs seem not to have been primarily in implementation--they are none of them paper reforms, though of course all had some implementation problems--but in conceptualization. They have affected the way people behave, but they have not by and large produced the impacts anticipated. Though some of the unanticipated impacts have clearly been negative, even the early critics of the reform ideas did not very accurately foresee developments. In these circumstances, it is suggested that AID should at least for the time being show considerable caution with respect to support for such broad and decisive reform initiatives as individualization of tenure, cooperativization of production, and nationalization to establish centralized, bureaucratic control of tenure systems. Mistakes in such social engineering exercises can be costly in both human and economic terms, and the track record is not very good.

It is more appropriate, it seems, for AID to assist governments in experiments with more modest efforts, whose payoffs are more modest but whose potential for miscarrying is also limited. AID should examine opportunities related to reinstitutionalization of existing systems and reform of rules of inheritance, but should be cautious simply because while these approaches appear to have promise, they have received little careful study to date.

While AID may wish to consider the implementation of these latter reform approaches on a national scale, it is probably important in all cases to seek opportunities to first implement land tenure reform on a pilot basis. The project context is AID's opportunity to seek viable solutions to land tenure problems, and project design staff need to take to heart the admonition that projects should be viewed as experiments. It is not a question of whether or not one should "experiment," but a matter of recognizing that, like it or not, every project is an experiment. The only question is whether it is planned or unplanned experiment, and whether it is organized in such a way that we may more easily learn something from it. (One of the most interesting current experiments, and one for which adequate ongoing research and monitoring has

been planned as an integral part of project activities, concerns rangeland control in several villages in eastern Lesotho. See Insert 63.)[172] Such experimentation should, in addition to teaching us about the effects of certain substantive changes, serve as a framework for us to feel out the potentials and limitations of the tools for reform in the project context set out in Chapter 7.

Where redistributive reform appears appropriate--and in this area AID has usually had better articulated policies than as regards tenure reform--any substantial African land reform will require much the same of AID as land reform elsewhere: a good eye for windows of political opportunity, the capability to react supportively very quickly, and resoluteness in bearing the costs. Where AID finds real opportunities in the area, it should seize them. Moreover, missions should ensure that they are knowledgeable enough to recognize and evaluate opportunities competently. Such tenure problems tend to be perceived as "long-term" in the sense that no immediate resolution is possible. This will be true in some cases, but too often the response generated by tnat perception is to do nothing until the problem is very short-term indeed--when it is too late to do the research needed for realistic policy-making and reform planning, and too late to create a cadre of administrators who are both committed and technically knowledgeable about land reform. AID missions in countries with such problems should pursue research and training opportunities, in order to be able to act effectively when reform becomes possible. Some of the pitfalls of such attempts are examined by Cohen in his examination of the role of foreign experts in pre-revolutionary Ethiopia (see Insert 64).

Research Implications: If AID is to come to grips with tenure issues in project design--both in the interests of project success and to gain experience with tenure "experiments"--it is important that it upgrade significantly the research on land tenure which takes place as part of pre-project activities. This issue is not separable from the more general issue of the role of social science research in project design, and that knotty question cannot be resolved in this context. It is suggested, however, that AID needs a clearer sense than it has at the moment of what is involved in good applied land tenure research, and some suggestions on that point are ventured below.

The issues which need to be addressed will of course vary depending on the type of project, and Chapter 6 indicates which issues are most likely to arise in particular types of projects. It is also clear, that there are certain topics on which present data is especially inadequate: the impact of inheritance patterns; the consequences of the exclusion of women, who commonly perform most farm labor and often make critical management decisions, from access to land in their own right; the dynamics and impacts of Islamicization of indigenous land tenure sysems; the character and economic role of indigenous land transactions; and the problems and potentials of decentralized land administration, including land use planning, by traditional or modern local institutions. However, the recommendations below relate more to broader concerns about the quality of such research which, it is suggested, should:

(a) get beyond descriptive statements about the tenure "system" to a law-in-action perspective which seeks an understanding of practice in the interplay between rules and other factors affecting behavior;

63. Project-Initiated Land Tenure Change in Lesotho

Recent government policy has attempted to improve range condition by promoting community-level institutions and organizations for managing local range lands. A major policy experiment has been the establishment of a grazing association in Sehlabathebe, a mountainous area on Lesotho's eastern border with South Africa. A special Range Management Area (RMA) constituting about 30,000 hectares has been designated. The ten villages in Sehlabathebe have a combined population of about 4,500. An estimated 3,000 cattle, 20,000 sheep, 4,000 goats, and 800 horses and donkeys graze the area.

Major technical assistance has been provided through the USAID funded Land Conservation and Range Development Project. Under the guidance of project and Government of Lesotho (GOL) personnel, a local grazing association has been established. Membership is open to all area residents. In 1983 the association had nearly 300 members, or about 60 percent of all stockholders in the area. A constitution and by-laws govern the activities of the association, and set out the responsibilities of an executive committee, made up of two elected representatives from each village, as well as the chief or headman from each village. The committee members, chosen by villagers every two years, select a chairman and other officers. The committee is responsible for making rules for the use of local range, including the setting of dates for taking stock to and from the cattle posts, exemptions for milking cows and draft oxen which may be left in the village areas, and the culling of sub-standard stock.

In January 1983 the Principal Chief of Qacha's Nek District granted stockholders from Sehlabathebe exclusive use rights over a cattle post grazing area traditionally shared with stock holders from neighbouring areas. This step, though permitted in terms of recent grazing regulations, runs counter to customary law which assured open access to cattle post areas. The executive committee controls twelve range riders, who police the cattle posts against encroachment by stock from outside the area, and impound local and outside stock grazing in violation of the rules.

The village chiefs still retain much of their legal authority for regulating grazing in the village (non-cattle post) areas. The legal relationship between the executive committee and village chiefs with respect to enforcing rules in village areas (and how actions taken by chiefs in village areas affect management objectives in cattle post areas) has not been clearly defined. Rules in this area are in flux.

Steven Lawry, "Private Grazing and Communal Land: Problems in the Management of Communal Grazing Land in Lesotho." Maseru: Research Proposal, 1985.

64. Foreign Advisors and Reform on Pre-Revolutionary Ethiopia

Ethiopia's land reform supports Hung-Chao Tai's thesis that in a government dominated by "cooperative" élites, foreign experts are likely to formulate overly complex policies and technically difficult draft legislation. This is because they must work within the system and face its constraints. They cannot consider the simpler solutions available to separate élites or revolutionaries who may seize a reform-blocked society. The search for a solution compatible with a country's existing political economy can become the swamp of complexity in which a government will bog reform down. Nowhere is this clearer than in the complex "expropriation of under-utilized" land legislation worked on by MLRA advisors in the early 1970s.

The less preexisting data there is on land tenure patterns, the more useful foreign advisors can make themselves. In fact, technical studies and position papers can provide extensive opportunities. But as evidence in favor of reform increases and the options for legislation are articulated, the need for advisors decreases; indeed, such work creates political heat that politicians are likely to find uncomfortable. This is particularly true when studies and policy papers are leaked by frustrated advisors or their young Western-trained counterparts to donors who in turn use them to pressure the government, or else, to radical intellectuals, students, and journalists. Leaks of this sort marked most foreign involvement in Ethiopia's government processes, generating information flows that enriched international understanding of the problem and raised domestic consciousness of the need for reform. The work of foreign personnel, except for the FAO advisors who had a long-standing relationship with the government built on trust, appears to have had greater positive impact outside government channels than within them.

A major problem with foreign actors is that they tend to neglect the constraints of institutional and manpower resources when they argue for reform. Aside from the efforts of the FAO in 1969 and the Swedish Agricultural Workers Union in 1972, there is no evidence that any member of the international community offered the funds, training, or technical assistance necessary to implement land reforms and to administer land offices at local levels, despite widespread recognition of the dearth of trained technicians who could implement essential reform provisions such as land measurement and the maintenance of ownership and land use records.

John M. Cohen, "Foreign Involvement in Land Tenure Reform: The Case of Ethiopia," at pp. 169-219 of International Dimensions of Land Reform, ed. John D. Montgomery (Boulder, Colo.: Westview Press, 1984).

(b) approach tenure issues in projects not as tenure "problems" but as opportunities for imaginative project design;

(c) view tenure systems as menus, with different primary tenures for different uses, constituting potential tenure niches for project activities, and with secondary tenures such as leasehold which may in a particular case be quite as important for project purposes as the primary tenures;

(d) see tenure as dynamic, and focus upon patterns of change already underway, relating them in historical terms to changes in land use such as the stabilization of cultivation;

(e) focus upon the farmer's perspective, seeking to understand how he or she sees the tenure system, and in particular to understand farmer land acquisition and retention strategies in the household cycle context;

(f) use dispute studies as a relatively quick means of identifying "trouble spots" in the tenure system;

(g) examine the legal culture concerning normative change, to permit assessment of the potential of the various tools for tenure reform in the project context; and

(h) adopt an interdisciplinary approach to produce a research product which melds (1) the relatively sophisticated conceptualizations of indigenous tenures developed by anthropology and law-in-action studies with (2) the economists' ability to quantify, determine stastical significance, and relate tenure issues to economic development strategies.

No such listing can hope to be comprehensive, but the above suggestions would, if followed, significantly improve the quality of the applied research on land tenure which AID funds.

Policy Dialogue on Land Tenure Issues: It has been suggested in Chapter 7 that land tenure issues are not hopelessly "sensitive." It is worthwhile repeating several points made there, as prologue to some suggestions concerning dialogue. Land tenure issues are probably less politically explosive than some other current topics of policy dialogue, such as decontrol of food prices for urban consumers. They only achieve comparable levels of sensitivity when ethnic conflict over resources is involved. Moreover, most African governments are controlled by elites who have little vested interest in existing tenure arrangements. They may share the cultural values underlying those tenure systems, but they also tend to want to reshape tenure systems in ways which enhance their authority and legitimacy.

On the other hand, donors have a credibility problem with African governments when talking about tenure change, more so than when discussing "getting the prices right." There is a great and for the most part well-founded reluctance to believe that donors appreciate the intricate linkages involved in existing tenure systems. It is suggested that the context in which policy

dialogue can most constructively begin is the project context, where national professional and technical staff and donor staff can develop shared perceptions of problems and opportunities, and ways of addressing them. By using projects as pilots for land tenure change, hypotheses can be tested and more confident answers developed. By involving the right local research institutions in land tenure research for project and other purposes, one ensures not only more relevant and sensitive research, but that the research results are internalized in an institution to which government turns for advice periodically. By providing training opportunties in land tenure, a common ground of concepts and concerns is established as a basis for dialogue. These are the ways to build effective dialogue.

Dialogue with whom? It cannot be stressed too strongly that a serious concern with land tenure issues will necessarily lead USAIDs into contacts with ministries and agencies with whom it has not previously been dealing. The contacts of AID's Agricultural Development Officers are generally concentrated in the Ministry of Agriculture. While there may be a section in Agriculture with some responsibility for thinking about tenure issues in relation to agricultural development, that section usually does not have the competence alone to do anything about land policy, and it is almost never the focus of implementation capabilities with respect to land. These commonly are vested in a Ministry of Lands and Local Government, or Lands and Natural Resources, or perhaps a Lands Division in the Ministry of Interior. Often the implementation capabilities of these agencies are very modest. Where AID is attempting to deal with land tenure in the project context it must recognize this and, to the extent that it needs this Ministry's help, it must be ready to build funding into the project for that Ministry's implementation exercise. AID should in any case be building bridges to such agencies and familiarizing itself with their capabilities. Any realistic policy dialogue must be informed by a clear sense of what is possible given levels of training and staffing. Use of training funds for personnel of such ministries seems an appropriate way to build such bridges.

Footnotes

1. Classics include Isaac Schapera, Native Land Tenure in the Bechuanaland Protectorate (Lovedale, South Africa: Lovedale Press, 1943); William Allen, Land Holding and Land Usage among the Plateau Tonga of Mazabuka District: A Reconnaissance Survey, 1945 (Westport, Conn.: Negro Universities Press, 1948, 1970); Henry W. West, Land Policy in Buganda (Cambridge: Cambridge University Press, 1972); A.J.B. Hughes, Land Tenure, Land Rights and Land Communities on Swazi Nation Land in Swaziland (Durban: Institute for Social Research, University of Natal, 1972); Vernon Sheddick, Land Tenure in Basutoland, Colonial Research Studies, no. 2 (London: Commonwealth Relations Office, HMSO, 1954); and Allan Hoben, Land Tenure among the Amhara of Ethiopia; The Dynamics of Cognatic Descent (Chicago: University of Chicago Press, 1973).

2. Such simplistic models of "African land tenure" unfortunately appear regularly in the development economics literature. For example, see the otherwise thoughtful piece by David E. Ault and Gilbert L. Rutman, "The Development of Individual Rights to Property in Tribal Africa," Journal of Law and Economics 22 (1979): 163-82, at p. 172.

3. For another list of the various meanings of "communal," see W. Arthur Lewis, The Theory of Economic Growth (London: Allen and Unwin, 1963), at p. 29.

4. Our society justifies public control of the use of private property not on the basis of a "tenure" right in the state (as was English law, which holds that all land is held from the Crown), but upon constitutional empowerments such as the police power, the power of eminent domain, and the power to protect the health, safety, and welfare of the public. The net result is not so very different. For a classic statement, see Raymond J. Penn, "Public Interest in Private Property (Land). Land Economics 37 (1961): 100-104.

5. White questions the appropriateness of the term "allocate" for situations such as that among the Plateau Tonga of Zambia, where the village headman's "only participation in the acquisition of land is to provide information as to whether or not existing rights are already enjoyed by an individual in a piece of land which another wishes to acquire." C.M.N. White, "Terminological Confusion in African Land Tenure," Journal of African Administration 10 (1953): 124-30, at p. 125.

6. Such rights have traditionally been enjoyed, for instance, by chiefs in Lesotho and by elders under the tenure chiguraf-gwoses in Tigray, Ethiopia. In Lesotho the right was withdrawn in 1979. On Lesotho, see Vernon Sheddick, Land Tenure in Basutoland, Colonial Research Studies, no. 2 (London: Commonwealth Relations Office, HMSO, 1954); and for the withdrawal of the right from the chiefs, John W. Bruce, "A Report on the Land Act Policy Seminar," in Proceedings: Lesotho Land Act Policy Seminar, LTC Paper No. 125 (Madison: Land Tenure Center, University of Wisconsin, 1985) at p. 2. On reallocation by elders under the tenure chiguraf-gwoses, see the excerpt from Bruce presented in this paper as insert 22.

7. The transition is not always clearcut. Sometimes the heir or heirs are to be selected by the patrikin or matrikin, while in other cases a particular heir (i.e., youngest son of first wife) is specified by custom. See section 3.6, infra.

8. Sales are reported by a multitude of authors around Africa. See the cases assembled in Raymond Noronha, "A Review of the Literature on Land Tenure Systems in Sub-Saharan Africa," (Washington, DC: World Bank, Report No. ARU 43), 1985, pp. 109-113; and the discussion in John M. Cohen, "Land Tenure and Rural Development in Africa," in Agricultural Development in Africa, ed. R.F. Bates and M.F. Lofchie (New York: Praeger, 1980), pp. 348-400, at pp. 360-63. A very basic question not often asked is: once a member of the land-allocating group (lineage, village, etc.) has sold his or her holding, does he or she still have a right, as a member of the group, to other land? If land is still plentiful, the answer may be in the positive. See John W. Bruce, Observations on Land Tenure and Housing Development in the Major Villages of Botswana, LTC Research Paper, no. 75 (Madison: Land Tenure Center, University of Wisconsin, 1981), at pp. 12-13.

9. Carlo Conti Rossini, Principi di diritto consultudinario dell' Eritrea (Rome: Ministero delle Colonie, Manuali Coloniali, 1916), at p. 115-116.

10. The notion of a "bundle of rights" has been used often and profitably in the literature, and it originates with Henry Maine, Ancient Law, 10th ed. (1920), p. 174. For a classic statement, paraphrased in the text, concerning concurrently "communal" and "individual" nature of landholding in any society, see Godfrey Wilson, The Land Rights of Individuals among the Nyakyusa (Manchester: Manchester University Press, for Institute for Social Research, University of Zambia, 1938), at p. 12.

11. Max Gluckman, "Property Rights and Status in African Traditional Law," in Ideas and Procedures in African Traditional Law, ed. Max Gluckman (London: Oxford University Press, 1969), pp. 251-65.

12. Daniel Biebuyck, "Land Holding and Social Organization," in Economic Transition in Africa, ed. M.M. Herskovitz and M. Harwitz (London: Routledge and Kegan Paul, 1964), pp. 99-112, at p. 104. Others have expressed concern about too facile applications of Gluckman's "estates" model. White has pointed out its questionable utility for other groups in Zambia. C.M.N. White, "Terminological Confusion in African Land Tenure," Journal of African Administration 10 (1953): 124-30, at pp. 125-26. Prins has questioned its accuracy even as regards the Lozi. Gwyn Prins, The Hidden Hippopotomus (Cambridge University Press, 1980), at p. 32.

13. See, for instance, Dan F. Bauer, "For Want of an Ox . . . : Land, Capital and Social Stratification in Tigre," in Proceedings of the First United States Conference on Ethiopian Studies, 1975, ed. Harold Marcus (East Lansing: Michigan State University Press, 1975), pp. 235-47; and Vernon Sheddick, Land Tenure in Basutoland, Colonial Research Studies, no. 2 (London: Commonwealth Relations Office, HMSO, 1954), at p. 94.

14. This is most important in cognatic systems of descent, such as those of the Amhara or the Ondo Yoruba or the Lozi. See the discussion of the situation under rist (at pp. 151-52) and comparisons with other cognatic descent systems (at pp. 233-48) of Allan Hoben, Land Tenure among the Amhara of Ethiopia; The Dynamics of Cognatic Descent (Chicago: University of Chicago Press, 1973).

15. A study from Liberia illustrates this nicely: James L. Gibbs, Jr., "The Kpelle Moot: A Therapeutic Model for Informal Settlement of Disputes," Africa 33 (1968), pp. 1-10. An article which reviews the literature, and makes the important point that contrasts between African and Western systems can be overstated, is J. Van Velsen, "Procedural Informality, Reconciliation, and False Comparisons," in Ideas and Procedures in African Traditional Law, ed. Max Gluckman (London: Oxford University Press, 1969), pp. 137-50.

16. A classic review of those impacts is Elizabeth Colson, "The Impact of the Colonial Period on the Definition of Land Rights," in Profiles in Change: African Society and Colonial Rule, pp. 193-215, vol. 3, Colonialism in Africa: 1870-1960, ed. L.H. Gann (Cambridge: Cambridge University Press, 1971).

17. For an overview, see J. Suret-Canale, French Colonialism in Tropical Africa, 1900-1945 (London: C. Hurst, 1971), especially Part I, chapters 1 and 2, and Part II, chapter 1.

18. Tenure change among the Kipsigis of western Kenya was initiated when the establishment of tea plantations and the railroad created a significant market for maize. Robert A. Manners, "Colonialism and Native Land Tenure: A Case Study in Ordained Accommodation," in Process and Patterns in Culture, ed. Robert A. Manners (Chicago: Aldine, 1964), pp. 266-80. As Barber notes, the lifting of such restrictions on the eve of independence in Kenya contributed significantly to production, and in evaluating the concurrent land reform it is difficult to disaggregate the impacts. William J. Barber, "Land Reform and Economic Change among African Farmers in Kenya," Economic Development and Cultural Change 19 (1970/71): 6-24, at pp. 18-19. For a review of such restrictions on native choices of crops, see Ann Seidman, "The Inherited Dual Economies of East Africa," in Socialism in Tanzania, vol. 1, ed. L. Cliffe and J.S. Saul (Dar es Salaam, 1973), pp. 41-64.

19. The author is aware of land being "retribalized" in only two countries. The term is used in Botswana, and refers to the land being turned over to the Tribal Land Boards for administration. In Botswana, some former freehold farms in the Barolong and in the Tuti Block have been purchased by government and retribalized. Fortmann describes the situation in the Tuti Block. L. Fortmann and others, A Study of Local Institutions and Resource Management in the Northeast CFDA (Gaborone and Madison: Applied Research Unit, Ministry of Local Government and Land, and Land Tenure Center, University of Wisconsin, 1983), at pp. 68, 144, 186, and 247. A major repurchase program from foreign (largely South African) landowners has been under way for many years in Swaziland and following independence received British financial assistance. Only a part of the land repurchased has been retribalized, some being used for experimental farms, parastatal operations, etc. See G.W. Whittington and J.B. McI. Daniel, "Problems of Land Tenure and Ownership in Swaziland," in Environment and Land Use in Africa (eds. M.F. Thomas and G. W Whittington). London:

Meuthen, 1969. In Zambia, there are pressures for the takeover of some leasehold farms (former freehold) in Southern District. A Commission of Enquiry was appointed in 1981 to examine the situation there, but the author's information is that its report has never been made public. John W. Bruce and Peter P. Dorner, Agricultural Land Tenure in Zambia: Perspectives, Problems and Opportunities, LTC Research Paper, no. 76 (Madison: Land Tenure Center, University of Wisconsin, 1982), at pp. 28-29.

20. See the discussion of the persistence of this dualism in Zambia in insert 6 of this paper. It is often not appreciated that a dual tenure system functioned in West Africa as well, though with respect to much smaller amounts of land and on a very different legal basis. Freehold and leasehold were not created in large blocks by the action of colonial governments, but on a parcel-by-parcel basis through specifications in deeds and through enforcement of certain presumptions of law concerning intentions of the parties. See, for example, A.E.W. Park, "A Dual System of Land Tenure: The Experience of Southern Nigeria," Journal of African Law 9 (1965): 1-19.

21. The other classic on this process in West Africa is Polly Hill, Migrant Cocoa Farmers of Southern Ghana (Cambridge: Cambridge University Press, 1963). Similar changes were underway in French-speaking Africa. See C. Tardits, "Développement du régime d'appropriation privée des terres de la palmeraie du Sud-Dahomey," and A.J.F. Kobben, "Land as an Object of Gain in a Non-Literate Society: Land Tenure among the Bete and Dida (Ivory Coast, West Africa)," in African Agrarian Systems, ed. Daniel Biebuyck (London: Oxford University Press, 1963), pp. 297-313, and pp. 245-66. For other examples, see Louise Fortmann and James Riddell, Trees and Tenure: An Annotated Bibliography for Agroforesters and Others (Madison and Nairobi: Land Tenure Center, University of Wisconsin, and International Commission for Research in Agroforestry, 1985).

22. A.N. Allot, "Modern Changes in African Land Tenure," in Readings in African Law, ed. E. Cotran and N.N. Rubin (London: Frank Cass, 1970), pp. 236-41, at p. 239.

23. See A.N. Allot, "Family Property in West Africa: Its Juristic Basis, Control and Enjoyment," in Family Law in Asia and Africa, ed. J.N.D. Anderson (London: Butterworths, 1968), pp. 121-42.

24. G. Kouassigan, L'homme et la terre (Paris: Orstom, 1966), pp. 32-35.

25. See T.M. Lewis, Islam in Tropical Africa, 2nd ed. (Bloomington: Indiana University Press, and International African Institute, 1980), pp. 49-57; and J.N.D. Anderson, Islamic Law in Africa (London: Frank Cass, 1970). A classic description of the gradual acceptance of Islamic law is Spencer Trimingham, Islam in West Africa (London: Oxford University Press, 1959), pp. 21-46.

26. See, for instance, David E. Ault and Gilbert L. Rutman, "The Development of Individual Rights to Property in Tribal Africa," Journal of Law and Economics 22 (1979): 163-82; and Omotunde E.G. Johnson, "Economic Analysis, the Legal Framework and Land Tenure Systems," Journal of Law and Economics 15 (1972): 259-76. Johnson, at p. 275, adds a wise caveat, that the "costs of

moving from one system to another" must be borne in mind. J. Levi and M. Havinden, "Chapter 5: Land," of their Economics of African Agriculture (Harlow, Essex: Longmans, 1982), appear to have a better sense of the profoundly transitional situation in which many African landholders find themselves.

27. An exception are the institutional economists, who generally have a strong sense of history. Their classic text is J.R. Commons, Legal Foundations of Capitalism (Madison: University of Wisconsin Press, 1957). Their insights have considerable potential for application in the African context.

28. See Eleanor Boserup, The Conditions of Agricultural Growth: The Economics of Agrarian Change Under Population Pressure (Chicago: Aldine, 1965).

29. See Robert Harms, Land Tenure and Agricultural Development in Zaire, 1895-1961, LTC Research Paper, no. 99 (Madison: Land Tenure Center, University of Wisconsin, 1974), pp. 16-19, and Gaston Kalambay, "Les Droits fonciers coutumiers à traves la législation de la République Démocratique du Congo," Revue Juridique et Politique, Indépendance et Coopération 24 (1970): 1175-80.

30. Philip M. Raup, "The Contribution of Land Reforms to Agricultural Development: An Analytical Framework," Economic Development and Cultural Change 12 (1963): 1-21. The point about rising real income is made at p. 11.

31. The term was not meant perjoratively by its originator, Paul Bohannan, "'Land,' 'Tenure,' and Land-Tenure," in African Agrarian Systems, ed. Daniel Biebuyck (London: Oxford University Press, 1963), pp. 101-15.

32. Certainly this was the case with reallocations of chiguraf-gwoses land which I studied in Tigray. John W. Bruce, "Land Reform Planning and Indigenous Tenures: A Case Study of the Tenure Chiguraf-Gwoses in Tigray, Ethiopia," SJD dissertation (Law), University of Wisconsin-Madison, 1976, at p. 255. There is a dearth of information on the point in similar systems.

33. See Kenneth H. Parsons, Customary Land Tenure and the Development of African Agriculture, LTC Research Paper, no. 77 (Madison: Land Tenure Center, University of Wisconsin, 1971), at p. 33, for a discussion of the inability, or at least the slowness, of most kinship-based indigenous systems of land tenure to cut off claims from those who are gainfully employed outside agriculture.

34. See insert no. 41 for a description of such circumstances in Swaziland.

35. Suggested measures of security might be length of residence in the settlement, incidence of evictions, incidence of land disputes, security perceptions, and others. See Research Unit, Agriculture and Rural Development Department, World Bank, "Land Title Security and Farm Productivity; a Case Study in Thailand," 1983, at p. 12.

36. In discussions with farmers in Zambia in 1981, I had a clear impression that those cultivating under indigenous tenure systems were more conscious of insecurity of tenure because they were aware of the local alternative, long-

term leasehold. John W. Bruce and Peter P. Dorner, Agricultural Land Tenure in Zambia: Perspectives, Problems and Opportunities, LTC Research Paper, no. 76 (Madison: Land Tenure Center, University of Wisconsin, 1982), at p. 35.

37. See the items cited in n. 26. Many of the concepts applied in this area are derived from Demsetz's work. See Harold Demsetz, "Some Aspects of Property Rights," Journal of Law and Economics 9 (1964): 61-80; and Harold Demsetz, "The Exchange and Enforcement of Property Rights," Journal of Law and Economics 11 (1964): 15-29.

38. See, for example, D.R. Phororo, Land Tenure in Lesotho, Soil Use and Conservation, Water Use and Irrigation (Maseru: Ministry of Agriculture, Cooperatives and Marketing, 1979), at pp. 14-20; and Hamza Mohamed Nour el Zubeir, Fur Customary Land Law in Southern Darfur, Customary Law Monograph, no. 4 (Khartoum: Faculty of Law, University of Khartoum, n.d.), at pp. 75-82.

39. Where the traditional polity has succeeded to control of the state, such prohibitions may be legislated at the national level, e.g., the Swaziland Control of Tree Planting Act of 1972. See FAO, The Agricultural Economy of Swaziland (Rome: FAO, 1980), at p. 15. For other case in point, see pp. 26-32 of John W. Bruce and Raymond Noronha, "Land Tenure Issues in the Forestry and Agroforestry Contexts," Paper prepared for the International Workshop on Land Tenure Issues in Agroforestry (23-30 May 1985, Nairobi, Kenya).

40. See, for instance, Omotunde E.G. Johnson, "Economic Analysis, the Legal Framework and Land Tenure Systems," Journal of Law and Economics 15 (1972): 259-76, at p. 266; and David E. Ault and Gilbert L. Rutman, "The Development of Individual Rights to Property in Tribal Africa," Journal of Law and Economics 22 (1979): 163-82, at p. 174.

41. See David King, Land Reform and Participation of the Rural Poor in the Development Process of Africa, LTC Paper, no. 101 (Madison: Land Tenure Center, University of Wisconsin, 1974).

42. Evidence on the relative efficiency of different sizes of farms in Africa comes from Kenya and Sierra Leone. It is presented in John Levi and Michael Havinden, Economics of African Agriculture (Harlow, Essex: Longmans, 1982), at p. 80. The evidence from Kenya is from settlement schemes, and that from Sierra Leone concerns shifting cultivation. If it comes from specialized circumstances, it is supported by considerable evidence from other continents. See Albert R. Berry and William F. Cline, Agrarian Structure and Productivity in Developing Countries (Baltimore: Johns Hopkins University Press, 1979); and Bruce F. Johnston and Peter Kilby, Agriculture and Structural Transformation: Economic Strategies in Late-Developing Countries (New York: Oxford University Press, 1975).

43. H.W.O. Okoth-Ogendo, "African Land Tenure Reform," in Agricultural Development in Kenya: An Economic Assessment, ed. J. Hayer, J.K. Maitha, and W.M. Senga (Oxford: Oxford University Press, 1976), pp. 152-85, at p. 179.

44. See John R. Harris and Michael P. Todaro, "Migration, Unemployment and Development: A Two-Sector Analysis," American Economic Review 60 (1970): 126-42.

45. From a very long-term historical perspective, state action would seem to have produced most major concentrations, often though not invariably as the result of conquest and division of the spoils. See Elias H. Tuma, Twenty-six Centuries of Agrarian Reform, a Comparative Analysis (Berkeley: University of California Press, 1965), at pp. 168-79.

46. This is most common in countries of Africa in which Islamic legal influence is strong. The possessory mortgage does not pay "interest" as such, and so has usually been considered more consistent with Islamic law's prohibition of any interest as usury. See the references cited in n. 25. The possessory mortgage also occurs in non-Islamic contexts and in circumstances as diverse as Botswana and highland Ethiopia. In neither case does it appear to be a recent innovation. See Isaac Schapera, Native Land Tenure in the Bechuanaland Protectorate (Lovedale, South Africa: Lovedale Press, 1943), at p. 140. In highland Ethiopia, a possessory mortgage which is never repaid is sometimes the mechanism used to accomplish a surreptitious sale. See John W. Bruce, "Land Reform Planning and Indigenous Tenures: A Case Study of the Tenure Chiguraf-Gwoses in Tigray, Ethiopia." SJD dissertation (Law), University of Wisconsin-Madison, 1976, at pp. 233-235.

47. For a discussion of putting the cart before the horse (i.e., legal mortgagability before a land market) in the village context, see John W. Bruce, Observations on Land Tenure and Housing Development in the Major Villages of Botswana, LTC Research Paper, no. 75 (Madison: Land Tenure Center, University of Wisconsin, 1981), at pp. 5-6.

48. Ibid., at pp. 27-28.

49. H.W.O. Okoth-Ogendo, "African Land Tenure Reform," in Agricultural Development in Kenya: An Economic Assessment, ed. J. Hayer, J.K. Maitha, and W.M. Senga (Oxford: Oxford University Press, 1976), pp. 124-42, at p. 139 and H.W.O. Okoth-Ogendo, "The Perils of Land 'Tenure' Reform." Paper presented at a Workshop on Land Policy on Agricultural Production in Eastern and Southern African Countries, 14-19 February 1982 (Gaborone, Botswana), at p. 47.

50. See generally David Schneider and Kathleen Gough, eds., Matrilineal Kinship (Berkeley: University of California Press, 1961); Mary Douglas, "Is Matriliny Doomed in Africa," in Man in Africa, ed M. Douglas and E. Kaberry (London: Tavistock Publications, 1969), pp. 121-35; Jack Goody, "Sideways or Downwards? Lateral and Vertical Succession, Inheritance and Descent in Africa and Eurasia," Man 5 (1970): 627-38; and Jack Goody and Joan Buckley, "Inheritance and Woman's Labor in Africa," Africa 43 (1973): 108-21.

51. John W. Bruce and Peter P. Dorner, Agricultural Land Tenure in Zambia: Perspectives, Problems and Opportunities, LTC Research Paper, no. 76 (Madison: Land Tenure Center, University of Wisconsin, 1982), at pp. 35-39.

52. On the economic impacts of fragmentation, see Omotunde E.G. Johnson, "A Note on the Economics of Fragmentation," Nigerian Journal of Economic and Social Studies 12 (1970): 115-84; Russell King and Steve Burton, "Land Fragmentation: Notes on a Fundamental Rural Spatial Problem" in Progress in Human Geography 6 (4), December 1982, pp. 475-495; M.U. Igbozurike, "Fragmentation in Tropical Agriculture: An Overrated Phenomenon," Professional Geographer 22 (1970): 321-25; and E.H. Jacoby and C.F. Jacoby, The Essential Revolution: Man and Land (New York: Knopf, 1971), pp. 264-74.

53. Dan F. Bauer, "For Want of an Ox . . . : Land, Capital and Social Stratification in Tigre," in Proceedings of the First United States Conference on Ethiopian Studies, 1975, ed. Harold Marcus (East Lansing: Michigan State University Press, 1975), pp. 235-47.

54. This was happening in 1981 in densely populated areas of Zambia's Southern District. It has also been reported in Ghana. James C. Riddell, "Dynamics of Land Tenure and Agrarian Systems in Africa: A Synthesis of Findings," discussion draft (Rome: FAO, 1984), at pp. 26-29.

55. The major reform experiences are Kenya, Zambia, and Zimbabwe. For Kenya, see W.J. Barber, "Land Reform and Economic Change among African Farmers in Kenya," Economic Development and Cultural Change 19 (1970/71): 6-24; Russell King, "Kenya," in his Land Reform: A World Survey (Boulder, Colo.: Westview Press, 1977), pp. 335-55; and Christopher Leo, Land and Class in Kenya (Toronto: University of Toronto Press, 1984). For Zambia, see John W. Bruce and Peter P. Dorner, Agricultural Land Tenure in Zambia: Perspectives, Problems and Opportunities, LTC Research Paper, no. 76 (Madison: Land Tenure Center, University of Wisconsin, 1982); and Robin Palmer, "Land in Zambia," in his Zambia Land and Labour Studies, vol. 1 (Lusaka: National Archives, 1973), pp. 56-55. And on Zimbabwe, see B.H. Kinsey, "Forever Gained: Resettlement and Land Policy in the Context of National Development in Zimbabwe," Africa 52 (1982): 92-113.

56. See Dessalegn Rahmato, Agrarian Reform in Ethiopia (Uppsala: Scandanavian Institute of African Studies, 1984); John M. Cohen and Peter D. Koehn, "Rural and Urban Land Reform in Ethiopia," African Law Studies 14 (1977): 3-26; Alula Abate and Tesfaye Teklu, "Land Reform and Peasant Associations in Ethiopia--Case Studies of Two Widely Differing Regions," Northeast African Studies 2 (1980): 1-51; and John M. Cohen, Agrarian Reform in Ethiopia: The Situation on the Eve of the Revolution's 10th Anniversary, HIID Development Discussion Paper, no. 164 (Cambridge: HIID, 1984).

57. See John M. Cohen, "Foreign Involvement in Land Tenure Reform, the Case of Ethiopia," in International Dimensions of Land Reform, ed. John D. Montgomery (Boulder, Colo.: Westview Press, 1984), pp. 169-220. A portion is reproduced as insert 61 in this paper.

58. A debate on share tenancy continues, begun by Steven N.S. Cheung, "Private Property Rights and Sharecropping," Journal of Political Economy 76 (1968): 1107-22. The literature produced by the debate is summarized in Hans P. Binswanger and Mark R. Rosenzweig, Contractual Arrangements, Employment and Wages in Rural Labor Markets: A Critical Review (New York: Agricultural Development Council, 1981).

59. Commentary on the tenancy reform proposals has tended to take those proposals too much at face value, and to conclude that they were so modest as to perhaps be counterproductive. For example, see Gene Ellis, "Land Tenancy Reform in Ethiopia: A Retrospective Analysis," Economic Development and Cultural Change 28 (1980): 523-45. But those who supported the proposals saw in them a means of creating tenants' organizations, hoping to alter irrevocably the political situation in the countryside and soon generate demands for more radical reforms. The strong support for the proposals by radical elements in the Ministry of Land Reform and Administration is explicable only in these political terms.

60. It has been suggested by one author that it may be cheaper to live with the costs of problematic aspects of indigenous land tenure systems than to reform them. See Richard L. Barrows, Individualized Land Tenure and African Agricultural Development: Alternatives for Policy, LTC Paper, no. 85 (Madison: Land Tenure Center, University of Wisconsin, 1973). The most thoughtful discussion of the scope of tenure reform in an African case is Simon F. Coldham, "Land-Tenure Reform in Kenya: The Limits of Law," Journal of Modern African Studies 17 (1979): 615-29. The issue relates to a much broader debate on law and development. See Robert B. Seidman, The State, Law and Development (London: Methuen, 1978).

61. Paul Bohannan, "Land Use, Land Tenure and Land Reform," in Economic Transition in Africa, ed. M.M. Herskovitz and M. Harwitz (London: Routledge and Kegan Paul, 1964), pp. 133-49, at p. 149.

62. Kenneth H. Parsons, Customary Land Tenure and the Development of African Agriculture, LTC Research Paper, no. 77 (Madison: Land Tenure Center, University of Wisconsin, 1971), at p. 20.

63. For a clear sense of how limited what we think of as absolute title may be, and its implications in the African context, see A.N. Allot and S.R. Simpson, "Towards a Definition of Absolute Ownership, I and II," Journal of African Law 5 (1961): 99-102 and 145-50.

64. For a good brief introduction to the program, see J.C.D. Lawrence, "Land Consolidation and Registration in Kenya," in Change in Agriculture, ed. A.H. Bunting (London: Buckworth, 1970), pp. 451-60. The politics behind the reform are reviewed in John W. Harbeson, "Land Reforms and Politics in Kenya, 1954-70," Journal of Modern African Studies 9 (1971): 231-51.

65. The most balanced general examination is W.J. Barber, "Land Reform and Economic Change among African Farmers in Kenya," Economic Development and Cultural Change 19 (1970/71): 6-24.

66. In addition to Coldham, excerpted in insert 23, see Achola Pala Okeya, "The Joluo Equation: Land Reform = Lower Status for Women," Ceres, May-June 1980, pp. 37-42.

67. H.W.O. Okoth-Ogendo, "The Perils of Land 'Tenure' Reform," Paper prepared for Workshop on Land Policy and Agricultural Production in Eastern and Southern African Countries, held in Gaborone, Botswana, 14-19 Feb. 1982, at p. 12; Christopher Leo, Land and Class in Kenya (Toronto: University of Toronto Press, 1984), at pp. 119-145 and 179-198; Simon Coldham, "Land Reform in Kenya--Some Problems and Perspectives," in Law in Alternative Strategies of Rural Development, Third World Legal Studies (New York: INTWORLSA, 1982), pp. 82-103, at pp. 95-96.

68. In addition to Haugerud, excerpted in insert 24, see J.A. Wilson, "Land Control in Kenya's Smallholder Farming Areas," East African Journal of Rural Development 5 (1972): 123-41; Simon Coldham, "Land Reform in Kenya--Some Problems and Perspectives," in Law in Alternative Strategies of Rural Development, Third World Legal Studies (New York: INTWORLSA, 1982), pp. 82-103, at pp. 93-95; and F.O. Homan, "Consolidation, Enclosure and Registration of Title in Kenya," Journal of Local and Overseas Administration 1/2 (1962): 4-14, at pp. 9-10.

69. In addition to Coldham, excerpted in insert 25, see F.O. Homan, "Succession to Registered Land in the African Areas of Kenya," Journal of Local and Overseas Administration 1 (1962): 4-14; and H.W.O. Okoth-Ogendo, "The Perils of Land 'Tenure' Reform." Paper presented at a Workshop on Land Policy and Agricultural Production in Eastern and Southern African Countries, 14-19 February 1982 (Gaborone, Botswana), pp. 50-53. Disputes generated by what Okoth-Ogendo describes as "enormous normative confusion" led to the passage of legislation which takes land disputes out of the Magistrates Courts and has them decided by committees of elders. The Magistrates Jurisdiction (Amendment) Act, 1981 (Act 14 of 1981). It is assumed that many of these disputes are being decided according to customary notions of farmers rather than the law concerning registered land. It has been difficult to get evidence on the point because the decisions of the committees are not coming before the appellate courts for review--because of confusion created by the Act concerning appropriate channels of appeal. Personal communication from Simon Coldham.

70. John W. Bruce, "A Report on the Land Act Policy Seminar," in Proceedings: Lesotho Land Act Policy Seminar, LTC Paper No. 125 (Madison: Land Tenure Center, University of Wisconsin, 1985).

71. John W. Bruce, Observations on Land Tenure and Housing Development in the Major Villages of Botswana, LTC Research Paper, no. 75 (Madison: Land Tenure Center, University of Wisconsin, 1981), at pp. 23-25; and Republic of Botswana, Report of the Presidential Commission on Land Tenure (Gaborone: Government Printer, 1983), at pp. 9-11.

72. John. W. Bruce and Peter P. Dorner, Agricultural Land Tenure in Zambia: Perspectives, Problems and Opportunities, LTC Research Paper, no. 76 (Madison: Land Tenure Center, University of Wisconsin, 1982), at pp. 16-23.

73. The classic statement of the objective behind ujamaa is J.K. Nyerere, Socialism and Rural Development (Nairobi: East African Publishing House, 1967).

74. Two detailed studies of the process are Michaela von Freyhold, Ujamaa Villages: Analysis of a Social Experiment (London: Heinemann, 1979); and Louise Fortmann, Peasants, Officials and Participation in Rural Tanzania: Experience with Villagization and Decentralization, Rural Organization Monograph, no. 1 (Ithaca, N.Y.: Cornell University Center for International Studies, Cornell University, 1980).

75. In addition to Hyden, excerpted in insert 26, see John W. Harbeson, Tanzanian Socialism in Transition: Agricultural Crisis and Policy Reform, USIA Field Staff Report (Hanover, N.H.: USIA, 1983).

76. For possible causes of failure, see Dean E. McHenry, "Peasants and Participation in Communal Farming: The Tanzanian Experience," African Studies Review (1977): 43-63. For a sense of how scanty the legal arrangements were, see R.W. James, Land Tenure and Policy in Tanzania (Dar es Salaam: East African Literature Bureau, 1971), at pp. 240-47.

77. See generally Goran Hyden, Beyond Ujamaa in Tanzania: Underdevelopment and an Uncaptured Peasantry (Berkeley: University of California Press, 1980).

78. John W. Harbeson, Tanzanian Socialism in Transition: Agricultural Crisis and Policy Reform, USIA Field Staff Report (Hanover, N.H.: USIA, 1983), p. 9.

79. For background on land tenure before the revolution, see John M. Cohen and Dov Weintraub, Land and Peasants in Imperial Ethiopia: The Social Background to a Revolution (Assen: Van Gorcum and Co., 1975).

80. John M. Cohen, Agrarian Reform in Ethiopia: The Situation on the Eve of the Revolution's 10th Anniversary, HIID Development Discussion Paper, no. 164 (Cambridge: HIID, 1984), at pp. 15-20.

81. Ibid., p. 23.

82. For a review of programs for smallholders, see ibid., p. 36-43.

83. See above, section 2.3.

84. See A.N. Allot, "Family Property in West Africa: Its Juristic Basis, Control and Enjoyment," in Family Law in Asia and Africa, ed. J.N.D. Anderson (London: Butterworths, 1968), pp. 121-142; and then, for a critique of reliance on analogy to Western co-ownership or trust models, see R.W. James, Modern Land Law of Nigeria (Ile-Ife: University of Ife Press, 1982), at pp. 50-55.

85. For a discussion of the experience under this model, see R.W. James, "Land Tenure Reform in Developing Countries: From Westernization to Indigenization," East African Law Review 9 (1976): 1-46, at p. 40-42.

86. For a description of the code provisions, see Bililign Mandefro, "Agricultural Communities and the Civil Code," Journal of Ethiopian Law 6 (1969): 145-99.

87. For a brief description of the new Tribal Land Board structure, see "Botswana," in James C. Riddell and others, Country Profiles of Land Tenure, Africa 1985, Land Tenure Center (Madison: LTC, University of Wisconsin, draft, July 1985), pp. 13-18. For a more thoroughgoing examination, see Barulaganye Machacha, "Land Boards as Land Management Institutions," M.A. thesis, Land Resources Program, University of Wisconsin-Madison, 1981. Specifically on the continued land allocation activities by headmen, see Chris Brown, "The Institutions Research Project: Summary of Resource Management Issues" (Gaborone: Applied Research Unit, Ministry of Local Government and Lands, with Land Tenure Center, University of Wisconsin-Madison, 1983), at p. 74-80. For a study of allocation patterns emerging under the new system, see Mark A. Marquardt, "Research on Access to Land in the Communal Villages" (Gaborone: Applied Research Unit, Ministry of Local Government and Lands, with Land Tenure Center, University of Wisconsin-Madison, 1984).

88. See n. 69, supra.

89. See also Kathleen Gough, "The Modern Disintegration of Matrilineal Descent Groups," in Matrilineal Kinship, ed. David Schneider and Kathleen Gough (Berkeley: University of California Press, 1961), p. 26; and Karla O. Poewe, "Matriliny in the Throes of Change: Kinship, Descent and Marriage in Luapula, Zambia," 48 Africa (1973): 208 (Part I) and 363 (Part II).

90. On Kenya, see J.C.D Lawrence, "Land Consolidation and Registration in Kenya," in Change in Agriculture, ed. A.H. Bunting (London: Buckworth, 1970), pp. 451-60; F.O. Homan, "Consolidation, Enclosure and Registration of Title in Kenya," Journal of Local and Overseas Administration 1/2 (1962): 4-14; Simon Coldham, "Land Reform in Kenya--Some Problems and Perspectives," in Law in Alternative Strategies of Rural Development, Third World Legal Studies (New York: INTWORLSA, 1982), pp. 82-103, at pp. 84-89; Angelique Haugerud, "The Consequences of Land Tenure Reform among Smallholders in the Kenya Highlands," Rural Africana 15/16 (1983): 65-89, at p. 72. On Swaziland, see D.C. Funnell, "Changes in Farm Incomes and the Rural Development Program in Swaziland," Journal of Developing Areas 16 (1982): 271-90, at p. 80. Generally on fragmentation and consolidation, see the materials cited in note 52.

91. The material for the entire section 4.6 was drawn from James C. Riddell and others, Country Profiles of Land Tenure, Africa 1985 (Madison: LTC, University of Wisconsin), draft, July 1985.

92. This estimate is in terms of the norms that actually control the relationship between cultivators and their land. While much indigenous tenure regulates the use of land which is technically "State Land," that status usually means nothing to the users. And where attempts have been made to wipe the slate clean and begin again with imported tenure institutions, things have not turned out as planned. Attempts to replicate western property institutions may succeed only in modifying existing practice; with the result an amalgam. Imported legal norms, addressed to people very differently situated than those for whom they were originally framed, produce different behavior. "The same rules addressed to role occupants differently situated will produce different results." Robert B. Seidman, "The Communication of Law and the Process of Development," Wisconsin Law Review (1972): 114-65, at p. 118.

93. The example is based on a discussion with Swazi researchers involved in the Swaziland Cropping Systems Research Project, at the research station at Malkerns, in July 1984. I could not say how widespread the phenomenon was.

94. The project is AID's Lesotho Land Conservation and Range Development Project, visited by the author in March 1985. This is one of the more interesting tenure-modification projects currently underway in Africa. See insert no. 63, page 152.

95. This is based on attempts made by missionary agriculturalists to introduce animal traction into certain areas of Keffa Province of southern Ethiopia cleared of tse-tse fly in the late 1960s. Personal observation.

96. Attempts in the early 1970s to introduce boreholes with small pumps for irrigated vegetable gardens in Tigray Province of Ethiopia failed for this reason. Personal observation.

97. See the examples cited in John Higgs, "Land Settlement in Africa and the Near East," Land Reform, Land Settlement and Cooperatives 2 (1978): 1-24, at pp. 14-15.

98. The example is based on experience in a number of irrigation perimeters along the Senegal River in Mauritania and, in particular, the Gorgol Project, funded by the World Bank and other donors. Thomas Park, "Mauritania," in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: LTC, University of Wisconsin), draft, June 1985.

99. The example concerns disputes observed by the author in 1978-1980 concerning rainwater retention dams near El Fasher in the western Sudan.

100. The project was AID's Abyei Development Project, in the late 1970s.

101. The program is that in Kenya; the example is a simplified construct from the literature on the failure to register women's rights, cited in n. 66.

102. The program is again that in Kenya.

103. See the examples cited in n. 38. Recently, the problem has been encountered in Swaziland. Land Tenure Center, "Research Project Proposal: Changes in Agricultural Land Use, Institutional Constraints and Opportunities; A Proposal to the Ministry of Agriculture and Cooperatives of the Kingdom of Swaziland and USAID/Mbabane" (Madison: Land Tenure Center, University of Wisconsin, 1984), at p. 3. For problems between ethnic groups, see the project mentioned in n. 100, and the situations referred to by Riddell in Niger in insert 14.

104. Digging a well in resti areas of Tigray Province of Ethiopia in the 1960s and early 1970s attracted share claims with alarming speed. Personal observation.

105. See insert 41.

106. The author has seen extensive land degradation caused by uncontrolled tractor farming in the Setit Humera area of northwestern Ethiopia in the early 1970s and in the eastern Sudan, in areas south of Gedaref, in the early 1980s.

107. See also Jack Goody, "Rice-Burning and the Green Revolution in Northern Ghana," Journal of Development Studies 16 (1980): 136-55.

108. Tenancy relationships in southern Ethiopia were complicated by the ethnic factor. When credit for tractors became available in the 1960s, landlords evicted tenants in part because they were anxious to extract themselves from a complicated skein of mutual obligations which had originated with the conquest in the early 1900s. These mutual obligations were influenced by the fact that the tenants were the original inhabitants of the area. In the case of non-Amhara landlords, they involved both family ties with tenants and political relationships based on inherited positions of authority held in the local societies by the landlords.

109. John W. Bruce and Peter P. Dorner, Agricultural Land Tenure in Zambia: Perspectives, Problems and Opportunities, LTC Research Paper, no. 76 (Madison: Land Tenure Center, University of Wisconsin, 1982), at pp. 33-35.

110. Sections 3.2 and 3.4 supra.

111. Such leases are used in Zambia and Tanzania. See John W. Bruce and Peter P. Dorner, Agricultural Land Tenure in Zambia: Perspectives, Problems and Opportunities, LTC Research Paper, no. 76 (Madison: Land Tenure Center, University of Wisconsin, 1982), at pp. 16-24; and R.W. James, Land Tenure and Policy in Tanzania (Dar es Salaam: East African Literature Bureau, 1971), at pp. 138-66.

112. This discussion draws heavily on Peter Bloch and others, Land Tenure Issues in River Basin Development," (Madison: Land Tenure Center, University of Wisconsin, June 1985).

113. See the discussion of a "land law of the project" in section 7.5 infra.

114. In fairness, it should be remarked that development efforts in the U.S. commonly have severe but indirect impacts on landowners for which no compensation is required by law. There is reason, however, for greeter concern about such impacts and their consequences in the African situation, where those positively and negatively affected will define impacts in terms of X tribe as against Y tribe, or clan or village, and react as groups. See Mary Tiffen, Land Tenure Issues in Irrigation Planning: Design and Management in Sub-Saharan Africa, African Irrigation Overview, Water Management Synthesis Project, Working Paper no. 1 (Washington: USAID, 1984), at pp. 21-23. Nigeria in recent years seems to have taken a particularly unfortunate approach. See Christine Wallace, "The Kano River Project, Nigeria; the Impact of an Irrigation Scheme on Productivity and Welfare," in Rural Development in Tropical Africa, ed. Judith E. Hayer, P. Roberts, and G. Williams (New York: St. Martin's Press, 1981); and A. Bird, "The Land Tenure Issue in Large Scale Irrigation Projects; Some Problems from Northern Nigeria," in Irrigation in Tropical Africa: Problems and Problem Solving, ed. William A. Adams and A.T. Grove, Cambridge African Monograph, no. 3 (Cambridge: African Studies Center, 1984). The Nigerian experience is, however, not unique. See Peter Bloch, "Senegel," and James C. Riddell, "Mali," in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: Land Tenure Center, University of Wisconsin), draft June 1985.

115. See Peter Bloch, "Synthesis, Policy Analysis and Recommendations," in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: LTC, University of Wisconsin), draft, June 1985, at pp. 24-29. For an unusually concrete description of what "participation" means in one project context (a description from Indonesia of a procedure to incorporate existing tenure into the design of tertiary works) see Martin E. Adams, "Incorporating Existing Land Tenure in Tertiary Designs: Experience from Sumatra, Indonesia," Irrigation Management Network Paper, no. 76 (London: Overseas Development Institute, April 1983). A less happy experience is described in David Seddon, "Results of a Failure to Make an Early Investigation into Land Tenure in Morocco," Irrigation Management Network Paper, no. 76 (London: Overseas Development Institute, April 1983). L. Colvin-Phillips has described a system of small pump schemes in the northern Sudan under which private holdings and government land under lease are combined in a pump scheme to achieve a scale for irrigation not otherwise available. L. Colvin-Phillips, "Sudan," in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: Land Tenure Center, University of Wisconsin), draft, June 1985.

116. On the standards used in Sudan, see L. Colvin-Phillips, "Sudan" in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: Land Tenure Center, University of Wisconsin), draft, June 1985.

117. See Peter Bloch, "Synthesis, Policy Analysis and Recommendations," at pp. 21-25 and "Senegal," at pp. 9-10 in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: Land Tenure Center, University of Wisconsin), draft, June 1985; and Muneera Salem-Murdock, "The Impact of Agricultural Development on a Pastoral Society: The Shukriya of the Eastern Sudan" (Binghampton: Institute for Development Anthropology, 1979).

118. On allocation to women, see generally Peter Bloch, "Synthesis, Policy Analysis and Recommendations," in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: Land Tenure Center, University of Wisconsin), draft, June 1985, at p. 24; Mary Tiffen, Land Tenure Issues in Irrigation Planning: Design and Management in Sub-Saharan Africa, African Irrigation Overview, Water Management Synthesis Project, Working Paper no. 1 (Washington: USAID, 1984), at p. 15; and Muneera Salem-Murdock, "African River Basin Development: Socioeconomic Issues," in Problems and Issues in African River Basin Planning, ed. Eileen Berry, Leonard Berry, Gerald Karaska, and Thayer Scudder, SARSA Project (Worchester, Mass.: Clark University/Institute for Development Anthropology, for USAID, March 1985); and for country-specific studies see Cecile Jackson, "Hausa Women and Agricultural Change on the Kano River," in Irrigation in Tropical Africa: Problems and Problem Solving, ed. William A. Adams and A.T. Grove, Cambridge African Monograph, no. 3 (Cambridge: African Studies Center, 1984); and Jennie Dey, "Gambian Women: Unequal Partners in Rice Development Projects," Journal of Development Studies (April 1981). There is a potential conflict between local participation in land allocation decisions and avoiding co-optation of projects by local elites. See Peter Bloch, "Senegal," in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: Land Tenure Center, University of Wisconsin), draft, June 1985, at pp. 25-29.

119. See Peter Bloch, "Senegal," in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: Land Tenure Center, University of Wisconsin), draft, June 1985, at pp. 22-23; and L. Colvin-Phillips, "Sudan," in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: Land Tenure Center, University of Wisconsin), draft, June 1985, at p. 22.

120. See Peter Bloch, "Senegal," in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: Land Tenure Center, University of Wisconsin), draft, June 1985, at pp. 30-42; and Mary Tiffen, Land Tenure Issues in Irrigation Planning: Design and Management in Sub-Saharan Africa, African Irrigation Overview, Water Management Synthesis Project, Working Paper no. 1 (Washington: USAID, 1984).

121. For a more comprehensive discussion of the relationship between project objectives and security of tenure for plot-holders, see Peter Bloch, "Senegal," in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: Land Tenure Center, University of Wisconsin), draft, June 1985, at pp. 35-37.

122. The early success of the Gezira Scheme may have owed something to changes initially being stated as shares of production. See the discussion in Mary Tiffen, Land Tenure Issues in Irrigation Planning: Design and Management in Sub-Saharan Africa, African Irrigation Overview, Water Management Synthesis Project, Working Paper no. 1 (Washington: USAID, 1984), at pp. 39-40.

123. Bloch makes the important point that what is needed is not simply a preference for freedom of management and security of tenure for plot-holders but a strategy for moving from situations of control and conditionality of tenure to the desired position. See Peter Bloch, "Senegal," in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: Land Tenure Center, University of Wisconsin), draft, June 1985, at pp. 37-40; and L. Colvin-Phillips, "Sudan," in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: Land Tenure Center, University of Wisconsin), draft, June 1985.

124. See Peter Bloch, "Senegal," in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: Land Tenure Center, University of Wisconsin), draft, June 1985, at pp. 16-20; Mary Tiffen, Land Tenure Issues in Irrigation Planning: Design and Management in Sub-Saharan Africa, African Irrigation Overview, Water Management Synthesis Project, Working Paper no. 1 (Washington: USAID, 1984), at pp. 16-18.

125. See Peter Bloch, "Senegal," in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: Land Tenure Center, University of Wisconsin), draft, June 1985, at pp. 19-20. Smallholdings have been popular in schemes. Johannes M. Makado, "A Review of Some Factors Affecting the Viability of Smallholder Irrigation Schemes in Africa," in African Regional Symposium on Small Holder Irrigation, ed. Malcolm J. Blackie (Harare: University of Zimbabwe, 1984). Two articles provide evidence of the learning curve for farmers on irrigated holdings in Senegal: J.L. Boutillier, "Irrigated Farming in the Senegal River Valley," and Michèle Fieloux, "Summary of a Socioeconomic Study of a Toucouleur Village, Bow," both papers presented at Workshop on Sahelian Agriculture, Department of Agricultural Economics, Purdue University, May 1980.

126. See Peter Bloch, "Senegal," in Peter Bloch and others, Land Tenure Issues in River Basin Development (Madison: Land Tenure Center, University of Wisconsin), draft, June 1985, at p. 40; Mary Tiffen, Land Tenure Issues in Irrigation Planning: Design and Management in Sub-Saharan Africa, African Irrigation Overview, Water Management Synthesis Project, Working Paper no. 1 (Washington: USAID, 1984), at p. 34.

127. For an example from Botswana, see P.E. Peters, "Struggles Over Water, Struggles Over Meaning: Cattle, Water and the State in Southern Africa," Africa 54, 3: 29-49.

128. It is questionable whether donors have much to offer such efforts, which involve rather unique and gradually developed complementarities among scale, techniques, and skills. The one attempt to "improve" such a system with which the author is familiar concerned Jebel Marra in Darfur, Sudan, only damaged it. See Hamza Mohamed Nour El Zubeir, Fur Customary Land Law in Southern Darfur (Khartoum: Faculty of Law, University of Khartoum, n.d. but about 1980), at pp. 100-108.

129. This section of the paper draws heavily on the work of colleagues at the Land Tenure Center who participated in the preparation of LTC's 1985 state-of-the-arts paper on land tenure issues in livestock development, to be published shortly by USAID. Citations here are to the final draft submitted for publication: John W. Bennett, Steven W. Lawry, James C. Riddell, Land Tenure and Livestock Development in Subsaharan Africa: A Study in Economic Change, Resource Use, and Land Policy in Pastoralist Societies (Madison: Land Tenure Center, University of Wisconsin, 1985).

130. The past decade has been an extraordinarily fertile period for the literature on pastoralists and development projects which affect them. A select bibliography of major comparative works would include: W. Irons and Neville Dyson-Hudson, eds., Perspectives on Nomadism (Leiden: Brill, 1972); Theodore Monod, ed., Pastoralism in Tropical Africa (London: Oxford University Press, 1975); Claire Oxby, Pastoral Nomads and Development (London: International African Institute, 1975); Z.A. Konczacki, The Economics of Pastoralism: A Case Study of Sub-Saharan Africa (London: Frank Cass, 1978); Claude Lefebure, ed., Pastoral Production and Society (Cambridge: Cambridge University Press, for Equipe Ecologie et Anthropologie des Sociétés Pastorales, 1979); and Stephen Sandford, Management of Pastoral Development in the Third World (New York: John Wiley and Sons, 1983). AID's projects in the livestock sector have on the whole been unsuccessful and this has led to a good deal of soul-searching. Critical points in the process have been: Allan Hoben, Lessons from a Critical Examination of Livestock Projects in Africa, AID Program Evaluation Working Paper, no. 26 (Washington: USAID, 1979); Michael M. Horowitz, The Sociology of Pastoralism and African Livestock Projects, Washington, DC: AID Program Evaluation Discussion Paper No. 6, May 1979; Institute for Development Anthropology, ed., The Workshop on Pastoralism and African Livestock Development, AID Program Evaluation Report, no. 4 (Binghampton, N.Y.: Institute for Development Anthropology, and U.S. Agency for International Development, 1980); Joan Atherton, "The Evaluation of a Donor Assistance Strategy for Livestock Programs in Subsaharan Africa," pp. 163-174 in Livestock Development in Subsaharan Africa, James R. Simpson and Phylo Evangelou, eds., Boulder: Westview Press, 1984; and John W. Bennett, Steven W. Lawry, and James C. Riddell, Land Tenure and Livestock Development in Sub-Saharan Africa; A Study in Economic Change, Resource Use, and Land Policy in Pastoralist Societies (Madison: Land Tenure Center, University of Wisconsin, 1985).

131. The theoretical perspective of Hardin and colleagues is set out in Garrett Hardin and John Baden, eds., Managing the Commons (San Francisco: W.H. Freeman, 1977); and Garrett Hardin's influential "The Tragedy of the Commons," Science, 162 (1968), pp. 1243-48. Others view the situation as essentially posing an assurance problem. C.F. Runge, "Common Property Externalities: Isolation, Assurance and Resource Repletion in a Traditional Grazing Context," American Journal of Agricultural Economics 63 (1981): 595-606. For an excellent discussion of the "tragedy of the commmons" from a perspective informed by extensive experience with commons in Africa, see Stephen Sandford, Management of Pastoral Development in the Third World (New York: John Wiley and Sons, 1983), at pp. 119-27.

132. One of the more interesting debates has been in Botswana. Supporters of the traditional dispensation have argued from Schapera's early reports of control of overgrazing by pasture overseers for the reinstitution of such ar-

rangements. See Marcia L. and Malcolm J. Odell, "The Evolution of a Strategy for Livestock Development in the Communal Areas of Botswana," ODI Pastoral Network Paper, no. 10b (ODI, 1980). Others have argued for new local institutions. Lawry reviews several proposals and ends by questioning the extent of traditional controls in the past and their likely effectiveness in present circumstances. Steven W. Lawry, Land Tenure, Land Policy and Smallholder Livestock Development in Botswana, LTC Research Paper, no. 78 (Madison: Land Tenure Center, University of Wisconsin, 1983), at pp. 33-39.

133. John W. Bennett, "Pastoralists in Transition: A Frame of Reference," and Steven W. Lawry, James C. Riddell, and John W. Bennett, "Land Tenure Policy in African Livestock Development," in John W. Bennett, Steven W. Lawry, James C. Riddell, Land Tenure and Livestock Development in Subsaharan Africa: A Study in Economic Change, Resource Use, and Land Policy in Pastoralist Societies (Madison: Land Tenure Center, University of Wisconsin, 1985), at pp. 1-7 and 128-29, respectively.

134. See Steven W. Lawry, "Botswana's Tribal Grazing Land Policy," in John W. Bennett, Steven W. Lawry, James C. Riddell, Land Tenure and Livestock Development in Subsaharan Africa: A Study in Economic Change, Resource Use, and Land Policy in Pastoralist Societies (Madison: Land Tenure Center, University of Wisconsin, 1985), at p. 115.

135. See Stephen Sandford, Management of Pastoral Development in the Third World (New York: John Wiley and Sons, 1983), at pp. 122-23.

136. There have been some excellent examinations of TGLP. See Robert Hitchcock, "Tradition, Social Justice and Land Reform in Central Botswana," Journal of African Law 24 (1980): 1-34; Louis Picard, "Bureaucrats, Cattle and Public Policy--Land Tenure Changes in Botswana," Comparative Political Studies (1980): 313-56; Stephen Sandford, Keeping an Eye on TGLP, Working Paper, no. 31 (Gaborone: National Institute of Development and Cultural Research, n.d. but about 1982); and Steven W. Lawry, Land Tenure, Land Policy and Smallholder Livestock Development in Botswana, LTC Research Paper, no. 78 (Madison: Land Tenure Center, University of Wisconsin, 1983). For information on the proposed expansion of the system, see "Botswana," in Land Tenure Center, Country Profiles of Land Tenure: Africa 1985 (Madison: Land Tenure Center, University of Wisconsin, draft, July 1985).

137. Stephen Sandford, Management of Pastoral Development in the Third World (New York: John Wiley and Sons, 1983), at p. 120.

138. There is a thoughtful discussion of the problems and opportunities posed by groups of different types in Stephen Sandford, Management of Pastoral Development in the Third World (New York: John Wiley and Sons, 1983), at pp. 127-32.

139. Sandford warns that ". . . where pastoral society is socially highly stratified and especially where it is under economic or political stress that appears to threaten its long-term viability, or where the power of pastoral leaders is supported by the nation-state, these leaders often head the rush to alienate key pieces of land for pastoral use. This was the experience of pre-revolutionary Kazakhstan, the Aussa Sultanate in Ethiopia, and Twareg Ahaggar

of the Sahara. These leaders' actions were not motivated by considerations of socially optimal land-use but by private interest. It appears that in the change from one use to another there is an opportunity for private gain that social institutions restrain in a more stable situation." Stephen Sandford, Management of Pastoral Development in the Third World (New York: John Wiley and Sons, 1983), at p. 110.

140. See the discussion of grazing associations in Steven W. Lawry, "Land Tenure Issues in Livestock Development and Range Management," in Proceedings: Lesotho Land Act Policy Seminar, LTC Paper, no. 125 (Madison: Land Tenure Center, University of Wisconsin, 1985), pp. 60-69.

141. This effect has been discussed in relation to commercial ranching under Botswana's TGLP, where it has been suggested that commercial ranches in the future be clustered (rather than scattered within communal grazing areas) so that they would exert such a pressure for better management on one another. The effect has also been raised in discussions of spatial strategies for replication of AID's Range Development and Land Conservation Project at Selabathebe in Lesotho.

142. The hema system as applied in Syria is described in Omar Draz, "Revival of the Hema System of Range Reserves as a Basis for the Syrian Range Development Program," in Proceedings of the First International Rangelands Congress, ed. Donald N. Hyder (Denver: Society for Range Management, 1978), at pp. 100-103. A proposal for use of this model in Mauritania by Manzardo has been excerpted in insert 58. On the Code Pastoral, see J. Gallais and G. Boudet, Projet de code pastoral concernant plus spécialement la région du delta central du Niger au Mali (Maison-Alfort: IEMVT, 1980). On the Dina, see John van D. Lewis, Range Use and Fulbe Social Organization: The View from Macina (Los Angeles: American Anthropological Association, 1978). On the Sudanese experience, see the items cited in note 164, infra.

143. Experimentation with different institutional forms has been most widespread in East Africa. The experience with different forms is reviewed in John W. Bennett, "The East African Experience with Livestock Projects," in John W. Bennett, Steven W. Lawry, and James C. Riddell, Land Tenure and Livestock Development in Sub-Saharan Africa; a Study in Economic Change, Resource Use, and Land Policy in Pastoralist Societies (Madison: Land Tenure Center, University of Wisconsin, 1985); and John G. Galaty et al., "Organizations for Pastoral Development: Contexts of Causality, Change and Assessment," in The Future of Pastoral Peoples, ed. J. Galaty, D. Aronson, and P.C. Salzman (Ottawa and Montreal: IDRC and McGill University, 1981).

144. This section of the paper owes a great deal to the recent Ford Foundation-funded collaborative effort between the Land Tenure Center and the International Commission for Research in Agroforestry (ICRAF), Nairobi, and in particular to the International Workshop on Tenure Issues in Agroforestry, held in Nairobi, 27-31 May 1985. Proceedings of the workshop will be published in 1986, but in the meantime the annotated bibliography prepared for the workshop is a very helpful source: Louise Fortmann, James Riddell, and others, Trees and Tenure: An Annotated Bibliography for Agroforesters and Others (Madison and Nairobi: Land Tenure Center, University of Wisconsin, and International Commission for Research in Agroforestry, 1985). See in particular John Bruce, Louise Fortmann, and James Riddell, "Trees and Tenure: An Introduction," at pp. vii-xvii.

145. Jorgen and Karen Rald, Rural Organization in Bukoba District (Uppsala: Scandanavian Institute of African Studies, 1975), mention reversion of trees to the clan. Prevention of tenants and others using land by permission planting trees is documented in M.M. Shambi, The Problem of Land Ownership and Cashewnut Claims in Malindi Coastal Belt (Malindi: mimeo, n.d., after 1970); R. Tanner, "Land Rights on the Tanganyika Coast," African Studies 19 (1960): 14-25; and R.W. James, Land Tenure and Policy in Tanzania (Dar es Salaam: East African Literature Bureau, 1971). For cases dealing with farmers planting on their own land, see James Brain, "The Uluguru Land Use Scheme: Success and Failure," Journal of Developing Areas (1980): 175-90; and Patrick Duncan, Sotho Laws and Customs (Cape Town: Oxford University Press, 1960). As an example of one knowledgeable observer's conclusion that rights of individual landholders must be strengthened, see James T. Thompson, Participation, Local Organization, Land and Tree Tenure: Future Directions for Sahelian Forestry (Club du Sahel/OECD, 1982).

146. The most thorough works on the commercialization of cocoa in West Africa and its impact on land tenure are Polly Hill, Migrant Cocoa Farmers of Southern Ghana (London: Cambridge University Press, 1963); and Sarah S. Berry, Cocoa, Custom and Socio-Economic Change in Rural Western Nigeria (Oxford: Clarendon Press, 1975). For additional country-specific sources, see Louise Fortmann and James Riddell, Trees and Tenure: An Annotated Bibliography for Agroforesters and Others (Madison and Nairobi: Land Tenure Center, University of Wisconsin, and International Commission for Research in Agroforestry, 1985). Generally, see James C. Riddell, "Land Tenure and Agroforestry," Background paper for International Workshop on Tenure Issues in Agroforestry, held in Nairobi, 27-31 May 1985, at pp. 6-8.

147. The Ivory Coast example is from Mary Tiffen, Economic, Social and Institutional Aspects of Shifting Cultivation in Humid and Semi-Humid Africa (Rome: FAO, forthcoming). On the Liberian example, see, in addition to the evaluation excerpted in insert 50, Land Tenure Center, "Project Identification Document: Land Tenure, Republic of Liberia," typescript (Madison: Land Tenure Center, University of Wisconsin, for USAID, 1982).

148. On the land-grabbing potential of tree-planting, see John Raintree, "Agroforestry, Tropical Land Use and Tenure," Background paper for International Workshop on Tenure Issues in Agroforestry, Nairobi, 27-31 May 1985, at pp. 15-18. On inter-family distributional impacts, see Dianne E. Rocheleau, "Women, Trees and Tenure: Implications for Agroforestry Research and Development," Background paper for International Workshop on Tenure Issues in Agroforestry, Nairobi, 27-31 May 1985. Rocheleau (pp. 9-15) identifies two promising "niches" for tree planting to benefit women: the home garden, because women's rights in such gardens are relatively well established; and the commons, as an area from which it may be possible to establish new rights for women. See also Marilyn Hoskins, "Community Forestry Depends on Women," Unasylva 32 (1980): 27-32.

149. In addition to the Fortmann article excerpted in insert 49, see L. Fortmann and D. Rocheleau, "Women and Agroforestry: Four Myths and Three Case Studies," Unasylva 36 (1984): 145-69.

150. In the Ivory Coast, a tenure system which permits use to establish land rights has apparently fostered an expansion of the area under tree crops. Robert M. Hecht, "The Ivory Coast Economic 'Miracle': What Benefits for Peasant Farmers?" Journal of Modern African Studies 21 (1983): 25-53, at pp. 33-34. It would not, on the other hand, be expected to foster intensification ot tree cropping. In Senegal, where title to fully used land had to be applied for within a brief period after new legislation went into effect in 1964, the situation since then has been one of considerable uncertainty for prospective tree-planters. See Mamadou M. Niang, "Réflexions sur la réforme foncière sénégalaise de 1964," at pp. 219-227 of Enjeux Fonciers en Afrique Noire, ed. E. Le Bris, E. Le Roy, F. Leimdorfer, and E. Grégoire (Paris: ORSTOM/Kanthala, 1982).

151. See John Raintree, "Agroforestry, Tropical Land Use and Tenure," Background paper for International Workshop on Tenure Issues in Agroforestry, Nairobi, 27-31 May 1985, at p. 28; and E.E. Enabor, J.A. Okajie, and I. Verinumbe, "Taungya Systems: Socio-Economic Prospects and Limitations," in Agro-Forestry in the African Humid Tropics, ed. L.H. MacDonald (Tokyo: United Nations University, 1981), at pp. 59-64. There is a considerable literature on taungya in Africa, consisting almost entirely of country studies. See the sources indexed under "taungya" in Louise Fortmann and James Riddell, Trees and Tenure: An Annotated Bibliography for Agroforesters and Others (Madison and Nairobi: Land Tenure Center, University of Wisconsin, and International Commission for Research in Agroforestry, 1985).

152. See generally Raymond Noronha, "Why Is It So Difficult to Grow Firewood," Unasylva 33 (1981): 4-12; Harry Blair, ed., Report on Community Forestry Workshop (Washington: USAID, 1982); and World Bank, Review of Bank Financed Forestry Activity, FY 1983 (Washington: World Bank, 1983). The African project experience with "community forestry" has been relatively short, and classic studies of land tenure issues come from Asia, such as Michael M. Cernea, Land Tenure and the Social Implications of Forestry Development Programs, World Bank Staff Working Paper, no. 452 (Washington: World Bank, 1981). But the Noronha paper cites experience in Tanzania; the excerpt from Turner in insert 50 is from Lesotho; and for the Sahel there is James T. Thompson, Participation, Local Organization, Land and Tree Tenure: Future Directions for Sahelian Forestry (Club du Sahel/OECD, 1982).

153. For a recent rethinking of group action in forestry, see Michael M. Cernea, "Land Tenure and the Social Units Sustaining Alternative Forestry Development Strategies," in Putting People First: Sociological Variables in Development Projects, ed. Michael M. Cernea (Oxford: Oxford University Press, 1985). The reluctance of intended beneficiaries to believe that trees planted on their land (private or community holdings) will actually belong to them is well documented, and often involves a suspicion that government is attempting to take their land by planting "its" trees upon the land. See James Brain, "The Uluguru Land Usage Scheme: Success and Failure," Journal of Developing Areas (1980): 175-90; Marilyn Hoskins, "Observations on Indigenous and Modern Agro Forestry Activities in West Africa," in United Nations University Workshop: Problems of Agro Forestry (Frieburg: University of Frieburg, 1982); and C.O.M. Ng'andwe, "African Traditional Land Tenure and Agricultural Development: Case Study of the Kunda People in Jumbe," African Social Research 21 (1976): 51-67.

154. This may involve the project in a land acquisition process. See Raymond Noronha and Francis J. Lethem, Traditional Land Tenures and Land Use Systems in the Design of Agricultural Projects, World Bank Staff Working Paper, no. 561 (Washington: World Bank, 1983), at pp. 28-30.

155. The potential land tenure issue was first noted in Devres, Inc., Socio-Economic and Environmental Impacts of Low-Volume Rural Roads--A Review of the Literature, USAID Program Evaluation Discussion Paper, no. 7 (Washington: USAID, Feb. 1980), at pp. 134-35. The Liberia report is cited in insert 155. The Kenya report is John E. Roberts and others, Kenya: Rural Roads, AID Project Impact Evaluation, no. 26 (Washington, USAID, Jan. 1982), at p. 10. The Liberian, Kenyan, and Sierra Leone experiences are compared in G. William Anderson, Charles G. Vanderwort, and others, Rural Roads Evaluation Summary Report, AID Program Evaluation Report, no. 5 (Washington, USAID, March 1982), at p. 15.

156. IITA's experience with alley-cropping has been noted in the excerpt from Raintree, insert 33. See also Paul Francis, "Land Tenure Systems and the Adoption of Alley Farming in Southern Nigeria." Paper prepared for International Workshop on Tenure Issues in Agroforestry, Nairobi, May 1985.

157. In the early 1970s USAID/Addis Ababa used a regional development project to demonstrate the workability of tenancy reform proposals under consideration by the Ethiopian parliament. See insert 60.

158. USAID/Nouakchott, "Project Paper: Mauritania Land Tenure Project (AID 625-0937)" (Nouakchott: USAID, 1981), at p. 2.

159. In the early 1970s two pieces of reform legislation were before the Ethiopian parliament. One was a land registration bill, acceptable to owners of freehold in southern Ethiopia but suspect to deputies from the northern, "communal" tenure provinces. The other was a tenancy regulation bill, needed badly by tenants in southern Ethiopia and opposed by many deputies from the south, but of questionable relevance to the north, where tenancy was much less significant and of a quite different character. Both bills were proposed by government on a national rather than a regional basis because it was felt they could not pass on the latter basis; the votes of the southern deputies were needed to pass the registration bill and the votes of the northern deputies to pass the tenancy regulation bill.

160. See Arthur Schiller, "Introduction," in Africa and Law, by Thomas W. Hutchinson (Madison: University of Wisconsin Press, 1968), pp. vii-xviii, at p. xvi.

161. Gerald Murray suggests that we think in terms of a land tenure "menu," from which to select tenures appropriate to our purposes. See Gerald Murray, "Land Tenure and Agroforestry in Haiti: A Case Study in Anthropological Project Design," Paper prepared for International Workshop on Tenure Issues in Agroforestry, Nairobi, Kenya, 26-30 May 1985, at p. 4.

162. The situation is one which existed in the Amba Alaghi area of Raya-Azebo Awraja, Tigray Province, Ethiopia, in the early 1970s. The project was not a regional effort, but the local element of a national extension program known as EPID. Personal observation.

163. The project is a fiction; the process of subdivision of a commons to better regulate pasture in the plowing season is not. The author witnessed it in the community of Mai Nebri in Agame Awraja of Tigray in early 1973.

164. In the Sudan, relations between nomadic groups and between nomads and settled peoples are handled through such agreements, and these are being actively utilized during the current drought, as pastoralist groups shift well south of their normal ranges. Two articles give excellent descriptions of this process, though neither is very current. See Kevin O'C. Hayes, "Dar Rights among the Nomads: An Arbitral Award," Sudan Law Journal and Reports (1960): 336-47; and Carroll Brewster, ed., "The Malha Agreement of 1964: Background and History of Recent Relations between the Kababish and the Meidob," Sudan Law Journal and Reports (1964): 218-54. Such mechanisms are essential if serious violence is to be avoided in times of major dislocations.

165. The documents mentioned are: USAID, "Capital Assistance Paper: Proposal and Recommendations for the Review of the Development Loan Committee: Ethiopia--Ada Agricultural Development Project (AID-DLC/1-982)" (June 1971), at p. 4; also, Annex V, p. 6, and Annex XI, "Lease Agreement"; John Fischer, "Ada Evaluation Report," (June 1973), at p. 5; John W. Mellor, "Report on Rural Development Issues in Ethiopia--Problems and Prescriptions with Special Reference to EPID and the Ada Project" (July 1974), at p. 5; and Near East Foundation, "Project Appraisal Report (Project No. 663-55-130-162, 10/31/74-5/1/76)" (25 June 1976), Annex II, p. 6.

166. For a recent review of these models of agricultural development, see John M. Staatz and Carl K. Eicher, "Agricultural Development Ideas in Historical Perspective," in Agricultural Development in the Third World, ed. Carl K. Eicher and John M. Staatz (Baltimore: Johns Hopkins University Press, 1984), at pp. 3-81.

167. The critical work on population absorption in agriculture was C.K. Eicher, T. Zalla, J. Kocher, and P. Wench, Employment Generation in African Agriculture (East Lansing: Institute of International Agriculture, Michigan State University, 1970).

168. On the efficiency of small farms, see Peter Dorner and Don Kanel, "The Economic Case for Land Reform: Employment, Income Distribution and Productivity," in Land Reform in Latin America, ed. Peter Dorner, Land Economics Monograph Series, no. 3 (Madison: Published by Land Economics for the Land Tenure Center at the University of Wisconsin, 1971), at pp. 41-56; Solon Barraclough, Agrarian Structure in Latin America (Lexington, Mass.: Lexington Books, 1973); and Albert R. Berry and William F. Cline, Agrarian Structure and Productivity in Developing Countries (Baltimore: Johns Hopkins University Press, 1979). The literature on share tenancy has been noted earlier in n. 58. The African evidence on the point is summarized in John Levi and Michael Havinden, Economics of African Agriculture (Harlow, Essex: Longmans, 1982), at p. 80, and in Carl K. Eicher and Doyle C. Baker, Research on Agricultural Development in Sub-Saharan Africa: A Critical Survey. MSU International Development Paper No. 1 (East Lansing, Michigan: Department of Agricultural Economics, Michigan State University, 1982), at pp. 47-52.

169. The groundwork for the conclusions in Insert no. 62 was laid in Bruce F. Johnston and Peter Kilby, Agriculture and Structural Transformation: Economic Strategies in Late-Developing Countries (New York: Oxford University Press, 1975).

170. For the contrast between tne "frontier model" and the "conservation model," see Vernon Ruttan, "Models of Agricultural Development," in Agricultural Development in the Third World, ed. Carl K. Eicher and John M. Staatz (Baltimore: Johns Hopkins University Press, 1984), at pp. 38-45.

171. The most interesting effort in terms of the reexamination of economic models is the 1985 review of common property models sponsored by the National Academy for the Advancement of Science, an almost unique interaction between a theoretical model and empirical data. Publication of the papers is anticipated later this year.

172. The Lesotho project, managed by American Ag International, has been unusually sensitive to land tenure issues and institutional issues generally, and promises to produce a body of applied research which will have important implications for other range management and conservation projects.

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