COUNTRY PROFILES OF LAND TENURE:

AFRICA 1986

by

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Preface

These land tenure profiles were prepared by LTC at the request of Ray Love, Deputy Assistant Administrator, Africa Bureau, USAID. The work was funded primarily from Africa Bureau Special Studies funds, supplemented by funds under LTC's Cooperative Agreement with the Office of Rural Development, Bureau of Science and Technology, USAID. In preparation of the profiles LTC has liaised with David Atwood (ST/RD), Curt Reintsma (AFR/TR) and Pat Fleuret (AFR/DP). Their interest and comments have been much appreciated.

The objective of this exercise was a brief treatment of land tenure issues for each country of sub-Saharan Africa, with the discussion oriented toward development issues. A uniform outline was agreed upon to ensure a standard coverage and to facilitate comparisons among countries. Because it was assumed that many users would be interested only in one country, it was decided that each profile should be able to stand by itself, even at the cost of some repetition as between countries. The profiles were to be between two and eight pages each, the length depending upon: (1) the relative importance of land tenure issues in the particular country's development; (2) whether important tenure reform initiatives had been undertaken since independence; and, of course, (3) availability of information. The profiles were done on a modest budget in an intensive effort lasting six months, and this has largely limited the authors of the profiles to information available in the LTC Library. Our holdings, while excellent, are of course uneven, and for some countries almost nothing has been published. For countries where LTC has worked we have been able to write confidently with respect to policy questions, but for some others this has not been possible. We recognize that some of the profiles included here leave a good deal to be desired, such as those for Burkina Faso, Guinea, and Central African Republic. We welcome comments and any additional information from readers with personal experience of land tenure in those (or other) countries.

It should be noted that the profiles approach involves important inherent limitations. The necessity of working only with published sources poses real dangers. Such sources generally contain far more information on government policies and legislation than they do on implementation. And they contain more on policies, legislation and implementation than they do concerning more basic, long-term evolutionary patterns of land tenure which originate in fundamental demographic and economic trends, rather than with government initiatives. In addition, some areas of importance are necessarily slighted in brief treatments of land tenure at the national level. Indigenous land tenure patterns vary considerably as between ethnic groups and ecological zones, and most countries have at least several such tenure systems operating within their boundaries. In the context of these short profiles it has been impossible to accord them the detailed treatment which their importance would otherwise dictate.

On the positive side, the coverage of so many national cases has made clear the pervasiveness of certain broad trends in land tenure evolution and policy. Jim Riddell identifies these and discusses them briefly in his introduction. In addition, the broad coverage has made possible, for the first time so far as we are aware, an attempt at a land tenure map of Africa, which follows the introduction.

Jim Riddell and Carol Dickerman coordinated this initiative for LTC, and they with Douglas Stienbarger (Research Assistant) constituted the core staff for the effort, all on a part-time basis. Several LTC faculty and program staff contributed or reviewed profiles for countries in which they had worked, and a number of students were engaged on an hourly basis to do profiles of their own countries or countries with which they had special familiarity. The text was typed by Patty Grubb and Teresa Barry. We are grateful to all those involved for all the hard work that has gone into these profiles.

LTC has found the production of these profiles useful in directing our attention to a broadened range of national experiences. We hope they will prove equally helpful to other readers.

John W. Bruce
Africa Program Coordinator

INTRODUCTION:

COUNTRY PROFILES OF LAND TENURE

AFRICA 1985

James Riddell, Project Coordinator*

The on-going crisis in food production on the African continent means that existing land resources will have to be used more productively in the future. Estimates by FAO indicate that if the current trends continue, the continent will be able to meet only half of its food needs by the year 2000 and will still have over 60 percent of its population employed in the agricultural sector. Attempts to alter the way land is used will necessitate an examination of the manner in which land is currently controlled, and whether or not these existing land tenure systems are a constraint to development efforts.

Can work on the level of generality inherent in production over a semester of 37 land tenure profiles make any useful contribution to the discussion of how land tenure affects productive efforts? This examination of the tenure situation in a greater number of countries than those customarily examined in such reviews (those where relatively more is known about tenure systems) has affected our perceptions on a number of points:

1. The African countries with relatively good production records over the last twenty years have achieved them under a remarkably diverse set of tenure arrangements, in which customary tenure figures prominently; there is clearly no single tenure arrangement which is requisite in all circumstances for a productive agriculture, though there may be certain basic needs, such as security of tenure, which need to be and can be met in different social and economic contexts by different land tenure arrangements.

There are bright spots in terms of increased productivity in Africa: Ivory Coast, Cameroon, Kenya, Malawi, Botswana, and Zimbabwe. Among them, one finds the full range of land tenure systems. Cameroon has achieved its relative success with customary tenure, Ivory Coast and Malawi with a mixed title (freehold and leasehold) and customary pattern, heavily dominated by the latter. Kenya presents a contrast, with most of the good agricultural land

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now under freehold, while in Zimbabwe the government is still grappling with the issue of what to do with a productive private sector that is being abandoned, and mounting political pressure from cultivators on crowded, over-cropped plots in the customary sector. Botswana, with a successful export-oriented livestock sector involving de facto control of range through control of water points by large stockholders, is in the process of converting this to a de jure situation through granting of long-term leaseholds. If this examination tells us anything, it is that land tenure is an interactive variable. It interacts with other elements of the society and economy, and the quality of that interaction appears to be at least as important in determining agricultural productivity as the presence or absence of any particular set of tenure norms or institutions.

2. Customary tenures are prominent in countries with good production records, but because these tenures are so diverse even within many countries, a brief survey of country experiences, focused at national level, cannot produce very useful information concerning positive and negative characteristics of customary tenures.

We have used the word customary to refer to those land tenure patterns that have continued to evolve from institutions established before colonial and national states assumed ultimate sovereignty. (In a certain sense all law is predominantly customary; what is so often in the literature referred to as "modern" law in Africa is merely the transplantation of a codified form of that which was once "customary" law in European society.) Africa is the only major research zone where development speaks of a continent-wide customary legal/land tenure system. One does not hear, outside of theoretical Marxist writings, of an Asian customary tenure system. Neither do we normally speak of a common pre-Colombian land tenure of Latin America. There is a critical need to recognize the real diversity of African land tenure.

On the other hand, there is a certain unity in the diversity of African customary systems. Under most of the pre-colonial systems one gained access to land by acceptable membership in a kinship group (though systems based on common residence and/or allegiance to a chief were not unusual; see the Burundi profile). There was generally no "land market," in the sense of an impersonal land market through which non-members of the group had access to land; there were sometimes significant land transactions, however, among members of the group, and tenancy-like arrangements for those from outside the group who sought access to land. Because membership in this kinship unit was usually mutually exclusive, working for people who were neither relatives nor in-laws was very rare as it was associated with a loss of status. Hence a labor market was not developed until fairly recently. Associated with the surface similarity respecting land or labor markets was the fact that for most societies, membership in one of the land-owning kinship groups guaranteed an adult access to the means of production and land.

Customary land tenure systems in Africa have sometimes seemed more similar than they are because they have been defined as the negative of European practices. To say, for example, that there is no "land market" in Western terms does not tell us what is there, nor anything at all about how people gain access to land outside their kinship group's home region. In addition, the terms we tend to use often imply evolutionary patterns. For instance, since land is not held in individual title it is said to be held as

common land. This is not an untrue statement in and of itself. The difficulty has been that since Europe converted most of the areas defined as common lands into freehold during its economic transformation, it is implied that Africans will do the same thing. The fact that the genesis of the two systems of common property and their natures are completely different is ignored by the connotations and denotations of the terms we have used to describe African tenure systems.

The putative unity in the diversity that characterizes most discussions of African social organization in the rural sector glosses over a reality that is just as complex as that found on the other continents. For example, it was pointed out above that access to land is through membership in kinship groups. One has only to remember that a whole specialty of social anthropology/comparative sociology was spawned by the complexity of just what is meant by kinship in the African context. Who has rights in land and what these rights are will be comprehensible only if there is an understanding of the underlying logic of kin-group membership. For example, in many parts of Africa one of the lineages or clans will be referred to as the "owners of the land." The members of all other lineages have access to land only because their ancestors were given use rights by the progenitors of the current owners of the land. The kinds of rights held in land will be quite different for members of the two types of lineages.

The most serious shortcoming of these profiles is the impossibility of dealing other than very summarily with each country's customary tenure systems; and it is important to affirm that any serious consideration of tenure issues must examine the diversity of those systems in detail.

3. "Individualization" of land tenure, which in the sixties was anticipated on a large scale, has proceeded very gradually; the slow pace of change and the continued observance of customary rules even in areas where individual titles have been registered, both suggest a lack of a felt need for such change among most African farmers.

The literature of the 1960s gave the impression that there would be a rapid transition from customary forms of group tenure to private individual tenure. The initial increase in productivity following (caused by?) the implementation of the consolidation and individualization plan in Kenya starting in 1957 seemed to bear this out. Under this plan, land was consolidated and title was given to a single individual. It seemed only a matter of time until the rest of Africa followed suit. The argument was that with individual tenure, the farmer would seek capital for investment using the land as collateral. As the Kenya profile points out, the traditional inheritance system has proven stronger than the appeal of individual property for the majority of the descendants of the original title holders. Furthermore, defaults on mortgages did not result in a loss of land. The financial institutions have been reluctant to seize the plots of defaulters because of the vigorous protestations by those holding residual rights in the land through customary rules. Much of the rural land market in Kenya has turned into a paper market for portfolio building and speculative purposes.

This is not the only case where this has happened on the continent. In 1929 the district of Antananarivo, Madagascar, was subjected to cadastral survey and title registration. The response on the part of the land holders

was to ignore the system, and most of the plots are still registered in the original holder's name. Land transfers have, meanwhile, been going on under the customary system. All the French colonies made the title registration available by the mid-1920s. The response was minimal. Less than two percent of the land was ever registered.

All of the above does not mean that there is no desire for individual tenure nor pressure for a limited land market in Africa. What it does point out is that for a majority of the continent's agriculturalists the customary tenure systems are the ones relied upon even where private property alternatives exist. In addition, the two need not be mutually exclusive. Lesotho, for instance, has turned to the lease as a mechanism to provide investment security to land that ultimately belongs to the Basotho people and can never be permanently alienated.

The profiles suggest to us that whatever innovations in land tenure are tried by projects and governments, the new system must have risk management capabilities such as those provided by flexible customary systems. The customary systems are marvelously adapted to the reality of climatic variation and ecological constraints. This accounts for the variety of land tenures. Any reduction in that flexibility only increases the insecurity of food producers in affected environments, whether they be cultivators, livestock managers, or irrigation farmers. Reducing flexibility also undermines the traditional institution base which often has its base in the control over allocation of land.

4. The predominant trend in the post-independence period has been the establishment of a legal interest on the part of the nation in privately held land, a process whose implications have varied considerably from country to country.

Many countries, such as Senegal, Mali, Tanzania, etc., passed legislation shortly after independence that established the new nations' interests in customary and private property. A majority of the continent's states have declared all or most of their land to be state or national land. In some cases, land already registered has been exempted, while in others, land already developed has been exempted. Most of the land administered under customary tenure is statutorally state land. The influence of the state is, however, felt directly in the rural land tenure situations only in those countries such as Tanzania that have had the political will and the administrative capacity to implement new land policies. In most countries the government's impact on land use and allocation is limited to project zones and urban areas.

5. Land administration and policy implementation may be as important as the substance of land policies, and clearly deserve more attention than they have so far received; significant experimentation with new administrative forms is under way, and limited administrative capability is proving an important constraint.

The way land is administered has received less attention in the literature than the substantive rules about land. The capacity of a country to deal financially and administratively with broad land policy varies considerably. Senegal has tried to establish a national presence at the

village level through its communautés rurales, Tanzania through ujamaa villagization, and Ethiopia through land reform by peasant associations. For most of the continent, however, the day-to-day administration of land rests largely with traditional institutions. Kenya has tried to integrate these into its national system by giving chiefs' councils a formal arbitration role in land disputes. In Botswana, government has created to administer land, replacing administration by chiefs. Some Board members are indirectly elected from District Councils, but there is also ex-officio representation by development tribal land boards ministries. Important experimentation is underway.

Such administrative reforms are sometimes too ambitious. As an example, northeastern Kenya may not recover in this century from premature attempts to replace traditional water management institutions. The herd leaders were told that the elders no longer had the right to negotiate herd movements and that this was being assumed by the government and the project. Competition and violence between herders over favored watering spots became rampant and project personnel and government administrators could only travel with armed patrols. We need to be very sure that host countries actually have the financial and administrative capacity to provide institutional support to land tenure before we support a project to replace established norms and procedures.

The statutory responsibility for land administration and planning will often be spread over more than one ministry. Agricultural projects normally are associated with the Ministry of Agriculture. The land upon which these projects are to be located can be under the control of a Ministry of Lands and Local Government (Botswana), or with a division in the Ministry of Interior (Liberia), or it may be vested in the Office of the President (Burkina Faso), or it may be spread over several ministries as in the Sudan. The location of land adminstration in a country is a product of that nation's history of land tenure pressures for change in legislation and administration.

6. The disappointing results of drastic tenure reform to date suggest that customary land tenure will persist, but in evolving forms; two trends which are evident are decreasing size of operating units and an increase in the incidence and importance of "secondary" tenures, such as share-cropping.

The profiles suggest that most major reforms of land tenure and rural land use have worsened the situation. Several centrally planned economies have tried to radicalize the social units of production. Mali, Benin, Madagascar and Ethiopia, to name just a few, have tried to create new productive forces by reorganizing land ownership and production. The results have been poor, and there is a steady movement away from this approach. Customary tenures appear likely to dominate the African rural scene for decades to come.

There are, however, important trends taking place within customary tenure systems. One of these involves the decreasing size of farm plots and farming units. As the profiles document, the large extended family or lineage farm, where it ever did exist, has been replaced by smaller family units. Demographic growth has exacerbated the situation. Africa, a continent where a generation or so ago every individual had land rights in a natal village, is experiencing growing landlessness. Those who possess land under customary

tenures are secure; it is the young farmers who are maturing who cannot find land. They either work for elder relatives or become part of the growing landless labor market.

A second trend concerns the increasing importance of "secondary" tenures. In most of Africa people from an overcrowded area cannot freely move and simply buy land from members of another ethnic group in a sparsely settled region. Yet one reads of buying and selling going on in many places. The apparent contradiction is clarified when the question of just what is "sold" is asked. The seller cannot sell more than he has to sell. The buyer is purchasing the use rights that were possessed by the "seller," not the land, which still belongs to a larger group of kinsmen. Many such "sales" take place among members of the same kinship group. Often the "seller" only disposes of his interest temporarily and in return for periodic payments, especially when the "buyer" is a "stranger," a non-member of the kinship group. The profiles suggest an important growth of secondary or indirect tenures, largely share-cropping. This trend has major implications for agricultural development. As more of the productive efforts are expended on land held through such temporarily limited tenures, do we have any hope of the continent's cultivators choosing long-term farming strategies of soil building and intensification?

Traditional bonds and obligations are changing, not disappearing, and we need desperately to document the direction and form.

Conclusion

The profiles underline the fact that land tenure is dynamic in Africa. The requirements of conciseness have meant that only a few of the constant spontaneous adjustments in land tenure could be included. Changes are also taking place with great rapidity at the governmental land policy level. It was necessary to rewrite the profile on Burkina Faso twice and the position may have been altered radically in some countries by the time this collection is in the hands of the reader. Of course, many of the changes are only on a formal level. The profiles document in great repetition that most of the countries on the continent have land laws on the book that have never been implemented. This is probably all to the good, because these profiles seem to point to a pragmatic approach, as the continuing success of countries like Malawi or Cameroons illustrates, rather than a reliance on legislation to enact any particular economic theory.

LAND TENURE PROFILE: ANGOLA

SUMMARY: The colonial period left Angola with two distinct agricultural systems. On the one hand there were large plantations devoted to the production of cash crops, principally coffee, while on the other there were small subsistence farms producing food crops. At independence many plantations were abandoned, and the government took them over with the intention of establishing state farms. Production levels have fallen drastically in recent years, largely due to continued fighting, and defense rather than agriculture remains the government's first priority.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Throughout the colonial period, and especially in the 1950s and 1960s, the Portuguese colonial government emphasized the importance of European settlement to the economy of Angola. Large projects to attract and settle Portuguese colonists were drawn up and as a first step in their implementation, substantial numbers of Africans, particularly in the Central Highlands area, were resettled onto smaller, less productive areas of land. Resettlement was also carried out in the 1960s and early 1970s as the government sought to maintain its hold on Portuguese Angola against the various liberation groups. These resettlement programs, whether for economic or military purposes, upset pre-existing patterns of land tenure, and the failure of the government to follow through with extension services or any other forms of assistance that had originally been planned, exacerbated the insecurity of cultivation rights and low production levels.

Nor were the programs to attract European settlement and to establish large plantations especially successful. Although substantial areas of land, particularly in what became the coffee-producing areas to the east of Luanda, were set aside for European colonists, most of the land remained underutilized and, as with African producers, little of the government's promised support ever materialized. At independence in 1975, the new government of Angola seized these plantations that were abandoned in the exodus of Portuguese settlers and announced plans to establish state farms and agricultural cooperatives. Implementation of this program has been slow, however, due not only to continued civil war but also to a lack of technical knowledge, administrative inefficiency, and inadequate funds.

B. Private Tenure

1. Customary Tenure

The Portuguese in Angola paid little attention to African systems of land tenure, and as a result material describing these systems is all too scarce. Rather than attempting to generalize about land-holding patterns for the country as a whole, the paragraphs that follow describe two land tenure systems: that of the Ovimbundu, in the Central Highlands area of the country, and that prevailing among the Khumbi and Dimba peoples, agropastoralists in southern Angola.

Among the Ovimbundu, land holding was originally communal. Although specific fields were allocated and farmed by individual families, the land was actually held by the village chief and allocated by him to clan heads, who in turn distributed it to family members of the clan. Families received fields to farm as long as the land remained productive, generally about six years; when the field began to yield less, the land would be returned to fallow and new fields allocated to the family by the clan head. Within the family, land was not inheritable, nor could it be sold or otherwise alienated.

The Ovimbundu land tenure system began to alter in the nineteenth century as trade penetrated the area and population increases brought greater demands for land. The chiefs' authority waned as clans migrated to new farming areas, and the powers of the clan heads in turn declined as land use became more permanent, the result of population increases, the introduction of perennial crops such as coffee, and dispersed settlement patterns. In many areas lands became inheritable, passed from one generation to another following the principles of matrilineal succession. Land sales and leases also became increasingly common, and land was now considered to be the property of the individual family rather than of the village or the clan.

In contrast, the land tenure systems of the agropastoralists in the Cunene region of southern Angola have undergone less change than that of the Ovimbundu--although here too there has been alteration in response to both internal and external pressures. Both the Khumbi and Dimba practice mixed systems of agriculture and pastoralism and although they are often said to be nomadic their patterns of land holding and animal herding show this to be untrue. Settlement sites are relatively permanent, often occupied for up to fifty years. (Although the soil is of very poor quality, manuring permits long periods of land use.) Land is held and worked by families comprised of several generations, and agricultural work is the responsibility of the women. The men are responsible for the cattle and their herding cycle is transhumant, following a relatively stable seasonal pattern of movement from one grassland to another. In the 1950s and 1960s this system, with its rights to graze specific areas during a certain time of the year, was infringed upon with the establishment of large ranches by Portuguese settlers, and to the extent that the ranches took over African pastureland or lay across customary routes, these transhumant patterns were disrupted. More recently, the area, lying as it does just north of Namibia, has been disrupted by fighting.

2. Freehold and Leasehold

Throughout the colonial period, and most especially in the twentieth century, the government of Angola passed legislation aimed at attracting Portuguese settlement by providing colonists with substantial tracts of land for the production of export crops such as coffee. As elsewhere in Africa "unoccupied" land was ruled to be state domain, and the state assumed the authority to allocate this land as it wished. Grants were made to settlers with the provision that title would become permanent after a period of twenty years if the property were developed. Formal registration of title seldom occurred, however, largely due to bureaucratic inefficiency, and these large plantations were more de facto than de jure freehold. At independence in 1975, most of the plantations were abandoned by their European owners and reverted to the state, which has abolished their freehold status.

The colonial government also granted leasehold concessions to settlers, principally in areas where livestock and forestry development was possible. These concessions too are no longer valid.

C. State Land

All land in Angola became state property after independence. Although most plantations were nationalized, non-Portuguese foreign investment was left untouched.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Land policies are established and implemented by the Ministry of Agriculture. It also administers plantations which reverted to the state and have now become state farms and farming cooperatives.

B. Pressures for Change in Legislation and Administration

The main pressure for change in Angola is the need to reverse falling levels of agricultural production, which have caused severe food shortages and substantially reduced exports. With regard to food crops, disruption of agriculture with continued fighting in the country has led to a decline in production of about 85 percent since the mid-1970s. The fall in production of export crops, principally coffee, has been even more precipitous, and coffee exports for 1984-85 were estimated at only six percent of the pre-independence level.

These low levels of production are obviously, at least in part, repercussions of continued fighting in Angola. But the government has also attempted to encourage production increases by emphasizing the peasant sector and reducing the state agricultural sector. To this end it is encouraging peasants to form production associations and cooperatives. In 1984 the government began setting up a network of agricultural development stations to provide smallholders with inputs, credit, transport, and technical support. It is not clear what the effects of both the encouragement of cooperatives and the provision of various support services will have on customary land tenure patterns.

III. LAND TENURE ISSUES IN NATIONAL POLICY

A. Critical Tenure Issues in National Policy

The government of Angola is at present directing its attention to fighting a civil war, and land tenure issues are not in the forefront of national concerns. Should conditions become more stable, however, there are several critical concerns to be addressed. Resettlement projects of the 1950s, 1960s, and early 1970s uprooted many Africans, forcing them to abandon lands they had claimed and cultivated over a long period of time. Some were pushed into new, often less desirable areas while others were left landless altogether. More recently, still others have been pushed off their lands by the fighting that continues. Once conditions become more peaceful, the government will need to address the problem of land rights for those made landless as well as for those pushed into more marginal areas.

A second important issue is that posed by the government's wish to establish state farms and production cooperatives. Soon after independence it proclaimed a policy of turning the larger abandoned plantations into state farms and the smaller ones into cooperative ventures. It does not appear that land tenure questions were considered at the time, and the fact that the establishment of state farms and cooperatives has proceeded much more slowly than envisioned has done little to highlight the need for such a policy. Nevertheless, the issue of land tenure in these new ventures can be expected to require consideration once internal conditions in Angola become more settled.

B. Land Tenure and Agricultural Production

Agricultural production has fallen drastically in the past decade, and both food crop and export crop levels are at a fraction of what they were in the early 1970s. The most important factor in this fall in production is the civil war that continues to rage in Angola. But it also appears that land tenure problems may play a small role in the decreases in production. No data have been gathered or any research carried out to analyze this problem, but the government's recently announced program to supply peasant producers with various financial, technical, and administrative services implies at least a partial admission that land tenure questions have affected, albeit in a minor way, agricultural production levels.

C. Implications for Project Design

Perhaps the single most important fact to be emphasized in any discussion of land tenure in Angola is how little we know either about land tenure systems in a theoretical or juridical sense or about land tenure practices as they exist today. Customary systems of land tenure were little noticed or researched under the colonial administrations, and the eleven years since independence have provided little opportunity to address such concerns. Nor even, if extensive research had been carried out under the Portuguese, would those findings be pertinent today. The disruptions of the past few decades--first with resettlement programs and then with almost continuous fighting, both before and after independence--have brought far-reaching

changes to land tenure practices--as to virtually every aspect of Angolans' lives. Before any project dealing with rural development can be implemented, or even laid out, extensive and thougntful research will have to be carried out on land tenure in the particular area of the project.

A second important consideration for project design is the relative emphasis the government may wish to place on peasant production over state farm and cooperative farming efforts. The land tenure issues in each of these kinds of farming establishments are of course quite different and must be accounted for in project design.

IV. SUGGESTED READING

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LAND TENURE PROFILE: BENIN

Summary: The Government of Benin has chosen to emphasize the importance of production cooperatives in its on-going drive to raise agricultural production. The emphasis has been especially great since 1976, when a new land law was enacted. Customary land tenure systems, however, remain operational throughout most of the country, and project design must take into account what the impact on traditional systems will be in the long and the short term.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Traditional land tenure systems remain largely intact in Benin despite governmental emphasis on cooperatization as a means of promoting increased agricultural production. Beginning in 1961 with Rural Development Areas featuring obligatory cooperative formation, the new military government continued to pursue collectivization and cooperation through a 1976 administrative reorganization in the rural areas. However, collectivization implementation proceeds very slowly due to peasant resistance, and existing cooperatives usually produce less than individual subsistence plots. Although Moise Mensah stated that some privatization of land tenure had occurred in Southern Benin by 1975, no further mention of such a trend has been made after the 1976 law interdicting such practices.

There are two phases of post-independence land tenure reform, with the first occurring between 1961 and 1976. During this time, the government established Rural Development Areas in which cooperatives were to be formed. Land was compulsorily leased to a cooperative at a fixed rate to discourage speculation. Land holders who did not contribute work got 3 percent annual interest on the land, but had no say in cooperative management. Workers with no land to contribute pledged 200 working days to the cooperative. Finally, those land holders who contributed work as well as land received both their share of cooperative profit as well as the small rent. The cooperative itself had a 50-year lease, and while 50 percent of the land was to be worked collectively, the rest was divided into small subsistence plots for members. Should the cooperative fail, land would revert to the original holder. Further, government control was to decrease after 3 to 6 years in favor of cooperative self-management. However, due to the differences between national and member goals, these organizations did not flourish and failed to alter customary land tenure practices.

B. Private Tenure

1. Customary Tenure

Despite the multiplicity of ethnic groups in Benin, the Aja-Ewe, Yoruba, and the Fon comprise the majority of the population and present a fairly representative picture of traditional land tenure systems. Original rights in land accrue through first occupation or clearing of the land and are inherited along patrilineal descent lines. Within the Yoruba and the Aja societies, it is the oldest male in the founding patrilineage who allocates land usage rights. Usually, but not always, the oldest male is also the village chief. Land usage rights are those then held by the basic economic group in the society: the extended family for the Yoruba, and the nuclear family for the Aja.

While the Fon are also characterized by patrilineal-based landholding, they traditionally possessed a more hierarchical social structure whereby a "king" allocated land to "nobles" of the royal lineage, who in turn allocated land to extended families who then held usage rights.

Common to all these groups were "slaves" or "serfs" who occupied the lowest social stratum and who worked their master's land as well as their own plots. It was not uncommon for these lands to revert to the nobles upon the death of the serf. Despite the abolition of serfdom, social vestiges of this system still remain to the present.

Although Western concepts of land tenure rarely exist in traditional systems, pledging and loans are forms of alienation which are practiced. While loans of land are generally for prearranged periods of time, pledged land may be redeemed at any time by repayment of the pledge amount. However, any crops growing on the land to be redeemed are first harvested by the pledgee.

2. Freehold and Leasehold

The concepts of freehold and leasehold are foreign to customary land tenure practices, but have been increasingly used by the government of Benin in its campaign to establish cooperatives. Local landholders are obliged to lease land to the cooperatives, and the cooperative in turn leases part of its holdings to individuals while retaining the balance for communal farming activities.

See also Section C below.

C. State Land

In 1976, the military government increased emphasis on collectivization. The law of 1976 divides land into four categories. State land includes not only forests, mining lands, water and other natural resources, but also all uncultivated land. Collectively worked land is held by the cooperative, while individual farmers retain rights to land that they cultivate or put into production. The last category concerns rights of foreigners vis-a-vis land

and suggests that they may hold land as long as it is in the interests of the state. As under other West African legal codes, the state reserves the right to appropriate land in the public interest.

D. Urban Land Tenure

No references were found in the literature detailing the current status of urban land tenure.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

The renovated Benin administrative system begins at the level of the six provinces, which are managed by Provincial Revolutionary Councils. Below this on the district level are the District Revolutionary Councils, followed by the Communal Revolutionary Councils (CRC). The lowest level consists of Village Committees forming a CRC. Ostensibly, these Committees possess a wide range of civil powers including authority over land questions and disputes. In reality, however, it is the provincial or district-level administrative units that exercise control. Although not specifically stated, it would appear that authority over uncultivated lands also rests in the higher administrative echelons. Nevertheless, the practical effects of this hierarchy on traditional land tenure have been slight.

B. Pressures for Change in Legislation and Administration

Despite the minimal effect of the 1976 legislation on traditional tenure systems, there are no indications at this time of new land tenure reform planned by the Benin government. However, areas of concern include the lack of small-holder interest in collectivization and the low agricultural output of cooperatives. Since these result from poor agricultural policies and from an overly centralized cooperative structure that favors influential persons while hindering farmer input, it is unlikely that the government will initiate substantive changes.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

Given the failure of the 1976 reforms to facilitate a transition from customary land tenure to communal land tenure, one critical issue involves revising idealized perceptions of communalism in customary land tenure systems. Further, to implement the policies of 1976 would have required both a larger and better-trained cadre of officials than Benin has at the present. Both of the above limitations suggest that in reality a less centralized approach involving more local decision-making is more prevalent.

B. Land Tenure and Agricultural Production

As outined above, the government has tied raising agricultural production to the formation of cooperatives working land collectively. Traditional land

holders in an area undergoing cooperatization still "hold" the land even though they can receive no rent or control its management. Further, even should the small-holder choose to join the cooperative, low producer prices favor one's best effort on the small individual plot provided since this can be either sold for more than the official price on the black market or smuggled into neighboring Nigeria. Government cropping emphasis frequently conflicts with farmer desires, thus ensuring low production on government-sponsored cooperative land. As long as current government policies persist, it is unlikely that farmers can be encouraged to forego traditional tenure based systems of production for collective systems.

C. Implications for Project Design

Since traditional land tenure systems remain operational in Benin, project design must consider project impact on tenure in the short and long term, and whether these impacts are desirable or undesirable for both the project and the farmer. Given the governmental preference for cooperative structures, project design could attempt to provide more workable structures based on increased local input. Nevertheless, it is unlikely that tenure considerations taken in isolation can help increase production. Rather, land tenure should be considered as an integral part of other considerations in project design.

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LAND TENURE PROFILE: BOTSWANA

Summary: Botswana became independent in 1969 with the bulk of its agricultural land under traditional land tenure. It has since reformed the system of tribal land administration, replacing chiefs with land boards, and has introduced long-term leasehold of some formerly communal grazing land in an attempt to promote commercial ranching. The impact of tenure change on ranch development remains unclear, but a major expansion of the program is under discussion with the World Bank. The policy is controversial. Tenure policy on farm land has been relatively static, perhaps because the arable land is of fairly limited potential. A Land Tenure White Paper is expected in the second half of 1985, the outcome of a Presidential Land Tenure Commission.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Three basic tenure types exist in Botswana: (1) tribal land (71 percent) administered under traditional tenure; (2) state land (23 percent), primarily in game preserves and parks; and (3) freehold land (6 percent), some in urban areas but also agricultural land given to white farmers and concessions to foreign companies during the early protectorate. Since independence Botswana has pursued one of the most major programs of land tenure and administration reform in Africa. Major elements have been:

1. Conservation of tribal administration of land in rural areas, but with chiefs replaced by tribal land boards, modern sector institutions responsible to national policy-makers;

2. Maintenance with relatively minor modifications of customary tenure arrangements for farmland and residential holdings in rural areas;

3. Institution of a major enclosure program with respect to grazing land, replacing customary commons arrangements with individually held commercial ranches in major areas of western Botswana; and

4. Introduction of several novel tenures as alternatives to freehold in urban areas.

B. Private Tenure

1. Customary Tenure

The Batswana constitute over ninety percent of the population and so there is a relatively uniform pattern of customary tenure. The archtypical settlement pattern involves a village focused around the chief's residence and council-place; surrounding farmland, known as "the lands," some of which is many miles from the village; and at a further remove, communal pasture. Large cattleowners maintain cattleposts in the communal grazing areas and active farmers live at "the lands" during the growing season. Rainfed, ox-plow cultivation of sorghum on small holdings prevails, but is difficult to maintain even on a subsistence basis. Soils are generally poor and the environment arid and drought-prone.

Each household head is entitled to allocations of farmland and residential land in the villages, and has the right to use the communal pasture. Traditionally, when a village was established, residential land was distributed to wards, groups based on common descent in the male line. The wards then distributed the land among their members. This was also true to some extent with respect to farmland, though there always appears to have been some mixing of holdings of farmers from different wards at "the lands." Residential holdings and farmland, once allocated, remained with a family over generations, and were inherited. When land held was insufficient to support all of a new generation, additional land would be requested and allocated, sometimes for an entire ward, sometimes for individual households. Grazing land was not divided among wards or even villages, but was administered by the paramount chief of the tribal group. The chief's overseer (badisa) was responsible for avoiding undue concentration of herds and consequent overgrazing or conflict. While he could order herds shifted, no stocking levels were imposed.

The Tribal Land Act of 1968 made major alterations in traditional land administration, but left basic tenure arrangements largely unchanged. There were, however, a number of clarifications and innovations. The conditions of which land can be taken from someone who had received it by allocation or inheritance are more clearly set out. While generally very restrictive, they permit reallocation of land not utilized for five years, a provision that has not so far been utilized. In addition, citizens may now be allocated tribal land in areas other than their own tribal area. There is also provision for issuance of common law leases for specific purposes, discussed below.

2. Freehold and Leasehold

Land policy since independence has not favored freehold, less on ideological grounds than because of its unpalatable historical association with non-citizen ownership. No new freehold has been created, though existing freehold has for the most part been preserved. There has been some purchase of white freehold farms by Batswana, but many white farmers have stayed on, some assuming Botswana citizenship. A few freehold farms have been purchased by government and "re-tribalized" (i.e., turned over to tribal land administration), but this has been significant only in Northeast District, where the Tati Freehold Concession was extensive and included large areas

occupied by Batswana "tenants." The freehold farms are unusually productive, and remain an under-researched area.

As indicated above, it is to leasehold tenure that government has turned to promote investment in the traditional tenure areas. The 1968 Tribal Lands Act introduced "common law leases" for residential and commercial purposes for non-citizens of Botswana who cannot hold allocations of land as tribesmen. These provisions have been widely utilized. Leasehold achieved a much greater importance in 1975, with the implementation of the Tribal Grazing Lands Policy (TGLP), 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 allocated, 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.

C. State Land

State land consists primarily of parks and game preserves, and no significant amount of productive agricultural land is owned by the state. Since independence a significant amount of state land, perhaps nearly half of the then state land, has been "re-tribalized," i.e., turned over to tribal land administration, primarily in the areas of Ghanzi, Kgalagadi, and Chobe. Under the Tribal Land Act, however, tribal land may be regarded as analogous to state land to the extent that land boards develop as agents of the national government, as opposed to legitimate local institutions exercising a trusteeship role (see Part II below).

D. Urban Land Tenure

Considerable amounts of old freehold exist in Francistown, Gaborone and other urban areas, but most urban land is state-owned and has since independence been distributed on "fixed-term grants" (FTG). The period of these grants have varied but they have been in the range of 40-99 years. The tenure was initially devised for the mining town of Selebi-Pikwe, but has now been generalized in townships. FTG are essentially capitalized leaseholds, with all "rent" paid at acquisition. All improvements revert to the state at expiration, and no terms are stated for renewal. They may be bought and sold, and mortgaged. At the moment a new FTG is treated in the land market as the rough equivalent of freehold.

A second tenure introduced since independence, in connection with squatter upgrading in Gaborone, is the Certificate of Right (COR). CORs are

given to former squatters. They are of perpetual duration and inheritable, but transferable only with the consent of the municipality.

E. Distribution of Types by Region or Ecological Zone

The map on the following page indicates the location of freehold, state land and tribal land, as well as the distribution of tribal land zoned as commercial and communal.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

The Tribal Land Act is most notable for its reform of land administration. Unlike many African countries, Botswana has not attempted to assume direct, top-down control of land administration. Instead, it has created local institutions based on the system of tribal land administration, but which are subject to national land policy.

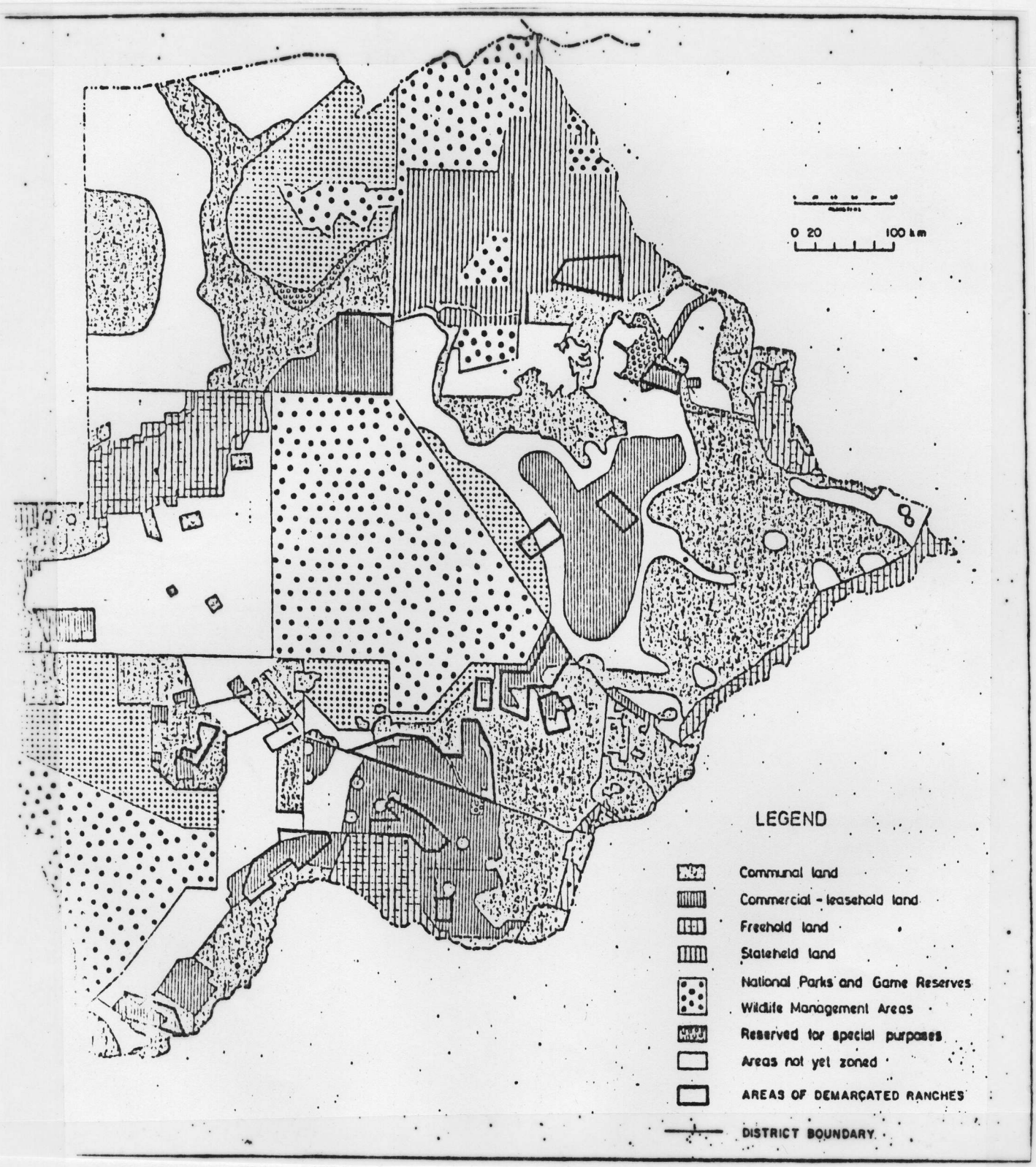
Even before independence in 1966, there were accusations of abuse of power and favoritism in land administration by chiefs. In a move which decisively undermined chiefly authority and political influence, the Tribal Land Act was passed in 1968 and brought into force in 1970. The Act replaced chiefs as land administrators with eleven Major Land Boards, some of whose members were appointed and others indirectly elected by District Councils from among their own directly elected members. Chiefs were appointed to the Boards as ex-officio members, but with varying degrees of active participation. The Boards are on one hand trustees of tribal land. On the other, they are staffed by executive secretaries and clerks who are under the Ministry of Local Government and Lands, and the Boards are required by the Act to comply with instructions of the Minister.

Thirty-five Subordinate Land Boards have been created to increase the effectiveness of the system. The Subordinate Land Boards deal with customary allocations of residential land and farmland. Matters dealing with grazing land and boreholes are dealt with by the Major Land Boards. Common law leases go to the Major Land Boards for approval; and all leases of more than one year by Subordinate or Major Boards must be approved by the head office of the Ministry. Appeals from board decisions go to the head office of the Ministry. Disputes between individuals, which may involve a challenge to a Land Board action, go into the customary court system, which is administered by the same Ministry.

B. Pressures for Change in Legislation and Administration

In 1982, a Presidential Commission on Housing recommended conversion of all land to freehold tenure. This recommendation was rejected by Cabinet and a Presidential Commission on Land Tenure appointed. In 1984 that Commission recommended that Botswana adhere to the patterns of tenure developed since independence with only minor modifications. The most important of these modifications is a proposal that a citizen holding an allocation of residential land from a Tribal Land Board should be able to apply to the Board

LAND ZONING FOR TGLP (1980)



for its conversion to a long-term lease. The Commission found no immediate need for leasehold for farmland. A White Paper is under discussion in Cabinet at this writing.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

1. TGLP. The Tribal Grazing Lands Policy 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 of the ranches will be realized. The program has not been generally popular. Implementation has been slowed by foot-dragging by some land boards, which have in certain cases rezoned areas from commercial to communal. A major expansion of the program is currently under discussion between the Government and IBRD.

Equally important, however, is the development of programs which will improve range conditions on the remaining communal grazing areas. To date, government and donor attention has been heavily skewed toward the commercial areas. Because the communal grazing areas are utilized by the bulk of the rural population who combine stockholding, cultivation and wage labor in the mining sector in and outside Botswana, strategies which integrate these actvities effectively are required, and are a necessary precursor to further decisions concerning land tenure issues in communal grazing and cultivable land. Farming systems research currently underway is expected to make a contribution to the understanding of such strategies.

2. Cultivable Land. The land board experience with cultivable land to date suggests that it is easy to underestimate the amount of work done by traditional institutions and the cost involved in creating modern local institutions to take over that workload. Major efforts are underway to improve training and technical assistance to land boards, but a great deal remains to be done. To date, land boards respond to applications for applicant-selected sites, and land use planning has made little progress outside the major villages. The lower, local levels of traditional authority must certify the availability of land for allocation; only they know the existing rights (most of which pre-date the land boards) and which land is free for allocation. In some areas, these leaders continue to allocate land illegally, without land board involvement. In the longer term, cadastral survey and registration of holdings may be needed for full and efficient land board control of allocations. At this time, however, it appears difficult to justify the costs involved, for land of such limited agricultural potential. In the immediate future, it will probably be more effective to recognize and organize better the interaction between land boards and the lower levels of traditional authority. Eventually, however, government must confront the issue of how to gradually create an affordable system of records of rights in land which permits land boards to more effectively exercise their planning and allocation functions.

B. Land Tenure and Agricultural Production

Whether current efforts to induce development by tenure change through TGLP commercial leaseholds will be successful is as yet unclear. ILCA and others have critiqued the assumptions concerning potential productivity on these ranches, suggesting that they may be faulty because production levels on freehold ranches have been overestimated and production levels under communal grazing underestimated. It has also been questioned whether many of the leaseholders for the TGLP ranches will be active owner-managers as was historically the case on the freehold ranches. The Nojane ranches developed in the 1960s on a similar model have not been successful.

The experience with TGLP commercial leaseholds to date, while very preliminary, is cautionary. Some leaseholders have displayed reluctance to assume the debt burden associated with the development of the ranches, and it is not clear that they share the faith of planners in the ultimate profitability of these ranches. In many cases their objective, instead of enhancement of the productivity of the range, may be simple exclusivity of grazing. There have been reports of overgrazing of some TGLP commercial ranches and of TGLP leaseholders moving their cattle back off the ranches into the communal grazing areas, at least seasonally.

Tenure of farmland in tribal areas appears secure, at least sufficiently secure for existing and recommended levels of investment in a resource of such limited potential. Security necessary for investment will in the future depend to a large extent upon the effectiveness and honesty of land board operations. While allocations of this land are not mortgageable, at the present time there is no market in such land because it is readily available; there is no reason to believe that banks would accept such land as security.

C. Implications for Project Design

Livestock projects, in terms of commercial ranches, have already been addressed. Livestock development in the communal grazing areas faces all the complex problems associated with management and conservation of a resource utilized in common. Given the lack of attention to these issues to date, range management projects in these areas are problematic and will themselves need to address these institutional and management issues. Development efforts in arable agriculture should be informed by a concern for the effectiveness of land board operations, but would otherwise not appear to be subject to significant tenure constraints. If smallholder irrigation became economically viable, issues of security and mortgageability would deserve closer attention, but to date such irrigation has been too expensive to compete effectively with food imports from South Africa.

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LAND TENURE PROFILE: BURKINA FASO

Summary: The government of Burkina Faso has announced that it intends to give priority to increasing agricultural production and has begun to institute measures which, if fully implemented, will produce far-reaching change in land tenure arrangements in both rural and urban areas. Unfortunately, there is as yet little detailed information available on either the provisions of these new regulations or the methods by which the government proposes to carry out its new program.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Varying population densities have given rise to uneven pressures on the land in Burkina Faso. In the Central Plateau region, population density is highest and Mossi men have for years migrated south to the Ivory Coast on a seasonal basis to work. In the Eastern region, population density is low, while valley areas along the Volta River are uninhabitable because of the threat of Onchocerciasis (River Blindness). Attempts at resettlement from denser into more sparsely settled areas have by and large failed, and agricultural production in Burkina Faso is at a very low level. The new government, which has only recently come to power, has announced that it intends to focus on increasing agricultural production and will implement production cooperatives, irrigation projects, and schemes to redistribute population. The implications of this policy for land tenure systems are vast, but to date little has appeared in print that lays out how these projects will be implemented and what their effects will be on land tenure. Newly instituted regulations, however, including one requiring that all industrial and commercial rents henceforth be paid to the state and another nationalizing all land and mineral rights, indicate that the government will not hesitate to introduce sweeping change.

B. Private Tenure

1. Customary Tenure

Despite considerable ethnic variation--there are more than sixty ethnic groups in Burkina Faso--land tenure patterns can be divided into four broad types, with population density the critical variable in their application. In

the western part of the country, among the Bwa, and in the east, where population densities are comparatively low, land is most often held communally, with the lineage chief exercising control over land allocation and agricultural production and distribution. Land is distributed among the kinship group by the lineage chief, who in theory also has the power to take back and reallocate land although in practice almost never does so. The lineage chief and other senior men also see to the distribution of the harvest among lineage members. Land cannot be sold or mortgaged, but remains within the lineage to be passed to succeeding generations.

A more common tenure pattern is one of mixed communal and individual land rights, found in the southern and western areas of the country among the Gourounsi, Gouin, and Senoufo. Chiefs of lineage exercise powers of allocation over communal fields, which are usually those farther from the village and may often be cultivated only periodically. Land closer to the village is usually held by an individual family head and under permanent cultivation by the nuclear family; these lands can be both inherited and loaned for varying periods of time to individuals outside the family or lineage.

A third land tenure pattern is one of individual household rights, a system found most especially among the Mossi (in the central part of the country), where population density is high. The nuclear family is the unit of production, and rights to the land are held by the head of the family. Upon his death, land passes to his sons. Loans of fields are not uncommon.

The final pattern of land tenure is found in the north, where Fulbe-speaking pastoralists practice transhumance. It is the control of water points and dry season pasturage that are the critical elements in land tenure in the north. Fulbe-speakers often grant temporary use rights to dry season pasturage to local farmers who might otherwise be landless in exchange for a part of the crop.

Variation in political systems in the pre-colonial period also contributed to the complexity of land tenure patterns. In areas occupied by the Bwa, Lobi, and Dagari, for example, where population densities were relatively low, the political unit was the segmentary lineage. Authority was vested in the land chief, a senior member of the first land-clearing lineage. In addition to performing ritual functions, the land chief exercised judicial authority and might be called upon to settle land disputes. Land distribution was relatively egalitarian in these areas. The Mossi, on the other hand, as well as the Gourma, had a very hierarchical political system, dividing themselves into a number of small kingdoms. Although land chiefs (tengsoba) exercised some powers among the Mossi, political chiefs (naba) held other authority, principally over labor, which diminished the importance of the tengsoba. Under French colonial administration, despite French preference for direct rule, the naba increased their powers.

2. Freehold and Leasehold

Although the legal concepts of freehold and leasehold have no validity in customary land tenure systems, the ideas of control over land embodied in the two concepts do: the loan of land rests on these two principles, making it

possible for one individual to allow another use of his land while at the same time recognizing that the first individual still maintains his rights to the land.

Although the French colonial regime recognized the primacy of customary land tenure practices throughout the country, in urban areas and for a few ill-fated ranches it established private freehold and allowed for sales of land.

C. State Land

Late in 1984 the new government of Burkina Faso nationalized all land and mineral rights. It also proclaimed that beginning in 1985 all commercial and industrial rents were to be paid to the state rather than to the landlord. (Its rationale for this latter act is to encourage investors to put money into agricultural development instead of construction.) Unfortunately, there is not as yet published material available which describes these changes in any detail.

D. Urban Land Tenure

During the colonial period, Africans were issued permits to establish urban residence; at the end of the colonial period these permits became grants of ownership. At least until the past few months, sales and leases of urban holdings were relatively common, as were sharecropping arrangements in peri-urban garden sites. Such contracts, however, have now become illegal, but it remains to be seen whether they have in fact ceased to exist.

E. Distribution of Types by Region or Ecological Zone

See Section B.1. above.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

To state that the current administration system is in a state of flux is an understatement. It is not clear at this point what the administrative structure with regard to land is. Until recently the country was divided into eleven Organismes Régionaux de Développement (ORD), autonomous planning units established in 1967 with, among other powers, administrative authority over land.

B. Pressures for Change in Legislation and Administration

The new government's commitment to change in all areas of the national economy is obvious from its first acts and its pledge "to carry out the revolution." That there is a need for change is also apparent: Burkina Faso has the lowest life expectancy in the world and one of the lowest per capita income levels. The Central Plateau area around Ouagadougou is heavily over-populated while the Volta valleys are currently uninhabitable and the eastern region under-populated. Resettlement programs in the past have

largely proven failures, and the government has recently stated that neither state farms nor individual efforts can solve Burkina Faso's agricultural problems. It hopes instead to establish multipurpose cooperatives and to work with pre-existing village groups.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

Perhaps the most critical issues with regard to tenure relate to the need to distribute the population more equally in the country and to increase agricultural production. Past programs of large scale resettlement have failed because the established populations refused to accept the newcomers, a fact that the present government recognizes in its recent statement that it hopes to establish multipurpose cooperatives and to work with pre-existing village groups. The first area in which the government hopes to work is the East-Central region, where it plans to provide infrastructure and short-term credit facilities. Land tenure arrangements which take into account both pre-existing systems and yet allow the new inputs to be advantageously used will be crucial. Another project which the government has announced it will undertake is the irrigation of 30,000 hectares from water from the Sourou dam. Here too tenure issues will be critical, for the newly irrigated land will obviously be more intensively used than in the past. Pre-existing rights to the land must be taken into account--as they apparently have not always been.

B. Land Tenure and Agricultural Production

Agricultural production is at a low level in Burkina Faso, but only in some cases can problems of land tenure be held responsible. The failure of the resettlement schemes is largely due to problems of land tenure, and the cooperatives that the government hopes to establish will obviously have to resolve these issues to be successful. Other causes of inadequate agricultural production, however, are ecological and demographic. The droughts in the north have contributed to falling levels of production, as have migrations. There are two kinds of migrations occurring: one is a pattern that has continued throughout the twentieth century, with Mossi men migrating to the Ivory Coast on a seasonal basis, and leaving the women, children, and elderly to farm the land. Other migration, which may or may not cross national borders, is in response to the droughts and desertification. The latter involve small family groups moving to the southwest (and to a more limited extent to the east). The land tenure problems associated with these spontaneous migrations are ones of insecurity and transience.

C. Implications for Project Design

The new government's commitment to increasing agricultural production through the establishment of cooperatives and with the participation of pre-existing local groups poses crucial land tenure questions that will need to be considered in project design. The failure of resettlement programs has shown the necessity for providing for the integration of newcomers into the pre-existing communities, and any future resettlement projects, as well as

cooperatives, will have to balance local tenure systems with project goals. Irrigation projects and other schemes which create more arable land will similarly require careful studies of local tenure arrangements and evaluations of project impacts on these systems.

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LAND TENURE PROFILE: BURUNDI

Summary: Scarcity of land, rather than security of tenure, is the most critical issue with regard to agriculture in Burundi. Under customary land tenure practices, land is held by individual heads of households and passed from father to sons. Customary practices and a dispersed settlement pattern still prevail, although the present government and the most recent land law (1977) tentatively support a program of villagization.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Burundi has one of the highest population densities in Africa (154 inhabitants per km^2), and to date there has been little sentiment in favor of limiting family size. The population of the country is relatively homogeneous and almost entirely agricultural; families live in small household units on their holdings. The dispersed settlement pattern is further reflected in the lack of towns and villages. The capital, Bujumbura, has a population of 170,000, and the only other urban areas in the country are small administrative centers. The rate of urban migration is far lower than in other parts of Africa (e.g., Kenya, Zaire), and thus pressure on the land remains high.

In the twenty-three years since Burundi independence change in agricultural land tenure patterns has come more from demographic pressures than from alterations introduced by the government or from market forces. The present government of Burundi, which came to power in 1976, has come out in favor of villagization, a program which would allow the provision of various educational and social services in the rural areas in a relatively efficient fashion, but as yet has taken few steps beyond the enactment of a new land law in 1976 to secure this end. Demographic and geographic givens remain powerful forces in the survival of the customary pattern of land tenure.

B. Private Tenure

1. Customary Tenure

The myth most Westerners hold of Burundi (as of neighboring Rwanda) is of a country whose population consists of cattle-owning Tutsi, who control the country and live off their herds, and agricultural Hutus, the dominated group

who are forced to yield up tribute and produce to their Tutsi overlords. The reality is, and has always been, far more complex, and for the purposes of this summary the point that needs to be stressed is that there is no dividing line, neither ethnic, economic, nor social, between pastoralists and agriculturalists. Most individuals, whether Hutu or Tutsi, farm, and the better-off among them also own a few head of cattle. There is thus no neat division of land and land use between ethnic groups or castes or between geographical areas.

Land in Burundi is held by an individual rather than a lineage. A man acquires rights to land through clearing, planting, and continuing to work it. In the past, in clearing and settling on the land, the individual placed himself under the authority of the chief within whose district the land was, and in exchange for the chief's patronage and protection and as an acknowledgement of his (the chief's) authority, the man would be obligated to supply some of his produce and labor to the chief. Unallocated land was thus given out by the chief.

The concept of clan--which in any case are not kinship groups in Burundi--played (and still plays) virtually no role in the system of land tenure. Land is inherited patrilineally, passed from father to sons, either at the time the sons marry or when the father dies. It is the nuclear, rather than the extended, family that is at the center of land holding and inheritance rules, just as it is the nuclear family that constitutes the unit of production.

In addition to fields, a wealthy individual may hold rights to pasture and forest lands, lands which are not under intensive cultivation. Although individually owned, access to such land is generally shared with neighbors and relatives. Neighbors' cows may be allowed to graze on pasture (or fallow) land, and neighbors may also be permitted to go into wooded areas to collect dead wood for firewood (although such permission does not include collecting live trees). Not all individuals, however, hold forest and pasture land, and allowing others rights to one's land is both a means of alleviating the unequal distribution of land and an expression of the unequal wealth (and status) in the countryside.

Customary tenure, then, when described from the perspective of the individual farmer, would appear to operate (and to have operated) relatively simply in Burundi. Unfortunately, various factors have complicated the working of the system as well as our understanding of it. Pre-colonial Burundi was a hierarchial society, and its government a monarchy. Twentieth-century descriptions of the traditional system of government and land tenure have introduced anachronisms which have now become enshrined as reality. It has been widely written that under the customary land tenure system all land was considered to belong to the mwami (king) of Burundi, who parcelled it out among various members of the nobility (baganwa), who in turn allocated it to their chiefs and sub-chiefs. These latter then divided the land among their various clients, individual family heads. Such a system was hierarchical in character, with the mwami or his delegates and agents retaining the power to evict the individual tenant. The head of the family held only usufructuary rights to the land rather than actual title, although he could still hand it on to his sons. This description of the customary land tenure system is

inaccurate, however, the product of botn accidental and deliberate misperceptions on the part of twentieth-century administrators and scholars. Early colonial officials equated the mwami's power with that of an absolute monarch, and scholars all too often failed to take into account that ideals could express what the more powerful hoped for rather than what actually was. The mwami was not the all-powerful ruler the Germans and Belgians believed. Certain lands, those belonging to him personally, were at the mwami's disposal, to assign or lend as he wished, but neither in actuality nor in theory did the mwami (or his delegates) exercise such power over his subjects or their land. Nevertheless, there is widespread acceptance of this idea today, and however false, its general currency has important implications for the mwami's successors, the Republic of Burundi, as for the peasantry.

In the colonial era Burundi (as the southern half of the colony of Ruanda-Urundi) remained a country of smallholder agricultural producers, and almost no land was appropriated for European agriculture or industry. Apart from those changes introduced into the theoretical base of the land tenure system (described above), there were few alterations in land tenure practices. With rare exceptions (urban areas, church mission lands, and minor agricultural and mining concessions), land holdings remained unregistered and continued to be held under the same tenure as in the past. Under Belgian colonial law, all land which was not occupied reverted to the state, but because so much land was already under cultivation, the law had nothing of the dramatic impact it did in the then Belgian Congo. Small concessions were made to individual colons, churches, and companies who intended to prospect for minerals, but the total area granted was quite small--due, no doubt, in part to the fact that the country contained little mineral wealth or other easily exploited natural resources.

2. Freehold and Leasehold

Under the terms of the 1961 land law (discussed more fully in Section IIB), land held under customary tenure is part of the state's domain, with the state exercising rights of reversion should the land fall unoccupied or otherwise be abandoned. Individual farmers possess only rights to occupy and use the land. (The misperception that all land actually belong to the mwami has thus been taken a step further.) Registered lands, however, such as that held by European companies and individuals and church missions, are not similarly encumbered and are held freehold.

A similar distinction between "ownership" and "tenancy" has long been recognized in customary tenure practices: an individual with more land than he actually needs for himself and his family may install a client-farmer on his land and in return accept a part of the crop or pots of beer from his tenant. Such a relationship rests on a recognition of a sort of leasehold, that it is possible to work the land and yet not be the owner of it.

C. State Land

Legally all unoccupied lands belong to the state, but because such a large percentage of land in Burundi is under cultivation, in reality the state's domains are rather small. State land can be in either the private or the public domain. In addition to land given over to various governmental

functions (roads, army camps, etc.) and communal activities (state land in the public domain), since independence several parastatal agencies have begun operations. Tea plantations have been established at Teza, Rwegura, and Tora and a peat project near Ijenda. It is not clear from the available literature under what terms these lands are held.

The state also holds land in the private domain for which there are no competing claims. Citizens may still exercise rights to fish, hunt, and gather wood in these areas. One such area is the Bururi forest, in the southern part of Burundi. Until recently local residents were able to gather firewood within its confines as they had in the past, but since the late 1970s the forest has been closed--although, no doubt, a number of local residents still continue to enter it.

D. Urban Land Tenure

Under the Belgian colonial regime, Africans were allowed only usufructuary rights to urban land (in housing areas expressly set aside for them); despite the legal regulations, however, there existed a lively market in housing plots within these areas. Since 1962 Africans have been able to acquire permanent title to plots of land in urban areas (i.e., Bujumbura), and the market in urban land and housing now includes virtually all areas of the city. For members of the elite, housing for lease to foreigners is often a form of investment.

In an effort to lower housing costs in Bujumbura for civil servants, the government recently constructed a new quarter of housing for them. Members of the civil service are eligible to purchase the houses in the new quarter and apparently hold title to the house and plot on a freehold basis.

E. Distribution of Types by Region or Ecological Zone

Burundi is almost entirely a country of interior highlands, areas of land 1500 meters above sea level or more. The land tenure system, as the population itself, is relatively uniform. Lower areas of land are found along the Ruzizi River and the Lake Tanganyika shore as well as in the Mosso and Cankuzo areas that form the eastern and southeastern boundaries of the country, and in these areas several new land-use patterns have been introduced in the past 30 years for which there are few customary precedents.

In the latter part of the 1950s the Belgian administration began to establish paysannats, large-scale farming and resettlement projects, in the northwestern part of the country. Peasant farmers from more densely populated parts of the country were resettled in the Imbo and Buyenzi areas where there was more land available. In exchange for title to four hectares of land, farmers were required to grow, in addition to food crops for themselves, industrial crops such as rice and cotton. The experiment was largely unsuccessful; farmers resented the stringent requirements on their time and crops. Most of the paysannats had broken up by the mid-1960s and participants had disbursed and returned to their original homes in the highland areas. More recently the government has attempted to reintroduce paysannats, but no information is available on the outcome of that effort.

The Cankuzo and Mosso areas, where population densities are lower than in the highland, have been areas for resettlement of Rwandan refugees, Tutsis who fled from that country after the 1959 revolution. There is no literature which deals with the process of land distrubtion to them or with the terms under which the Rwandans hold theland. It is very likely, however, that these settlements are similar to the paysannats established in the Imbo area in the late 1950s.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

The office responsible for registering land titles is the Office des Affaires Foncières, in the Ministère de l'Agriculture, de l'Elevage et du Développement Rural. It also retains files from earlier times and for urban land transactions.

From independence in 1962 until 1977 (when a new law was enacted), the land tenure system in Burundi was as defined in the edict of August 10, 1961. This law, passed to conform with Burundi's post-independence status as a constitutional monarchy, recognized two types of land, that in the public and that in the private domain. Lands in the public domain included those given over to various government and communal functions, such as army camps and roads, as well as those held by the various parastatal organizations. Private lands included vacant land held by the state, registered land, and land held under customary tenure. Because Burundi was to become a constitutional monarchy, all unregistered land was now considered to belong to the state rather than the mwami and to revert to it should it be abandoned or otherwise vacated. Although the law would thus seem to have given the state vast arbitrary powers to evict landowners and to acquire lands at will, in reality the state did little to change land tenure patterns. Rather, it appears that these aspects of the law were designed to give impetus to land registration, title to registered land being more secure under the law than title to lands held under customary rules. Unregistered land, such as that held under customary tenure, was said to be state land with its occupants exercising only usufructuary rights and with the state as "bare owner" (nu-propriétaire). Registered land, however, did not come under the same provision, and one of the motives behind this distinction may have been to allow greater security of tenure for European individuals and companies and to guard against seizure of their holdings by the state--the law was drawn up and implemented almost a year before independence and, except for rare cases, only foreigners' lands were registered.

In 1977 a new land law was passed. Virtually nothing has been written about it, but references to it in unpublished material indicate that the state has been given even greater powers to acquire and allocate lands. A coup occurred in 1976, with a new government coming to power, and this new land law may have been part of the new regime's initial efforts at reform, an attempt to achieve a more equitable distribution of land and population. The new law apparently is tied to a program of villagization, which will allow the more efficient provision of services to farmers by grouping them into communities

and also grant the poorer of them larger tracts of land. This is very speculative, however, and without the actual text of the law no accurate appraisal of its implications can be made.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The power of the state to intervene with regard to land has become more clearly defined since independence--at least on paper--and it remains to be seen how far the government is willing and able to push for land redistribution and resettlement. The government's interest in villagization, together with the recently enacted land law (1977), point to the possibility of wide-ranging change with regard to land tenure practices. As of 1985, however, such change is more under consideration than actually in the process of implementation. It is not yet apparent what forms of tenure (individual, communal, or some combination of both) the government can and will establish in any new settlement areas.

B. Land Tenure and Agricultural Production

In a country as densely populated as Burundi, and with as large a percentage of its population dependent on agriculture for survival, land and the level of production are critical issues. The problems with land, however, are less due to tenure issues than to scarcity of land, fragmentation of holdings, and soil exhaustion. Farmers are unlikely to borrow against their holdings less because their tenure is insecure (which it is usually not) or unregistered than because their holdings are too small for increased inputs to be effective.

C. Implications for Project Design

Land and land tenure pose several important considerations with regard to project design. Perhaps the most important concern is whether the proposed project will require significant amounts of land to be withdrawn from customary use. A reforestation project, for example, might necessitate the closing of the forest to those who depend on it for firewood or construction materials; revitalization of eroded pastureland might similiarly remove lands from the use of nearby inhabitants. And once such projects were carried out, who would then own or even have access to the forest or pastureland?

Projects aimed at increasing agricultural production need be less concerned with security of tenure than with fragmentation of holdings. The lack of credit facilities available to farmers is more a product of small holdings than of insecure land rights. And registration of holdings would obviously not solve this problem; disputes over land have undoutedly increased in recent years, but the quarrels have arisen due to population pressures. Moreover, registration of holdings would be prohibitively expensive and probably engender a great deal of suspicion; peasants would likely regard such a project as the first step to the imposition of a property tax or to the cultivation of obligatory crops. A consideration in a project which involved even limited registration of holdings is the question of whose lands were

being registered. A program of villagization which included registration of holdings might involve the over-writing of pre-existing claims on the land and the exclusion of some holders from new services and other benefits. There is very little unclaimed and unused land in Burundi, and any project which alters land use patterns will have implications for land tenure.

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LAND TENURE PROFILE: CAMEROON

Summary: The policy of the Government of Cameroon with regard to land tenure is to encourage both large-scale agro-industrial projects and smallholder production. Recent legislation is aimed at providing a uniform written code of land law that will facilitate the establishment of large parastatal operations while at the same time recognizing and providing security for the vast majority who hold land according to customary rules. Although land pressure in Cameroon is not as extreme as in some other African countries, uneven high population densities in the cocoa belt and the Northwest Province of the country have led to increasing individualization of tenure, migration, and the need for resettlement projects.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Cameroon has a complex ethnic and colonial heritage. Over a hundred different ethnic groups live within its borders, and the varying ecological and economic niches they occupy have given rise to a range of land tenure systems. Nor did colonial rule simplify this situation: originally a German colony, Kamerun was made a League of Nations mandate and divided between France and Great Britain at the end of World War I. Each of the three regimes enacted its own land laws and tenure regulations. Land ordinances passed in 1974 are aimed at establishing a uniform system of written land law for the entire country; at the same time the regulations recognize and are intended to give security under the various local land tenure systems. These land laws also serve to underpin the government's dualistic approach to agricultural production which promotes both parastatal agro-industrial development and smallholder production.

Cameroon's population is less than those of many other African countries, and population densities vary widely from one region to another. In the Northwest Province and in the central cocoa belt, where density is high, shortages of land and increased commercialization of production have given rise to individualization of tenure and permanent cultivation. In other areas, where population density is low, the government is encouraging settlement projects. In contrast to many other African countries, however, the government appears reluctant to impose new forms of tenure and land use and instead has shown itself willing to work within traditional structures at the local level.

B. Private Tenure

1. Customary Tenure

In Western and Southern Cameroon there is considerable diversity of ethnic groups. Each of these groups has developed its own set of land tenure practices and laws. In the Mount Cameroon area and in the northwestern area of the province, land that had not been alienated for plantations earlier in the century has long been held in permanent cultivation by extended patrilineal kinship groups. To the east and south, in contrast, pre-colonial agricultural practices were characterized by shifting cultivation, with land distributed by the elder lineage males to members of the kinship group. Land was available to all, and a family would farm a given area of land until it moved on to alternative sites.

The adoption of cash cropping has brought extensive change to land tenure practices in these areas; this is especially true in areas where cocoa trees have been planted because these trees can bear fruit for up to forty years and bring substantial return to their owners. In areas where cocoa trees have been planted, land is increasingly held under individual tenure and has assumed a value it did not formerly have. Yet other areas, where food crops are planted, may continue to be held and inherited under customary tenure practices. Land sales may take place, but as a rule they are restricted to members of the same or allied patrilineages. Such transactions, therefore, should not be confused with those of a land market in the usual sense. Although members of the patrilineal group have traditionally been assured of land, recent changes in population density and land demands in the western and southern areas of Cameroon have led to migration among the younger men either in search of employment opportunities or of land to farm elsewhere.

In northern Cameroon there are two competing systems of production, livestock management and cultivation, each with its own system of land tenure. The majority of the cultivators are descendants of immigrants from the Lake Chad region, and it is customary for one son, either the eldest or the youngest, to inherit land from the father. This has led to a certain confusion in recent times among development planners because although only one son "inherits," all of the members of the lineage segment hold residual rights. The son is merely, in a strict sense, custodian for the entire family.

The other major group in the north are the Fulbe-speaking descendants of pastoralists who entered the region beginning in the 1700s. In contrast to the Lake Chad immigrants, the Fulbe are Muslims and once settled in the region they began to capture other, non-Fulbe and non-Muslim populations for labor on the plantations they established. This forced these other groups into more marginal and more protected areas in the hills and other such sites. The problems generated by the competing systems of land tenure and use of these two different ethnic groups have yet to be resolved. In the colonial period, the Germans sided with the Fulbe, while their French successors took the opposite side. At independence the government declared that all boundaries and lands held under customary tenure were to be returned to the pre-colonial status, an approach that left matters even more confused. The conflict over land rights between the Fulbe and their neighbors is a constant theme in the region.

Nor do the Fulbe speakers themselves represent a homogeneous group. At one extreme are the nomadic Bororo, who herd their cattle over great distances during the annual transhumance cycle. Their concept of tenure is one in which all the range is open. When confronted by drought or other problems, they merely alter their migration patterns. At the other extreme are the Fulbe elite who live in market centers and control diverse economic empires. This latter group often own large numbers of livestock which are managed by Bororo or other Fulbe-speakers who are themselves pastoralists. Although Muslim, many of the Fulbe do not strictly follow Islamic inheritance patterns with regard to land, and daughters are often compensated in a manner that does not involve land.

2. Freehold and Leasehold

Because Cameroon was originally a German colony and then subsequently divided between France and Great Britain as a League of Nations mandate, land ownership was registered and recognized through a variety of mechanisms. The Germans establshed plantations in West Cameroons on land that they had acquired through a variety of legal and extra-legal means, and their freehold of these lands was recognized by the British after World War I. German ownership of the plantations continued until World War II, when they were merged into a parastatal organization, the Cameroons Development Corporation.

Ordinance No. 74-1 of 6 July 1980 recognizes five categories of private land: registered lands, freehold lands, lands acquired under the transcription system, lands covered by a final concession, and lands entered in the Grundbuch (the German registry book). These variations are a product of the various periods and ways in which title was acquired rather than different rights in the land. All land held under these categories can be bought and sold; the only requirement on these transactions is that they be registered.

C. State Land

Ordinance 74-1 states that, "The State shall be the guardian of all lands. It may in this capacity intervene to ensure rational use of land or in the imperative interest of defence or the economic policies of the nation." It is this power that has enabled the state to establish large agro-industrial projects throughout the country.

D. Urban Land

As of August 1974 all holders of urban land were required to register their holdings and to convert the previous "certificates of occupancy" or "land register books" into land certificates, defined elsewhere as the "official certification of real property rights." Landholders were given ten years in which to make the conversion, and all transactions in urban areas which ignored this requirement were to be declared null and void. Whether this complete conversion has occurred, however, is questionable, and land transactions undoubtedly take place in ignorance or disregard of the legal requirement.

E. Distribution of Types by Region or Ecological Zone

See Section B.1.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Cameroon has seven provinces divided into 44 departements, which are further divided into 171 arrondissements, some of which are sub-divided into districts and finally cantons (made up of villages and quarters). Land claim adjudication takes place at all levels, but the majority of the cases in the rural areas are handled by the village moot. In practice the government encourages the traditional leaders to resolve cases at as low a level as possible. Many of the changes in the way land is used have been promoted by a series of parastatal organizations that were established during the 1970s. These bodies have initiated projects, resettlement schemes, credit facilities and cooperatives. Their actual administrative power and legal capacity are established case by case and in some rural districts they are the effective land administration.

B. Pressures for Change in Legislation and Administration

The 1974 Land Ordinances and subsequent measures are designed to provide a unified code of land law for all of Cameroon, to bring practices in ex-British Cameroons in line with those of ex-French Cameroun and to eliminate any vestiges of German land procedures. In addition, the legislation is designed to provide the state with the basis for the establishment of a strong agricultural economy--that is, with the power to appropriate lands necessary for large-scale projects under the direction of parastatals. At the same time, the legislation recognizes that customary land practices remain in force throughout the country while attempting to provide security of tenure for smallholders through land registration, to be carried out in the next fifteen years (i.e., 1974-1989). Thus, the necessary legislation has been enacted, but it appears that it is only partially effective. Indications are that only a small minority of those farmers holding land under customary tenures have complied with the provisions of the law, either because of ignorance of its existence or because of deliberate disregard of registration requirements.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

Access to land is and will remain a critical issue for some time. In some areas where land is in short supply landholders tend to be older men, while younger men are forced to migrate to the cities in search of wage labor or to apply for one of the government's resettlement programs. The government, in turn, in order to keep pace with rising numbers of new farmers seeking land, is forced to open up new, more marginal areas for farming. Nor has it decided on the form of tenure in these new settlements.

B. Land Tenure and Agricultural Production

Cameroon is one of the bright spots on the food production balance sheets in Africa; population growth has not outstripped production increases and forced the country to import substantial amounts of food. The government

realizes that both parastatal agro-industrial projects and smallholders have roles to play in the agricultural sector and has not sought to impose unpopular forms of production and land tenure on small farmers. Rather, it is treading very lightly in the area of land tenure and has continued to work with traditional leaders rather than against them. So far this strategy has paid off.

C. Implications for Project Design

Customary tenure rules and practices will be a major factor in any project, whether it involves the establishment of agricultural facilities on land previously held under customary tenure practices or whether it works to increase the production, income, and efficiency of small farmers. Understanding these customary rules, and the changes that have been introduced in tenure systems over the past several decades, is of critical concern and must of necessity involve careful research in the specific project area. It is not enough for projects to rely on the provisions of the national land ordinances and on the parastatals to handle any difficulties that may arise.

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LAND TENURE PROFILE: CENTRAL AFRICAN REPUBLIC (CAR)

Summary: Because source material is scant, one can only surmise that despite governmental attempts to implement production cooperatives in the 1960s and early 1970s, traditional tenure systems, characterized by shifting cultivation, continue to prevail. Political instability, corruption, and a relative abundance of land act to forestall changes in customary land practices.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

As a result of corruption, political instability, and insufficient funding, attempts by the government of CAR to organize rural farmers collectively have failed. Peasant resistance to state-controlled cooperatives, a flagging economy, and continued relative land abundance augur against any alteration in traditional tenure practices that current land policy might be seen to advocate.

B. Customary Tenure

Although there are many different ethnic groups in the CAR, the Banda and Baya represent over 60 percent of the population and therefore provide examples of the most prevalent traditional forms of land tenure. Shifting cultivation amid land abundance characterized pre-colonial land use. Original rights to land were obtained by clearing and settling the land. These rights were inherited patrilineally. While the lineage, usually corresponding to a village, held the land as a group, land allocation was exercised by the oldest male in the patrilineage. In the event that there was more than one lineage in a village, the oldest male in the longest-established lineage allocated land. Rights to the use of land and its produce were held by the extended family, who could not permanently alienate that land.

C. Freehold and Leasehold

Although the concepts of freehold and leasehold do not exist as such in traditional land tenure systems, these systems do allow an individual to use a second individual's land, but only by consent and with the recognition that the second individual maintains his rights to the land.

D. State Land

Legally, all land belongs to the government of CAR although customary users are permitted to continue holding land as long as it is put into production. However, this formal land tenure system remains ignored, and in practice most land continues to be traditionally allocated and held, excepting for that appropriated by the state. This appropriated land was generally sold or leased to European plantation owners until 1970, but has more recently been alienated to influential citizens of CAR itself.

E. Urban Land Tenure

The literature on CAR implies--but does not state outright--that land can be and is held in fee simple in the urban areas, especially in the capital city. Much of the land so held in Bangui appears to be in the hands of foreign business concerns.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Since most land remains under the control of traditional managers, political units which are closest to the rural populations, such as the prefectures, sous-prefectures and local courts, would appear to exercise some power over land, at least in arbitration of land disputes.

There is no mention of urban land administration in the literature.

B. Pressures for Change in Legislation and Administration

The failure of the government-sponsored cooperatives (see III-B) resulted only in minor legislative and administrative changes. Therefore, these organizations exist primarily on paper. Given the continuing political problems in CAR, land tenure issues are unlikely to receive priority consideration.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

Inasmuch as the cooperative movement in CAR involved centralized decision-making and forced participation to achieve perceived national needs, small farmers' reluctance to join the movement is not surprising. Thus, one critical issue in land tenure and policy revolves around consideration of the perceived needs of the farmers themselves, as well as the need to increase their involvement in both decision-making and management in any schemes or projects aimed at increasing production by small-scale farmers. Without consideration in this direction, it is doubtful that farmers will readily abandon their traditional tenure practices where they exercise at least some control over their production.

B. Land Tenure and Agricultural Production

The emphasis placed on cooperatization prior to 1970 realized only limited application, in the northwestern part of CAR. Ostensibly, the Office for Regional Development directed local Rural Interest Groups formed by grouping several villages together for obligatory cooperative farming. However, these organizations elicited little farmer support, and in 1970, despite minor changes in their enabling legislation, existed primarily on paper.

Thus, with little national direction for improving agricultural production, the primary effects on land tenure will derive from specific projects. Under these circumstances, subsistence production under traditional land tenure will continue to be the predominant mode of production.

C. Implications for Project Design

In order to assess adequately the potential impacts of any project on land tenure, one must first attempt to understand both the local tenure system(s) and local perceptions of that system. With this knowledge, the project designer can consider compromises to possible tenure conflicts that will lessen farmer resistance. Further, the designer must balance government and project interests with farmer interest. If farmers' needs are not accounted for, or if tenure changes are disadvantageous from the farmers' perspective, farmers have little incentive to participate in a project. Such considerations in project design and implementation can determine the success or failure of a project.

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* Please note that written source material is scarce for CAR, thus resulting in the limited ability to crosscheck information.

LAND TENURE PROFILE: CHAD

Summary: Land tenure in Chad remains predominantly traditional despite a 1967 law designed to phase out customary land tenure and to institute a system of fee simple land registration and title. In the southern areas, where sedentary agriculture predominates, land is allocated along a hierarchical system. In the north, where herders migrate annually along fixed routes, the land tenure system is based on rights to pasture and wells.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Due to almost constant political instability and attendant lack of economic growth, efforts to realize the transition to privatized land tenure as envisioned in a land law passed in 1967 have received little attention or funding. Thus, although this law outlines a code of tenure for Chad, it represents a goal rather than reality, and little change is likely to occur in actual land tenure practices except in cases of state appropriation. In the case of state development projects, land cannot be sold, rented, or inherited by the farmer working the land.

B. Customary Tenure Systems

Among the many ethnic groups in Chad, the Sara represent 25 percent of the population, while other groups do not exceed 2 percent, individually. These other groups are mostly Moslem, with the attendant hierarchical structures for dealing with land tenure.

The Sara occupy most of southern Chad south of the tenth parallel. Land rights derive from original clearing of the land and are passed along patrilineal descent lines. The oldest male of the founding lineage allocates land to extended families within that lineage. These families hold usage rights to that land which are also inherited patrilineally. Generally, the position of land allocator coincides with that of village chief. Villages are only weakly allied politically, resulting in reasonably "egalitarian" communities.

Between the tenth and fourteenth parallels a great number of ethnic groups are found who exhibit similarities as a result of having been subjugated by Arab groups prior to European colonization. Most of these

groups possess very hierarchical social structures, including castes and slave classes. Within these ethnic groups, nomadic herders of cattle follow regular migration routes decided by the oldest male in the patrilineage. These lineages have rights to certain water sources along their routes, which other groups must seek permission to use.

For the more sedentary groups, central authority figures such as "kings," and later the sultans of the conquering states, generally allocate land to "nobles," who in turn allocate usage rights to cultivators. These cultivators then given both a payment for using the land as well as a religious tithe, usually a part of their crops. Cultivators (with the sometime exception of slaves) could inherit these land rights as long as they continued to make the obligatory payments.

Above the fourteenth parallel are the camel herders and former caravan raiders, the Toublou. Their social organization is based on the patrilineal descent group, several of which constitute a clan. These herders follow fixed annual migration routes from one well to another. Each clan has rights to certain pastures and wells, in addition to the gardens and date palms maintained by the wells, and one source estimates that a minimum of five wells per clan are necessary to support this pattern of migration. Within the clan, nuclear families have usage rights to specific pastures and wells. Although a clan must seek permission to use another's water or pasture, interclan marriage ties facilitate procedures for utilizing resources not owned by a clan.

C. Current Land Tenure Systems

Although ostensibly recognizing customary tenure rights during the colonial era, the French nevertheless introduced the idea of land registration and titling in the early 1900s and again in the mid-1930s. The Chadian government based the land registration law enacted in 1967 on the ideas introduced by the French. The first category of land created by this law is Public Lands, which are non-transferable. The land covered by this category is left undefined in the law. The other category created is Private Lands, and the law allows for both the rental and sale of property. Private lands are then subdivided into urban and rural lands. Under the guidelines of the law, any landholder, including holders of usufruct or mortgage pledges, may file for ownership. By law, the process must be completed within six months from the original filing date. Once the land in question is surveyed by the Land Registry, a further three months must elapse to allow for possible objections or disputes before title is granted. Foreign ownership of land must be approved by the Minister of Finance.

Although the law further states that "common law" rights are barred by statute at the end of ten years, this point is rendered moot in the face of the overwhelming continuance of both traditional allocation and inheritance of land rights.

D. Urban Land

Although not stated in the literature it is probable that the above law has been utilized almost exclusively in urban areas where the pressures of a monetarized economy are strongest.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Inasmuch as land management remains in the hands of traditional authorities who form the lowest administrative units at the village and canton levels, land is indirectly under the control of the administrative hierarchy: arrondissement, sous-prefecture, and prefecture. Under the 1967 law, however, the sous-prefect handles the stages of registration prior to surveying, after which the Land Registry assumes responsibility for both prospective and current land holders. Disputes unresolved at these two stages are subject to resolution in the court system.

B. Pressures for Change in Legislation and Administration

Due to continuing economic and political instability in Chad, it is difficult to determine what pressures on land tenure have resulted from the failure of the 1967 law. However, the unwillingness of the vast majority to embrace private tenure suggests the need for a different legal system of land tenure, one that better reflects local perceptions and practices of land tenure. Unfortunately, there are no indications that further land tenure reform will be undertaken in Chad at this time.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

In the northern area of Chad where land is suitable only for herding, private tenure has little to offer people who travel hundreds of miles each season in a continuing search for pasture. Moreover, the possibility of tenure claims on migratory routes (most likely in mid-Chad) could devastate the fragile balance maintained by herding populations with their environment. What may appear as "vacant" land may in reality be an integral part of a group's migration pattern--even if it is used only in alternate years. Hence, the failure of the 1967 law to realistically account for pastoral patterns of land use becomes a critical tenure issue. If freehold continues to be national policy, planners must then consider possibilities for integrating pastoral practices and needs into titling schemes, perhaps along the lines of group ranches. Concomitant delimitations of herd size and range size necessary for such schemes make this an extremely difficult task.

For the more sedentary peoples in the south, a system of registration is unrealistic from the standpoint of both the administrative and the financial capacity of the government. This is manifested in the lack of surveying personnel and the difficulty of demarcating the vast numbers of irregular-shaped farm plots. A system of land tenure that involves local input and relies on local administration could ease the requirements on national financial and manpower resources. Although the lack of public response can partially be attributed to poor information dissemination, this response may also indicate that a move into freehold tenure is perceived as disadvantageous by the majority of small farmers. Indeed, evidence from

countries such as Kenya indicate that emphasis on freehold title to stimulate agricultural production through expected concomitant land consolidation and access to credit have demonstrated only limited successes.

However, given the combined problems of political stability and drought, land tenure issues will continue to be of only secondary importance in development strategies.

B. Land Tenure and Agricultural Production

Despite the assumption by donor and host country alike that private land tenure automatically leads to increased agricultural production, little or no empirical data exist to support this idea. Whether because such attempts rely on centralized bureaucracies divorced from rural realities, or because of other policy failures, few rural populations have adopted private tenure. Given this performance, more emphasis must be placed on local involvement if one is to expect better production in agriculture.

C. Implications for Project Design

As is evidenced by the different problems which face cultivators and herders, project design must incorporate a knowledge of the local tenure system(s) in the project area. With this information, planners can then assess how the project will affect tenure in both the short and long term. Only by determining these effects will the designer be able to gauge possible peasant responses that can determine the success or failure of the project.

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LAND TENURE PROFILE: CONGO

Summary: While all land in the Congo is considered state land, "the property of the people," customary tenures continue to rule the circulation of most rural land--although individual purchases of land have appeared. The rural population has suffered an exodus of young men to the high-paying urban jobs, while the remaining population has become concentrated along roads and near southern urban centers. Once advocating the establishment of state farms and producer coops, the government now favors the formation of small, voluntary marketing coops based on existing village structures and customary allocation of land.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Rural population has declined as young men have left to seek urban jobs. Rural settlements are situated along roads, waterways and the railroad and near urban areas; seventy percent of the population lives in the southern third of the country. As rural villages have acquired large, fixed populations, customary tenure has had to evolve ways to insure equal access to land by all while maintaining fallow periods. The government is attempting to slow the rural exodus, increase commercial food production and reduce the disparity between urban and rural incomes by encouraging the formation of small, voluntary marketing coops based on existing village structures and methods of land allocation. About 14,000 people had joined coops by 1980. The coops are targets for credit, technical and marketing assistance. The government is no longer stressing the formation of state farms and government-directed producer coops.

B. Private Tenure

1. Customary Tenure

Two-thirds of the country is covered by equatorial forest, especially in the Sangha, Mayombe and Chaillu massif areas. Savannas are found in the Bateke Plateaux, Niari Valley, and Likouala areas. The north has marshy forests, the northwest and southwest have dense tropical forests, the central and southeast areas have hilly savanna. Some flat savanna is found near Brazzaville.

The major ethnic groups in the Congo are the Bakongo, who represent about 48 percent of the population and live mostly between Brazzaville and the coast; the Bateke, who compose about 22 percent of the population and live in the Plateaux and Pool regions; and the Mboshi, who live in the Cuvette region. The southern peoples such as the Bakongo and Bateke practice matrilineal descent, while patrilineal descent is the rule among the northern Mbosha and Sangah peoples such as the Djem and Bakwele who live in Souanké.

Among the Bakongo, land is customarily held by lineages and managed by the lineage head, who distributes access to the land. Because lands of lineages may be dispersed, the lineage chief may delegate his authority to a family member. The customary tenure system has to solve the following problems: distribution of lands to make the best use of available labor, access to land by all, and maintenance of fallow periods. Customary systems rely on reciprocal obligations; resources are shared to the group's advantage. Land is inherited matrilineally from uncle to nephew. Upon marriage the nephew goes to live in the maternal uncle's village where he has land rights. The nephew's wife, though, may be forced to rent land or swap rights if she lives far from her lineage lands. Forced regrouping of lineages into larger villages in the colonial era and recent migrations of rural people to villages near roads and the railway and with access to services has caused lineage groups to acquire unequal access to land.

The Basundi, members of the Kongo ethnic group in the Pool region, have devised a system of reciprocal exchange of land between lineages to ensure access to all and to protect fallow periods. Each year a different lineage chief allows members of other lineages to rent land that has been in long fallow. This rotational system aids people whose lands are distant or in short supply.

Two forms of purchased land exist among the Basundi. When lineages were forcibly regrouped in the thirties, the lineage chief sometimes used lineage funds to buy land in the new village. The land was then allocated according to customary rules. These lineage funds continue to exist and are replenished when lineage land is rented out. Since 1970 individuals have used their private funds to buy "personal" lands. Whether these lands will be inherited by the son or the nephew is presently the subject of disputes.

In the northern region of Souanké the patrilineal Djem and Bakwele live in clearings of the equatorial forest. Colonial policy in the 1920s and 1930s regrouped and fixed villages along the roads. After 1945 colonial policy reduced the despotic powers of administrative agents, extended roads and encouraged the cultivation of cocoa for export. Souanké neighbors an area of the Cameroons which exports cocoa, and this Cameroonian example inspired farmers to develop cocoa on their own initiative. Yet Souanké is isolated from Brazzaville and remains poor. The exchange of goods and access to land is, as among the Bakongo, the basis for even development of lineage groups. As in other parts of the Congo, extended family work groups which share agricultural tasks, especially between women, are common.

French colonial land legislation exploited to the full the notion that "vacant lands" reverted to state domain and could be redistributed by the state. All land not officially registered under the Torrens Act, nor held in

accordance with French civil code, was considered vacant. African customary law was not recognized. Only French law was to be applied in the colony and French law only recognized private individual property. The communal holding of land by communities, the role of chiefs of land, the customary rights of individuals were ignored.

Since independence, land legislation has continued to dismiss the validity of customary land tenure. Since 1973 all land is officially held by the state in the name of the people. All land titles and customary rights are abolished. In reality, land in rural areas continues to circulate according to customary tenures.

2. Freehold and Leasehold

France, in its first period of contact with the Congo, did not directly challenge customary land rights and allowed chiefs to control trading contacts between African and European traders. In 1899, urged on by King Leopold, France adopted a system of monopoly concessions in French Equatorial Africa similar to the system in the Belgian Congo. Seventy percent of the Congo was divided up into areas which were leased to companies who then possessed a monopoly over the exploitation of the products in their concession. The companies were granted rights to land which they actually developed in some way. When the concessions granted in 1899 lapsed in 1930, they were not renewed. Companies instead were granted ownership of large tracts of land.

This situation has changed since independence. Article 31 of the constitution abolishes all land titles and makes land officially "the property of the people" and therefore of the state.

C. State Land

All land is officially state land now. Article 31 of the constitution of 8 July 1979 reads, "Over the whole of the People's Republic of the Congo, the land is the property of the people. All the land titles and customary rights are abolished. All use of these titles and rights is contrary to the constitution and punished by law. At the same time, each citizen freely disposes of the product of the earth, fruit of his or her own work."

D. Urban Land Tenure

In 1920 land titles were granted to Africans possessing urban land not held collectively. In 1955 title could be granted only upon proof that the African had made permanent improvements on the land.

Since independence, nothing specific on urban land tenure has been written. Urban land is now apparently state land, as all land titles have been abolished. See Section C on State Land above.

E. Distribution of Types by Region or Ecological Zone

See Section B on Customary Land Tenure.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Most rural land continues to be administered by customary authorities according to traditional land tenure rules. Some state farms and producer coops exist which are administered by the government.

In the colonial era, secure title could only be acquired through a system of registration of land titles based on the Torrens Act. This system of land titles appears to have been revoked in 1973 but no further information is available on the government administration of land.

B. Pressures for Change in Legislation and Administration

The present land legislation does not seem to offer landholders secure title to their land. Land policy appears to be decided at the village level, and presumably there will be agitation for recognition of unofficial customary and "personal" titles to lands.

In the 1970s the government attempted to regroup farmers into producer coops administered by the government, but farmers were non-cooperative and the government now tries to work with and incorporate customary institutions in its cooperative program.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

Seventy percent of the population now lives in the southern third percent of the country. Rural population is distributed along the railways, roads, and waterways. As population density rises, unequal and difficult access to land becomes a problem that demands new adaptations of customary tenure.

The government and the UN are involved in developing small self-help coops of about 20 members, often mostly women, in order to improve food production. The coops receive credit and technical assistance and use land which is allocated to members according to customary rules. There are several questions the available information leaves unanswered. Is land available to coop members, especially women, at reasonable cost? Do coop members feel secure in investing in land held according to customary rules? Does the clause in the institution which declares that customary titles to land are illegal create insecurity?

B. Land Tenure and Agricultural Production

Historically, population density in the Congo has been low, but the concentration of rural population along the railways, roads and waterways and near the urban areas of the south has continued since the colonial era. Brazzaville, as the former capital of French Equatorial Africa (which included Congo, Gabon, Chad and the Central African Republic), has always had an

over-large service sector. Urban populations have risen to at least 45 percent of the total population. Oil and mining revenues and a socialist policy of full employment of high school graduates have led to an exodus of young men from rural areas and a great disparity in urban and rural incomes. As rural population has declined and congregated in fixed village sites near roads, food production has fallen as total land cultivated has declined and as fallow periods have been shortened.

Since 1968 the government has pursued a policy of "scientific socialism" and established state farms and attempted to organize producer coops under government control. The state farms run at a deficit and the producer coops have been largely unsuccessful.

The government now attempts to improve commercial food production by favoring voluntary formation of coops, buying coop food at a higher price, and supplying credit and technical assistance. Land is permitted to be allocated through customary tenures as the incorporation of existing village structures is a key aspect of these small coops. The small, voluntary marketing coops average 23 members, mostly women, and based on traditional collective work structures have succeeded. Loans to these coops and pre-coops--so called because farmers have applied for but not received official coop status--have been largely repaid.

C. Implications for Project Design

Because the government is increasingly backing away from its earlier emphasis on state farms and producer coops, projects in Congo will most likely be working with farmers holding land under customary tenures, and planners should be aware of the way lineage groups organize labor, possess lineage funds and use customary allocation of land to maintain the reciprocal obligations which form the basis for collective work strategies. The customary systems are likely to remain important as agricultural projects focus primarily on food production for national use rather than on export crop production.

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LAND TENURE PROFILE: ETHIOPIA

Summary: The 1974 Revolution in Ethiopia has achieved far-reaching and genuine land reform, replacing an oppressive and insecure system dominated by absentee landlords with one that allows peasants up to ten hectares. Many in the government, however, hope to push the goals of the revolution yet further and to implement collectivization. Evidence to date is that peasants are resisting such pressures and prefer to farm in more traditional units.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

The land tenure system in Ethiopia before the 1974 Revolution was perhaps the most intricate and hierarchical of any country in Africa, the product of the interaction of local tenure arrangements with the demands and imperatives of the central imperial government and the Coptic Church. By the 1960s it had become clear that the existing land tenure systems were the single greatest obstacle to agricultural development, and the new military government which seized power gave priority to the need for land reform. The old landlord-tenant relations were abolished, and the government began a program of land redistribution throughout the country. All private property was abolished, and instead individuals were to receive up to ten hectares of land.

The extent of revolution in landholding patterns in Ethiopia cannot be minimized; there has been a genuine redistribution of land. For many in the government, however, the reform has not yet gone far enough, and it is still necessary to implement the necessary steps to collectivization. It appears that many farmers are not inclined to move toward cooperative production and prefer to continue to farm in the units they have long been accustomed to.

B. Private Tenure

1. Customary Tenure

Land tenure systems in Ethiopia are diverse, the product of widely varying local systems which have been overlaid with land rights of the central government and the Coptic Church. As the Ethiopian Empire expanded in the nineteenth and early twentieth centuries and new areas in the south and

northeast were brought under its control, the imperial government imposed new systems of land tenure and land rights on the conquered areas.

In northern Ethiopia, which consists of Eritrea, Gojjam, Begemeder, Tigrai parts of Wollo and northern Showa, tenure systems, which were known as rist, were generally communal. In these systems, access to land was through membership in a corporate group; access to land was not necessarily equal, however. Communal tenure systems had two variations in ways individuals and families got access to land: (1) through membership in the extended family and descent from the person who was regarded as the "founding father"; and (2) through residence in a village, with land considered as common property. Under the village communal system, communities often gave land rights only to residents who could trace their descent from the founding father. In other villages, though, long-time residence and paying taxes would qualify individuals to get land. In either case of village communal rights, land right was heritable, subject to some controls by the community. Theoretically, land distribution took place periodically between five to ten years, but the practice was not strictly adhered to. In regions where land was claimed through descent, kinship links could be established through fathers, mothers, or wives.

Superimposed over the landed peasantry of the north was the institution called Gult, a form of fief granted by the Emperor in lieu of a salary that entitled its holders to tribute from the peasantry. In general, gult right was granted to the ruling elite and was a form of surplus appropriation from the producers through "a plethora of fees, fines and taxes imposed on practically everything that lived and grew on the land, and on many forms of activity engaged in by the peasants." The gult holder, besides economic rights, also enjoyed judicial and administrative jurisdiction over his gult territory.

In contrast, in most of the incorporated peripheral regions of the south, military conquest in the nineteenth and twentieth centuries shaped tenure patterns. Approximately a third of the land was left to the local elites as freehold and the remaining two-thirds was taken by the state. Ethiopian emperors used a land grant system as an important political and economic tool, distributing the land as rewards. The beneficiaries of these lands for the most part used tenants to farm the land. Theoretically, the land grants were temporary, intended to substitute for a salary and to last only as long as the beneficiary performed the duties of the office. Land grants that fell within these categories included maderia, rist-gult, and hudad. These temporary grants were sometimes changed into individual ownership, called gebbar.

The Ethiopian Coptic Church, with long historical links with the dominant elite, was endowed with extensive land grants. Some church lands, known as semon lands, were exempted from state taxes. Thus it was not uncommon for individuals to register their land as semon land and evade taxes. In addition to semon, the church also had numerous grants of gult land.

The various land grant policies and the penetration of market relations speeded up the process of land alienation, creating large numbers of absentee landlords and, correspondingly, a huge exodus of landless tenants. In the north, the continual redivision of land led to extreme fragmentation of farm

plots. It has also been argued that restrictions on alienability of land blocked the emergence of an enterpreneuring peasant. The south, with its system of individual tenure, was not without its own problems. There was no comprehensive legislation that governed landlord-tenant relationships, and landlords had the right to evict tenants without notice and could increase the land rent arbitrarily. Thus peasants in the south suffered from lack of security as did their northern counterparts.

By the middle of the 1960s, the land tenure system was identified as the major impediment to the economic development of the country. The government was pressured to contemplate various reforms, none of which materialized. Among the various reform suggestions, the government wanted to legislate regulations governing landlord-tenant relations, taxation on unutilized land, ceilings on land ownership and settlement schemes. However, identification of the need and the intention to reform were only the first steps in the right direction and required political courage and the will to execute the reforms. The government, which was under the influences of the landed elite, lacked both the commitment and the political will to institute any of the above reforms.

Around the middle of 1960, the government decided to increase the production of marketable crops. It initiated agricultural projects called the Minimum Package Programs (MPPs), such as the Chilalo Agricultural Development and Wallamo Agricultural Development Units. These farm projects were to disseminate information on modern agricultural techniques and to deliver improved seeds, fertilizer, etc. to the farmers. Although the MPPs were to provide their services equally to all farmers, the land tenure system precluded that these benefits would reach the majority of peasants. The effect of the projects was only to accelerate eviction of peasants.

2. Freehold and Leasehold

By the 1974 revolution, a large proportion of the land grants in the south of the country had been converted to individual ownership, which was then worked by tenant farmers under a sharecropping arrangement. The 1975 land proclamation abolished this and all other private land ownership.

C. State Land

On March 5, 1975, all rural lands were nationalized and made the collective property of Ethiopian people. The radical aspect of these reforms was comparable to that of Chinese and Russian agrarian reforms. The preamble of the proclamation states the far-ranging purpose of the reform to be to "fundamentally alter the existing agrarian relations so that the Ethiopian peasant masses . . . may be liberated from age-old feudal oppression, injustice, poverty and disease."

The salient features of the reform include the following: (a) abolition of private property; (b) creation of peasant-based rural institutions to implement the reform; (c) creation of an egalitarian society and elimination of the feudal system of administration. Land is distributed on an usufructory basis, with a ten-hectare maximum for each individual. The distribution and size of holdings is determined by the size of the household and the

availability of land in the region. The proclamation prohibited the use of hired labor except by the widowed, old and the sick or dependent children. The reform also abrogated existing landlord-tenant relationships and eliminated various forms of feudal tribute such as corvee labor and other services.

D. Urban Land Tenure

Proclamation No. 47 of 1975 nationalizes all urban land without compensation. In addition, while private ownership of urban houses is not completely abolished, an individual or family can no longer own more than a single dwelling house. All "extra" houses become government property. In place of private ownership of land, persons and families are granted possessory rights over a maximum of 500 square meters of urban land; this land cannot be sold or mortgaged. Urban tenants who previously did not own their own dwellings may claim possessory rights of 500 m^2 of land that they occupied as of the date of the proclamation.

E. Distribution of Types by Region or Ecological Zone

See Section B.1.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Responsibility for the land reform, originally assigned to the Ministry of Land Reform and Administration, has been taken over by the Ministry of Agriculture. At a local level, peasant associations have been formed to study land distribution patterns and to reallocate lands within the district. Because at the outset of the land reform campaign it was not clear that the local associations would understand and be able to implement the reforms, a "Development through Cooperation Campaign," or Zemecha, was undertaken which mobilized students to go out into the countryside and work with the peasants toward land reform.

The 1975 land reform legislation empowered peasants to create their own institutions which included peasant associations, judicial tribunals and militia organizations. These organizations are to be hierarchical with the lowest level of organization at the level of the parish in the north or on 800 hectares in the south. The next tiers are the district, Awraja, provincial and national levels. These institutions are to be used as channels of participation and communication between the state and the rural population. The associations are entrusted with socio-economic and political development in their locality. The proclamation empowers them to (1) distribute land; (2) conserve public property and maintain security; and (3) establish marketing and cooperative associations. Each peasant association has an executive committee consisting of chairperson, secretary, treasurer, and other members, all elected by the adult members of the general assembly. Election of officers is to take place annually.

These local peasant associations remain in existence in most areas and have now turned toward such other functions as literacy campaigns and

community development. There are almost 20,000 associations with a family membership of 5.1 million (as of 1982) organized under the umbrella association of the All-Ethiopian Peasant Association.

B. Pressures for Change in Legislation and Administration

The need to reform the systems of land tenure in the Ethiopian empire that had evolved in the nineteenth and twentieth centuries received priority under the military government that came to power in the 1974 coup. The old system had acted to brake agricultural development and had been a significant factor, if not the principal one, in the events leading to the overthrow of Emperior Haile Selassie. The new government since then has acted to achieve a genuine revolution in the land tenure system in the country.

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 increasingly 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.

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 two percent of cultivated land was farmed by producer cooperatives. There are no reliable data on the efficiency of individual versus cooperative production, nor are such data likely to emerge. 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.

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. With the Ethiopian government's 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. The cooperativization of production has been predictably unpopular with former tenants whose great aspiration was to own their own land. 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.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The most critical issue confronting the government of Ethiopia is how much emphasis to give the next step in land reform, formation of producer cooperatives. The organization and stages toward cooperatization have already been laid out, with peasant associations gradually moving from individual farming and income toward group ownership of land and distribution of income. The government offers various incentives to peasant associations to take these steps, providing credit subsidies, tax advantages, and priority access to farm inputs and extension services. About one percent of farm families belonging to peasant associations are in producer cooperatives, and it is estimated that their holdings cover an estimated 150,000 hectares.

The government is also aware, though, that there is risk in moving too rapidly toward producer cooperatives. Former tenants, particularly in the south, want to control their own land and farm it individually. Policy planners are aware that forced cooperatization is likely to create substantial unrest, and hence the government has so far moved cautiously in encouraging producer cooperatives. To date, most of those who have joined cooperatives have come from the ranks of the landless or those without oxen or other resources who were settled on former commercial farms of pre-revolutionary days.

Another land issue concerns the state farms. These farms, converted from the former commercial farms, have been designated to produce export crops and food for urban consumers, both vital needs. Most are not financially viable, however, and have serious problems of overmechanization, uneconomic use of inputs, and heavy manpower demands. The government has continued to support the existence of these farms, despite their obvious drawbacks. It hopes at some point in the future to convert them into producer cooperatives.

Other commercial farms have now been converted to settlement schemes for the landless and unemployed. Like the state farms, the settlement schemes are expensive ventures and not entirely successful. Most of the settlers, some 120,000, are not yet self-supporting nor is it clear that these settlement schemes will prove successful in the future. Many of the sites are badly chosen and settlers are often reluctant to stay on them.

B. Land Tenure and Agricultural Production

There has been little thorough research on the level of agricultural production achieved in various areas of Ethiopia since the land reform. Indications are that production has not substantially increased--even in areas less affected by drought--although individual farmers are not as badly off as they once were since they no longer need to hand over substantial portions of their crops. Increasing concern over land degradation in the northern highlands has recently raised the question of whether traditional tenure arrangements there have contributed to such degradation. Extensive terracing and other labor-intensive conservation practices suggest that they have not, and that the problem is one of overpopulation and consequent overuse, unexacerbated by traditional tenure patterns.

C. Implications for Project Design

The most important implication for project design in Ethiopia is the need to strike a balance between the goals of the Ethiopian government, which hopes to encourage collectivization, and the wishes of peasant farmers, who for the time being appear to prefer to farm in the units to which they have become accustomed. Increased cooperative production will enable various services and inputs to be supplied more efficiently and can help to increase production levels. But unless farmers are willing to participate in these ventures they will not succeed.

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LAND TENURE PROFILE: GABON

Summary: In Gabon land is abundant and underpopulated. High urban wages attract young adults from rural areas to the cities, and food self-sufficiency is only about 50 percent. National land laws grant secure title only to landholders who officially register their land and receive a lease or a private individual title. Customary tenure, though, continues to rule the allocation of most rural farm land. The government has invested in large industrial farms to raise food production and act as "poles of development" around which villagers are to resettle.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

The Gabonese government has continued the French colonial policy of denying the validity of customary titles to land. Secure title can only be obtained by registering one's land and receiving a private individual title or a lease. Customary tenure continues to operate, though, in most rural Gabonese communities. This dichotomy between de facto and de jure tenures may be a future source of conflict, but at present land is abundant and where land has acquired a commercial value individual rights appear even in customary tenures.

In general, while the men of rural Gabon may develop plantations, fish, hunt or work in the timber or mining industries, women are responsible for much of the food production. As rural land is not scarce, especially with the exodus of young adults to the cities, long fallow periods and thus soil fertility are able to be maintained.

The government is investing in huge industrial farms to raise commercial food production rather than investing in small producers. Small farmers are expected to settle near the industrial farms and derive benefits from improved infrastructure, commercial networks and educational services. This regrouping process may place stress on the local land tenure.

B. Private Tenure

1. Customary Tenure

The equatorial forest dominates the ecology of Gabon, and villages traditionally were located in clearings of the forest. Some spots of savanna

exist in the south. Plantain and manioc are the two major food crops in Gabon, supplemented with taro, sugar cane, corn, peanuts, pineapples and some rice in the south. Cocoa and coffee have been widely introduced but the greatest production, of cocoa especially, is in the northern region of Woleu-Ntem.

Gabon has over forty different ethnic groups, including Fang, Eshira, Omyene, Bapounou, Bateke and Okande. Little research is available on the various customary tenures of these groups. The landholding groups holding customary collective rights are lineage and clan or village groups. Rights of individuals and families to land exist within the larger clan or village groups. Chiefs of land play roles as managers of the land rights of local groups. The Fang north of the Ogooué are patrilineal, as are the Mpongwe of the Libreville area. South of the Ogooué River descent is matrilineal.

In the case of the Bateke of the eastern plateau, each farmer freely chooses his or her own field. The Fang in the north have grouped together in large villages and settled around cocoa and coffee plantations. Fang individual and family rights to land are relatively fixed. Traditionally a gerontocracy may have existed in which elder heads of families used the labor of male family members in the family head's plantations. Now each farmer is likely to develop his own plantation.

In the Libreville area the land of the Mpongwe ethnic group has become totally urbanized. The Mpongwe have claimed urban land through customary rights in the face of colonial and post-colonial land legislation which ignored these rights. The Mpongwe were indemnified by the colonial administration, but continue to press their claims to land in suburbs of Libreville.

French colonial land legislation exploited to the full the notion that "vacant lands" reverted to State domain and could be redistributed by the state. All land not officially registered under the Torrens Act, nor held in accordance with French civil code, was considered vacant. African customary law was not recognized. Only French law was to be applied in the colony and French law only recognized private individual property. The communal holding of land by communities, the role of the chiefs of land, the customary rights of individuals were ignored.

After the 1930s, the French courts began to inquire into and admit to some degree the existence of customary rights to land. Generally though, only native lands registered under the Torrens Act were protected, and such lands were rare.

Since independence, land legislation has continued to dismiss the validity of customary land law. The laws do not recognize village, lineage, clan or tribal property. Only those holding officially registered titles to land hold secure title. In rural areas, though, the land legislation is largely unapplied and customary tenures continue to prevail. One exception may involve areas of forest which have been officially alloted to local families.

Since independence, colonial policies involving obligatory cultivation of land and forced labor have been discontinued.

2. Freehold and Leasehold

Freehold and leasehold first appeared in Gabon in the colonial era. All land not actually under cultivation by Africans was declared vacant and reverted to the state. Concessions of great tracts of land were then made to companies for thirty years. Companies acquired ownership of land they developed. The concessions lapsed in 1930, but companies were instead granted ownership over these large tracts of land. Throughout the colonial period, freehold could be established by registering title to land under the Torrens system.

Since independence, Gabonese land laws recognize only public state domain and private domain either held by the state, held privately, or leased by individuals or organizations possessing registered title to the land. The domanial code recognizes only state property and individual private property. Customary rights to land are not recognized.

Private individual title to state land is ceded by the state for a provisional period of two years in urban areas and five years in rural areas. Once the land has been shown to be developed, a definitive title to land may be acquired. Persons who occupy land to which they have customary rights can only secure their title by going through the procedure of registering their land.

The state can agree to the long-term lease of land from the state private domain for a limit of fifty years. The lease may be renewed for a maximum of forty-nine years.

C. State Land

State land consists of public and private domain. All vacant land belongs to the state private domain, as well as all land held under customary tenure and not officially registered to a landholder. Once definitive title is granted to an individual the land is no longer state land.

D. Urban Land Tenure

Official title to urban land is normally acquired through the registration procedures applied to all land in Gabon. After a provisional period of two years the occupant of land can make the title definitive. The Mpongwe in Libreville have claimed some urban land on the basis of ancestral customary rights, but their claims appear to be recognized only when the individual claimants have occupied the land for at least the last five years: customary claims are thus recognized on the same basis, and individual, not collective, titles granted, as owner for any occupant of urban land.

E. Distribution of Types by Region or Ecological Zone

See Section B on Customary Land Tenure.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Local land commissions, courts, the Direction of Lands, the Council of Ministers and the Chief of State may all become involved in the administration of land.

The registration of title to land involves two phases: administrative and judicial. First, the Registrar of Land publishes information about the planned registration of land to notify anyone who may wish to oppose the registration. Second, a judge renders an ordinance of registration which is inscribed in the land book. People who occupy land without title or who possess customary title can obtain definitive private title to their property on the condition that they bring proof that the occupation has been peaceful and continuous for at least five years.

Land commissions have been created in every administrative district. Local occupants of land can start the registration process by contacting these commissions. Rural commissions may be composed of local adminstrators such as prefects; the head of the Office of the Cadastre; the land agent; the president of the rural collectivity; the representative of the appropriate local canton to the council of the rural collectivity; the representative of the Director of Agriculture; the representative of the Director of Waters and Forests.

Despite this formal administrative structure, most rural land continues under customary tenure and is in fact administered by local chiefs of land, family heads, etc.

B. Pressures for Change in Legislation and Administration

Most cultivated land in Gabon continues to be administered by chiefs of land according to systems of customary tenure. The Gabonese land laws recognize private individual title to land when officially registered, but deny the validity of customary rights to land. The urban Mpongwe are the only documented example of friction between customary landholding groups and the government, but no doubt similar disputes occur elsewhere. Individual tenure may be seen as a threat to local group landholding rights and social cohesion. Yet, as Gabon is underpopulated and only a fraction of the land is cultivated, the abundance of land may reduce conflict.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The government has adopted a policy of encouraging individual private tenure and only grants secure title to a small number of landholders, as most landholders hold land according to unrecognized customary tenure. The government policy may encounter opposition from and undermines the customary institutions of landholding groups.

The government has an ongoing policy of regrouping villages to ease their access to services, agricultural extension works, and marketing of crops. The process of regrouping may involve conflict between landholding groups, but little has been written about the consequences of regrouping.

B. Land Tenure and Agricultural Production

Agricultural production is low, and food imports into Gabon are substantial. Gabon is an underpopulated country with thriving oil and mining industries which attract foreign capital investment. About four-fifths of the land is covered by forests which were once the source of Gabon's major export and which continue to be logged by big companies and by local farm communities. Urban unemployment among Gabonese is very low and urban wages are high, creating a great disparity between urban and rural incomes. The rural farming population has aged as young adults have left in search of urban jobs. The farming sector supplies only about half of the food needed for urban markets. The government has attempted to increase investment in agricultural projects, services and extension work to raise food production to prepare for the "post-petroleum" era. It has concentrated its investment in large industrial farms employing hundreds of workers, claiming that these farms will be poles of development which will stimulate the economy of surrounding villages which are in fact to be resettled near these industrial farms. Planners note that these industrial farms could undercut small producers but do not suggest remedies. The plans do not clearly describe how small farmers will learn and benefit from proximity to the industrial farms. Many questions are raised. One wonders how the government acquired the land for these farms. To the extent that villagers regroup around these farms, do villagers feel they hold secure title to their land? Do villagers invest in their land? Is credit available to villagers?

The critical question, which remains unanswered, is, do the national land laws create insecurity and lower investment in land by farmers who hold land according to customary title rather than officially registered title?

C. Implications for Project Design

Projects which work with farmers holding land under customary tenure will need to research the customary rights of local landholding groups and individuals--men and women--and the role of chiefs of land. In theory, land which has been subject to a large investment must be officially registered and private title granted to an individual or organization. Local landholding groups may approve granting private title to an individual. In general, project designers should inform themselves about the local chiefs of land, landholding groups, and should develop policy which affects land tenure with the participation of the interested small groups and their leaders.

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LAND TENURE PROFILE: GAMBIA

Summary: Customary systems of land tenure influenced by Islamic norms, have shown themselves flexible with regard to agricultural change in the past century. Land is in increasingly short supply, and customary practices have adapted, with varying degrees of success, to allow for the introduction of new crops and techniques, increasing numbers of land sales, and new contracts for leasing land. At this point in time, considerable uncertainty often attends such transactions. Gambia is perhaps the most-Islamicised country in sub-Sahara Africa, and there is a fundamental policy issue as to whether evolving rural land tenure will look to Islamic models or Western tenure forms already established in Gamia's urban areas.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Although customary land tenure practices continue to predominate in Gambia today, these practices themselves have changed from earlier times. A shortage of land has resulted not only in the intensification of land use, but also in increasing land sales (which are contrary to customary practice) and in alterations in the terms of rentals of land: where formerly kola nuts were customarily given to the owner of the land by the prospective tenant, now money is the acceptable form of payment. There is, moreover, an increasing tendency for individuals to assert personal claims to land.

B. Private Tenure

1. Customary Tenure

The population of Gambia is composed of several ethnic groups, but the customary systems of land tenure are very similar and variations are the result more of production differences than of ethnic diversity. The integration of certain Islamic concepts into customary systems may have had a homogenizing effect. Today, Islamic and customary rules are so melded together that people do not think of rules as having had one or the other origin--they are all customary, and all in accord with Islam. These systems are complex, and have proven themselves highly flexible and adaptive in the past century.

Claims to land are established through clearing and cultivating it, but the location of land, as well as the unit of production (compound, sub-compound, or individual), provide variation in the kinds of rights that can be asserted over the land. Uncleared land within the boundaries of a village is under the administration of the village head (alkalo, who is often also the head of the original land-clearing lineage), and an individual or group who wish to clear land within the village must first receive his permission. The alkalo also maintains rights over lands within the village long since allocated: in theory he can appropriate these lands and reallocate them, but in practice almost never does so.

Outside the village, land may be cleared and claimed by a compound, and the power to distribute it rests with the head of the compound. Upland is usually allocated on a seasonal basis to males within the compound. Women, on the other hand, are given rainfed and swamp rice land, and these rights are granted for long periods of time. (Upland requires fallow periods, whereas swamplands do not.) Other, undistributed compound land may be allocated to immigrants, or "stranger" farmers. Compound land is not inherited by the cultivator's offspring, but rather reverts to the compound head for reallocation upon the holder's death.

Both men and women may also establish individual rights to unclaimed land through clearing and continuing its cultivation. Individuals are free to dispose of these lands as they wish, and such land is also inheritable, with daughters inheriting from mothers as a rule and sons from fathers. Other lands attach to specific traditional offices (e.g., village head), and although they may be shared by the office-holder with his wives and male dependents, the lands remain attached to the office and are passed to the successor.

2. Freehold and Leasehold

Under the Lands (Provinces) Act of 1966 (originally enacted in 1946 and revised and re-enacted after independence) all land in the Provinces (all land outside urban Banjul and Kombo Saint Mary) is regulated according to customary laws. There is no freehold in the Provinces. There is, however, a small but growing amount of land acquired by the state and leased out for various purposes, primarily non-agricultrual. Most freehold and leasehold land is located in urban areas. See D below.

C. State Land

The state is empowered to acquire lands for public use for a fixed period of years and in exchange for adequate compensation. It can, in turn, then lease out the land, as it did in the Jahili Swamp area in the 1950s. This area was originally acquired and leased for a commercial rice farm. The farm soon failed, and for the past twenty years women in nearby villages have been cultivating this swamp without paying rent.

Land in the urban areas of Banjul and Kombo Saint Mary, unless granted in fee simple, had until recently been presumed to belong to the state as the result of colonial-period concessions. Recent litigation has called this into question. See D below.

D. Urban Land Tenure

In the urban areas of Banjul and Kombo Saint Mary the concepts of freehold and leasehold apply. A small amount of fee simple (freehold) land exists in Banjul, and while new grants of freehold are possible (consent of the House of Representatives is required), none is in fact being created. Under the Lands (Bathhurst and Kombo Saint Mary) Act of 1966 (originally enacted in 1946), the Minister of lands may grant leases of land to private individuals for varying lengths of time. As noted above, there is currently serious confusion as to how much of the Kombo Saint Mary area is government-owned land, and how much is held under customary title. Traditional allocations by alkalos have in fact far outstripped government efforts to introduce land use planning and more systematic land allocation. A committee of the Law Reform Commission is proposing legislation to clarify the legal status of urban land. There is 1985 urban planning legislation, as yet unimplemented.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

The Lands (Provinces) Act, 1946, vested ultimate rights to land in District Authorities which are to administer the land for the benefit of the communities concerned. At that time the district authorities were largely traditional authorities, but these have gradually become more and more extensions of the national government bureaucracy. The Minister of Lands has the right to acquire land for public purposes for a fixed term of years, subject to paying compensation. While government has acquired and leased out some land, its role has been relatively unintrusive. The occupation and use of land is still governed by the customary laws obtaining in the localities in which such lands are situated. The village heads and district chiefs are responsible for the actual administration of these laws. Most disputes are settled at the District Tribunal, which consists of four or five village heads co-opted for life and presided over by the Chief. Appeals can be made first to the Divisional Commissioner, then to the Supreme Court followed by the Court of Appeal.

B. Pressures for Change in Legislation and Administration

Land legislation currently in force in the Gambia is that originally enacted in the colonial era in 1946 which states that land occupied by Africans is to be governed by customary tenure rules. These practices have so far proved adaptable to increasing individualization of rights and to new rental contracts. A critical lack, however, is the absence of legal mechanism to deal with land transfers such as sales, whose numbers are rising and which are contrary to customary practices. To date the government has not acted to establish procedures for regularizing such transactions. At the moment the Law Reform Commission is developing legislation which will deal wih uncertainties in urban and peri-urban areas, but thereis no consideration being given to significant changes in agricultural land tenure.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The shortage of land poses several critical issues with regard to land tenure: sales of land, individualization of tenure, and increased marginalization of "latecomer" lineages and "stranger" farmers. Sales of land are increasingly frequent, particularly in peri-urban areas, and their "illegality" has done little to prevent them. Rather, the fact that there is no legal procedure for these transactions is likely to mean greater numbers of disputes over past and projected sales of lands and insecurity of tenure for the purchaser. Increasing individualization of tenure, on the other hand, undercuts the old processes by which compound lands were redistributed among its members, a procedure which muted--but certainly did not eliminate--unequal distribution of lands from one generation to the next. The shortage of land has also meant that lineages who have only recently settled in an area are likely to lose the land allotted them by the village head as lands are taken back and redistributed among the founding lineage. Lineages which lose their lands are then forced into more distant and more marginal areas, while the founding lineage retains the more central and more fertile lands. Land shortages have also affected the relationships between compound heads and "stranger" farmers. In the past the exchange was one of labor for land, whereas now in some areas a quasi-rent has been introduced, with the stranger farmer paying his patron an annual sum for use of the land. All of these cases reflect the increasing value of land, and it remains to be seen if the government will step in to provide a system to regularize land transactions and counteract increasing insecurity of tenure.

Another pattern is posed by the increasing numbers of cattle. Since late in the colonial era, the number of cattle has increased to the point where it threatens to surpass the dry-season carrying capacity of the land under current management practices. Ownership of cattle has become widespread in Gambia, with most people holding them as a form of savings rather than for commercial uses. This phenomenon is of recent development and therefore rests somewhat outside of customary tenure rules. Thus, the paucity of traditional guidelines coupled with the infringement of cattle in search of fodder onto farms will be a critical tenure concern in coming years.

B. Land Tenure and Agricultural Production

Only 10-15 percent of Gambian cultivators utilize oxen, while the remainder use traditional implements primarily for subsistence farming purposes. Having obtained only moderate increases in production since independence, Gambia remains a net food importer. Traditional tenure systems are consistently cited as an impediment to credit and efficient land use. Attempts to meet these needs through cooperatives have met with only limited success, partially as a result of wealthier members defaulting on credit loans (the low interest rates make it worthwhile to postpone repayment). Further, only the wealthier farmers can afford to utilize costly inputs such as fertilizer that help increase production. Recently, serious instances of corrupt practices on the part of the cooperative leadership have come to light. The evidence of trends and impacts on production is sparse, however. There has perhaps been less written on land tenure in Gambia than in any other country in Anglophonic Africa.

C. Implications for Project Design

Because customary tenure practices continue to prevail in Gambia and because these practices are neither uniform nor fixed, the critical consideration in project design will be to understand which individuals or groups the project will affect and under what conditions they hold their land. A project dealing with swamp rice cultivation, for example, will affect women, who may have long-term rights to lands, while upland projects may center on men whose rights to fields are only seasonal. In some circumstances these rights may be heritable, in other situations not. Still other groups may possess only very insecure tenure and can expect to be evicted should the land become more fertile. Because so little is known about customary landholding, it is especially important that pre-project research provide project designers with adequate information in this area.

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LAND TENURE PROFILE: GHANA

Summary: Indigenous systems of land tenure in Ghana proved themselves highly flexible in southern Ghana to the introduction of cocoa cultivation. But in the process the systems themselves altered to encompass individual title to land kept under permanent cultivation. By the 1960s problems of fragmentation of holdings, sharecropping, and landlessness had appeared, and many young men migrated to the cities. Since then, however, the disastrous state of the Ghanaian economy has tended to mask these problems, which can be expected to resurface when the Ghanaian economy revives.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

The Ghanaian economy has followed a roller-coaster course in the twentieth century, achieving genuine prosperity based on small-holder cocoa production in the 1950s and plummetting to new lows in recent years as both food and cash-crop production collapsed under a variety of internal and external pressures. The growth of indigenous cocoa production rested on a foundation of customary tenure practices adapted to new conditions and new crops. The precipitous fall of the Ghanaian economy, on the other hand, is only partially due to problems with land tenure. Nkrumah's state farms were unsuccessful ventures in state-controlled agriculture, but the continuing problems of the Ghanaian economy are due to such factors as corruption, breakdown in transport and distribution systems, unfavorable world and domestic prices, and plant diseases. The very success of the Ghanaian cocoa industry produced land tenure problems of fragmentation of holdings, landlessness, disputed land transactions, and increasingly unfavorable sharecropping arrangements. In recent years these problems have been masked by more obvious inadequacies in the structure of Ghanaian agriculture, but it can be expected that as the economy gains in strength these problems of land tenure will not only re-emerge but take on added urgency not only in the cocoa-producing area of the forest, but also in the northern grain-producing areas.

B. Private Tenure

1. Customary Tenure

Although Ghanaian society is composed of a number of ethnic groups, land holding practices present a certain similarity and the most distinctive and critical difference between ethnic groups is a distinction between matrilineal and patrilineal inheritance. In general, land is considered to be held by the wider kinship group, with the individual family (monogamous or polygamous) holding rights to cultivate specific areas; these rights are inheritable according to which ever system of inheritance prevails. New lands can be cleared and brought under cultivation, and these lands become inheritable as well.

In a patrilineal society, such as the Krobo, Shai, or Ga, land is passed from a father to his sons and at his death may be subdivided among them. In contrast, among matrilineal societies such as the Akan, at a man's death his land passes to his brother or his sister's son, a practice which does not demand that the land be subdivided. These differences in inheritance practices have important implications for land holding: among patrilineal groups, land holdings are likely to become fragmented into small units which may not be adequate for the holder's survival. Among matrilineal societies, on the other hand, a certain number of sons are made landless each generation. As long as there is adequate land, however, these problems are not likely to become critical: landless sons can bring new lands into cultivation as can those whose holdings are too small.

Customary land tenure practices also provide for the integration of "strangers" and other landless individuals into the community. A newcomer may be given land by the head of the lineage or community, land which can then be passed on to his descendants. In exchange, the community head receives a small gift from the newcomer, a donation which is more a recogition of the former's authority than an item of significant value. In addition, most societies have various tenancy arrrangements which allow for land to be temporarily loaned. These arrangements vary in length and in the form of payment made to the original landholder. Recently there is an increasing tendency for these exchanges to resemble sharecropping, and where in the past payment was often small and served primarily as an annual public recognition of the overriding rights of the original landholder, now a significant proportion of the crop or of the client's labor may be required.

Customary land practices proved themselves highly flexible in the late nineteenth and twentieth centuries as new lands were planted with cocoa trees in the forest areas of southern Ghana. Three groups of farmers cleared and planted vast areas of virgin forest land, and the adaptations in land tenure practices and institutions among each group provide fascinating evidence of the strength of customary practices in seizing new economic opportunities.

The most numerous group was the patrilineal Krobo, who formed themselves into companies and bought forest land as a group. These companies were adaptations of groups devised earlier in the nineteenth century by the Krobo as they moved south toward the coast and began to purchase oil-palm land. The

new companies, however, unlike their precursors, were composed of individuals who were often unrelated. Once forest land was purchased, the land would be divided into long strips and distributed to members of the company who then cleared and planted cocoa trees. The cocoa-tree land was inheritable, passed from a father to his sons.

The second group of farmers was composed of matrilineal Aburi people, who migrated into the forest area and purchased land individually rather than as companies. Like the original Krobo purchases, the land was divided into long strips, but these strips were not generally subdivided as they are among the patrilineal Krobo landholders. Because the land planted with cocoa trees had taken on a greater value than if it were planted in an annual crop, however, and because sons often wished to acquire their father's cocoa land, there was an increasing tendency for sons to "buy" the land from the prospective heirs. In other cases, a father might purchase land which he did not cultivate immediately but instead held to divide among his sons. (Today, with cocoa production at a low point and with less land planted in cocoa than earlier, there is an increasing tendency for sons to leave the farms altogether. As cocoa production and the return from it increase, it is likely that sons will return to the farms and that these patterns will once again prevail.)

The third group of farmers, and the smallest numerically, are those cocoa farmers indigenous to the forest area. They are also likely to have the smallest farms. Among the Akim farmers, both men and women own cocoa land, although women's holdings are likely to be smaller than the men's. Unlike the Krobo or Aburi farmers, Akim farmers grow food crops as well as cocoa.

The evolution of customary land tenure has been promoted through the decisions of Ghana's common law courts, which like the courts in Nigeria and to a lesser extent Sierra Leone, have gradually defined a "family land" tenure which bridges the diversity among the variety of traditional systems.

2. Freehold and Leasehold

One researcher has characterized the form of landholding in the cocoa areas of the forest as "customary freehold," a peculiar hybrid term that has a certain appropriateness in describing land acquisition and holding patterns. The Aburi and Krobo farmers acquired these lands by purchase, and both groups as well as various scholars insist that buying is the appropriate word to describe the transactions. Today, with land increasingly scarce, the validity of many of these early sales is being challenged in the courts by descendants of the sellers.

And just as the system of land tenure established by the "stranger" cocoa farmers can be loosely called "customary freehold," so too can the sharecropping arrangements, which allowed cocoa farmers to obtain needed outside labor, be seen as a sort of "customary leasehold." Recently this arrangement has been largely redefined so as to allow the tenant-farmer a ten-year lease, a requirement insisted on by banks for loans, but apparently is only rarely done in practice.

C. State Land

During the administration of Nkrumah, which lasted until 1966, state farms and cooperatives were established. State farms were located on land

acquired by the state by purchase or composed of previously vacant land to which the state held rights. The farms, worked by agricultural laborers who received wages but no rights to land, grew a variety of food and export crops; some 50,000 hectares in all were actually under cultivation. The farms were largely failures due to high labor costs, corruption, inappropriate technology, and ill-conceived projects. Today some of the state farms have been returned to the private sector while others, apparently, have simply dissolved.

The cooperatives were scarcely more successful. In the northern savannah areas cooperatives were established with a mixed pattern of land holding, with some land held by the state and other land held in fee simple by the farmers. These were partially successful, but broke down under some of the same bureaucratic problems as did the state farms.

D. Urban Land Tenure

There are four categories of urban land in Ghana: (a) State land, formerly known as Crown land and subsequently vested in the state; (b) Stool land, land held by a chief in trust for his people; (c) Land held under customary tenure by stool subjects or strangers, having been granted by the stool; and (d) Private land, land held in either freehold or long leasehold by an individual or private organization.

E. Distribution of Types by Region or Ecological Zone

It is only in the forest areas in southern Ghana, suitable for growing cocoa, that the extensive new applications of land tenure practices described in Section B.1. took place. Elsewhere in the country, in the northern savannah areas and in the western section of the country, land tenure practices and indeed land use patterns, have not altered drastically and pressure on land has remained low.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Authority over land matters is vested in the Ministry of Lands and Natural Resources. The Ministry works through the regional District Council which in turn rely on local Tribal Councils for day-to-day administration of land.

B. Pressures for Change in Legislation and Administration

Pressures for change in land legislation are being exerted from below rather than above; that is, it is conditions on the ground that point to the need for new policy rather than inappropriate national laws or government concern with land tenure. Two conditions in particular need to be carefully studied and dealt with. The first is the high incidence of sharecropping, an arrangement that often gives the tenant a very small amount of land while taking a disproportionate amount of the crop or the tenant's labor for the land holder. A recent study has shown that these leases generally last from 1.5 to 4 years, too short a period of time to provide security of tenure for the tenant or to allow for anything but the most immediately rewarding uses of land. It is likely that sharecropping arrangements will become yet more

prevalent in the south as the Ghanaian economy, and cocoa production in particular, improve. Pressures on the land are likely to become more acute as farmers once again plant cocoa trees and seek to attract labor to assist them.

The second condition that needs to be dealt with is the large number of land disputes that come before the courts in the south. The sales of land that took place in the forest area in the early twentieth century are now being contested by the descendants of the original land holders, who often claim that the land was not sold and that their forbears did not have the right to enter into such contracts. This is a very thorny issue--particularly since the transactions have been regarded for over fifty years as definitive transfers that guaranteed full security for the recipients of the land.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The most critical task confronting the present government of Ghana is the need to revive the Ghanaian economy, and it is placing emphasis on agriculture and mining in its efforts to achieve national growth. To date the government has preferred to increase prices to producers as a way of raising agricultural production levels rather than to implement changes in production patterns that would directly effect land tenure. Nevertheless, if price incentives are successful in raising agricultural production, land tenure issues will emerge as farm land once again becomes valuable. Disputes over land, landlessness, fragmentation of holdings, and exploitative sharecropping arrangements are all likely to become even greater problems than they are at the present.

B. Land Tenure and Agricultural Production

Ghanaians have shown themselves quite willing to "vote with their hoes" and to select patterns of land tenure which provide them with economic incentive and security. In the colonial era the spread of cocoa cultivation throughout the forest area was unparalleled and was accomplished entirely through the adaptation of customary tenure patterns. State farms, on the other hand, were failures. Only those which provided both collectively and individually held land to the participants enjoyed any success.

The precipitous decline in agricultural production in Ghana in the past twenty years is only partially due to the imposition of collective forms of land tenure. Corruption, breakdowns in transport and distribution networks, plant disease, and unattractive price levels have probably been more important factors in the continuing low levels of production.

C. Implications for Project Design

Tenure problems at this juncture in Ghana's development are likely to be hidden by the more obvious issues of price levels, transport and distribution breakdowns, etc., which will confront project planners. Nevertheless, land tenure issues can be expected to re-emerge as projects appear successful, and planners will need to consider tenure implications at the outset. If, for example, there is to be resettlement in the northern areas in an effort to

relieve land pressure in the south, it is quite possible that resettlement will generate conflicting claims to land in much the same way as has happened in the south. In the absence of national policy regarding land sales and sharecropping contracts, discussed above, project planners will need to investigate local tenure practices and to provide sufficient security of tenure to assure continued operation of the project.

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LAND TENURE PROFILE: GUINEA

Summary: The new government that came to power in April 1984, a month after the death of Sekou Touré, has proclaimed that raising agricultural production is to become a national priority. It is not yet clear exactly how it will proceed toward this goal, but it will probably give some attention to dismantling Sekou Touré's party machinery, which exercised authority over land matters at the local level. The new government may also wish to find an alternative to the production cooperatives established under Touré's leadership that were both unpopular and unsuccessful, contributing to a fall in agricultural production.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Under the leadership of Sekou Touré, who died in 1984, the Guinean state sought to establish cooperative farming schemes, and by the passage of a series of laws in the first years after independence it attempted to propound the idea of State ownership of all land. The cooperatives were unsuccessful and traditional systems of land tenure, in which the lineage held the land and its head undertook the allocation, continued to operate. The new government of Guinea is now attempting to undo some of the damage to Guinea's economy of the past decades and has made increasing agricultural production an important priority. It is still too recent to know how the government intends to proceed and what the effects on land tenure systems will be.

B. Private Tenure

1. Customary Tenure

Guinea's pre-colonial land use was characterized by shifting cultivation, although in areas adjacent to permanent villages a system of bush fallow was practiced. Generally, communities consisted of 10 to 100 families. Among the Malinke and Sousou groups of Lower and Upper Guinea, respectively rights to land were inherited patrilineally and land was distributed by the oldest male in the lineage. When there were several lineages in the community, this allocation right rested with the oldest male in the longest-established lineage. As a rule, the nuclear family was the basic unit working the land; the family could not alienate its land to others.

These traditional systems came under stress first during the colonial period, as the French sought to establish individual land rights at the expense of lineage rights. Although not particularly successful, privatization of land was introduced and then enhanced by the colonial policy of appointing only chiefs who cooperated with the colonial administration. This policy reduced the strength of traditional land allocators, who in many instances were replaced by collaborating chiefs from outside the traditional structure. The Peul, already used to unequal access to land, most often collaborated and were most susceptible to the privatization of land. The primary areas affected by privatization by the close of the colonial period were urban areas and areas used for cash crops.

2. Freehold and Leasehold

Freehold is not a concept found in customary tenure systems in Guinea, but under French rule in the twentieth century (until 1958), the colonial regime passed provisions which allowed for the privatization of land holdings. This occurred most frequently in urban areas and on plantations, and such titles were often in foreign hands. Sekou Touré, on the other hand, who presided over Guinea from 1958 to 1984, attempted to reverse this process and to enforce state ownership of land; those who worked the land thus would have only leasehold rights--at least under the provisions of the law.

C. State Land

The first lands to revert to state ownership at independence where those buildings and tracts of land abandoned by the European officials, technicians, and planters. A measure passed in 1961 brought yet more land under the control of the state: land which remained unproductive or unimproved for a period of more than three years reverted to the state.

D. Urban Land

As described above, a portion of urban land fell to the state as the French left Guinea, and some of this land was redistributed by the state among members of the Parti Democratique de Guinee (PDG). Other land remains privately owned, but under a law passed in 1959, it cannot be sold, mortgaged, or even given away without the permission of the Service des Domaines.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

During Sekou Touré's period in office, land transactions were regulated by the Service des Domaines in the Ministère des Travaux Publics. At the local level, land allocations and disputes were handled by the Pouvoir Revolutionnaire Local (PRL); this delegating of power to local party officials was designed to undercut the power of the traditional chiefs, who had exercised such authority under the colonial regime. It is not yet clear what body or group will assume the powers formerly exercised by the PRLs.

B. Pressures for Change in Legislation and Administration

The single most important impetus for change in legislation and administration with regard to land is obviously the fact that a new regime has succeeded Sekou Touré, and it wishes to countermand some of his schemes. It has characterized Touré's domestic policies as brutal and now has declared that increasing agricultural production, which declined drastically between 1960 and 1980, is to be an important priority. It is not yet clear how it intends to accomplish it, or what its policy will be with regard to ownership of land. Certainly there will have to be some measures passed to deal with land questions. One pressure for new legislation will undoubtedly come from the fact that refugees who had fled from the country while Touré was in power are now returning. Their numbers were estimated at 300,000 in September 1984 by the U.N. High Commission on Refugees, and the UNHCR believes that this number could reach 2,000,000--a staggering figure given that Guinea's population was estimated at 5,285,000 in 1982.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Land Tenure Issues in National Policy

The question of land tenure in national policy is a critical one; the new regime has committed itself to raising agricultural production, but it is not yet clear whether it will continue to emphasize, as Touré did, the state's control over land and the role of production cooperatives in the process. The new government will have to decide which, if any, grants of land made by its predecessors will be honored and on what basis land is to be held. The question is highly political, for whoever has the power to allocate land exercises a great deal of authority--whether it is the traditional chiefs, as it was under the French; members of the PRL, as it was under Touré; or a third group, as yet unnamed. The need to raise agricultural production as well as to provide for the returning Guineans makes land tenure an important issue.

B. Land Tenure and Agricultural Production

Sekou Touré hoped to establish cooperatives at the heart of agricultural production in Guinea, but the scheme was a failure. Often granted unproductive land, poorly managed, and imposed on people who did not want them, these production cooperatives sometimes benefitted only local party officials, who diverted the funds and inputs for their own use. But it was not only the cooperatives that were unsuccessful. Agricultural production fell dramatically in all areas in the years between 1960 and 1980, with both coffee and banana exports declining and food imports rising. As a first step in its program to increase production the new government has announced that it will raise the prices paid to producers. It has also stated that it soon hopes as a next step to distribute machinery, fertilizers, and other inputs to Guinean farmers, and this will undoubtedly affect and be affected by land rights.

C. Implications for Project Design

Because of the priority given to raising agricultural productivity by the new government, land tenure systems and their implications are important

considerations. It is unlikely that the new government will attempt to enforce cooperatives, but it will be necessary to establish structures to settle land questions and distribute inputs. Different sorts of projects--to increase food production by small holders or to revitalize production for export--will have different impacts on the land tenure systems. Until there is more published information about the new government's policies and programs, it is difficult even to speculate.

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LAND TENURE PROFILE: GUINEA-BISSAU

Summary: Centuries of Portuguese rule left less change in Guinea-Bissau than elsewhere in Africa, and land tenure practices did not alter appreciably under colonial rule. At independence in 1974, all land was declared to be state land, but only on the state farms has this decree been put into effect. Drastic food shortages in the past five years have brought increasing attention to the necessity of raising agricultural production. To date, however, government and donor projects to increase production are focusing on transportation and pricing rather than on land tenure rules and practices.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

In contrast to the other former Portuguese colonies of Angola and Mozambique, Guinea-Bissau was not a settler colony and thus large amounts of Africans' lands were not expropriated for distribution to European colonists. Rather, African land tenure patterns were little changed over the centuries of Portuguese rule, and the not infrequent response of Africans to such unpopular policies as forced cultivation of groundnuts for export was to emigrate to nearby Senegal and Guinea. There has thus been less pressure on land than in other areas of Africa and less disruption of customary agricultural practices. The only significant changes in land tenure patterns occurred during the ten-year war for independence, from 1964 to 1974, as each side attempted to establish village settlements in areas under its control.

With independence the government declared that all land belonged to the state, a policy that has continued in force despite the 1980 coup which brought a military government to power. In reality state ownership of all land has meant little change to land tenure practices in the customary sector; it is only on the state farms and state-supported producer cooperatives that the policy has had any real import. Agricultural production has fallen in recent years and the government is increasingly focusing on programs that will reverse this decline; to date, however, its efforts have had little to do with land tenure practices and instead have focused on improving transportation in the country, increasing prices paid to producers for their crops, and reclaiming ricelands in the swampy coastal areas.

B. Private Tenure

1. Customary Tenure

Although a number of ethnic groups inhabit Guinea-Bissau and have different social and political organizations, the principal determinant of land tenure patterns is whether or not a group's agricultural lands include ricelands in the swampy coastal areas (bolanhas). Among the Balanta, Beafada, Mandjack, and Nalu peoples, whose holdings include varying amounts of bolanha land, individual families are allocated strips of riceland by the head of the extended family. Although it is the individual family that is responsible for a given strip, the need for careful management and maintenance of dikes so that the soil does not become too salty to cultivate requires cooperation between various families. Other fields, often called "bush" fields, may be cleared and cultivated as well, and rights to these fields are established through clearing of the land. Land may not be sold, but newcomers and those who would otherwise be landless may be loaned land.

The Mandinga and Fulani (or Peul) inhabit areas farther inland, and their land holdings do not include bolanha land. Fulani and Mandinga societies are more hierarchical than those along the coast, and land allocation reflects this structure. At the village level, land distribution is done by the head of the village, who allocates land surrounding the village to family heads. Rather than perpetual rights to the land, it is use rights that are allocated to the family heads; most of the labor in these fields is done by the women in the family and the produce shared within the family. Women may also obtain from the family heads fields for their own use and to which they alone are entitled to the yield. In addition, an individual (male) may clear and plant land beyond the village and this land can then be passed to his heirs. As in the coastal areas, land cannot be sold.

2. Freehold and Leasehold

All land in Guinea-Bissau belongs to the state and although the state may make concessions of land to individuals or companies, the concepts of freehold and leasehold have no legal status.

C. State Land

Ownership of all land in Guinea-Bissau is vested in the state. It is only on the state farms and the state-supported producer cooperatives, however, which the state administers directly, that this principle has affected day-to-day land tenure practices.

D. Urban Land Tenure

There is no mention of the status of land tenure in urban areas in any of the literature.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Administration of land falls under the direction of the Ministry of Rural Development, which oversees the state farms and provides support for the cooperatives. At the local level, village councils, or tabancas, are empowered to deal with land questions and other local issues. In most areas the tabancas are now less the local-level spokesmen for the central government and party they were originally intended to be than they are the representatives of the local customary authority.

B. Pressures for Change in Legislation and Administration

The government which took power at independence in 1974 proclaimed that it would follow a path of "growth with equitable distribution," a course that would allow for state farms in which farmers were also allocated their own plots, producer cooperatives in which membership was voluntary, and peasant production which did not require cultivation of certain obligatory crops. Despite this relatively flexible agricultural policy, in none of these areas did the government succeed in raising production levels to any appreciable degree, and the leaders of the military coup which took place in November 1980 charged that the old regime had become increasingly out of touch with local needs and interests and instead had focused on large-scale, and largely unsuccessful, agricultural projects.

This new government, which continues in office, remains committed to Amilcar Cabral's socialist goals and has affirmed its emphasis on agriculture as the center of Guinea-Bissau's economy. Nevertheless, agricultural production levels have continued to fall, due to both natural disasters (drought and salinization of coastal land) and structural problems (inadequate transport, price disincentives). The government is attempting to reverse this course by implementing a massive program of road construction, reorganization of public and private trading facilities, and price increases for farmers for both food and export crops. It does not appear that changes in land policy or administration are contemplated at this time nor, given the large number of problems that need to be addressed first, does there appear to be a need for new legislation or administrative restructuring for the present.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

Although at independence all land was declared state land, the reality is that land tenure practices have changed little. Only on the state farms is state ownership of the land a reality, and even here farmers have private fields of their own to work in addition to those of the state farm. The critical issue with regard to land tenure that confronts the state is to what degree it should follow through on its proclaimed land policy and what effect the implemented policy would have on agricultural production. The need to raise agricultural production is a central one in Guinea-Bissau, and any

change with regard to land policy will have to be evaluated in this light. Tenure issues are not at present in the forefront of national concerns, but if the government and international donors are successful in their programs to provide incentives and infrastructure to increase agricultural production, then tenure issues--state-controlled production units vs. peasant producers--will take on increasing importance.

B. Land Tenure and Agricultural Production

Agricultural production has fallen markedly in Guinea-Bissau in the past decade, but land tenure patterns have played little role in this decline. Rather, natural disasters, including years of drought and increasing salinization of coastal ricelands, and structural problems, including a grossly inadequate transportation network and low returns to producers, have been the culprits. It is these structural problems that the government is hoping to solve in its new campaign to raise agricultural production.

C. Implications for Project Design

Perhaps the most striking thing one notices in a survey of material about Guinea-Bissau is how little information--of good, bad, or indifferent quality--is available. This paucity of information has very clear implications for project design, for there are virtually no pre-existing studies on whose findings one can draw. Careful and original research will have to be done on land tenure patterns at the very earliest stages of project design. It is clear that the de facto and de jure situations with regard to land tenure are very different in Guinea-Bissau, and local studies will need to be carried out to gain an understanding of land use patterns in the particular area to be affected by a proposed project. Moreover, as discussed in the section on customary tenure practices, land use patterns vary not only from one area to another, but also according to which crops and whose fields are under consideration. For example, women may hold some fields that they farm for their own gain, but not all the fields that they farm do they hold in this way.

Another consideration in project design is the extent to which the government may wish to bring the legal situation of state ownership of land in line with the reality of continuing customary tenure practices and the effects that such a policy might have on the success of a project. International donors, including the EEC, West Germany, and the World Bank, have pledged large sums of money for projects in Guinea-Bissau in the past five years, and the government appears quite willing to backpedal on its policy of state-controlled production and prices in order to encourage smallholders to raise production levels. The question remains, though, for how long it may be willing to continue this more open approach to agricultural production.

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LAND TENURE PROFILE: IVORY COAST

Summary: The land tenure system of Ivory Coast is characterized by the continuing reliance on traditional tenure practices, which have come under increasing stress with the influx of immigrant labor and intensive monetarization of land values. Although claiming ultimate ownership of land, the government has rejected a rigid and codified tenure system in favor of an ad hoc consideration on a piecemeal basis. This policy has worked surprisingly well due to an economic prosperity which allows the government to maintain acceptable producer prices and provide reasonably easy credit to farmers.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Customary tenure practices predominate in Ivory Coast's tenure system despite a thriving market economy. Although the State considers itself the ultimate holder and dispenser of land, it has been hesitant to promulgate legal justification of this view. Neither has the State delegated clear-cut administrative authority over land to any State organs. Rather, Ivory Coast practices a very pragmatic policy towards customary tenure whereby the government interferes primarily when traditional practices hinder economic development. Nevertheless, traditional systems of land tenure are being weakened as a result of forces generated by modernization and immigrant populations.

B. Private Tenure

1. Customary Tenure

Ivory Coast contains numerous ethnic groups, and many different tenure systems have developed within the differing social structures. In the central and eastern portions of Ivory Coast are the Agni and Baoulé ethnic groups, both of which exhibit hierarchical matrilineal social structures in which land is allocated by the king to the various lineages. However, the extended family remains the basic economic unit working the land and is not required to make payments for that use. Whereas the Agni land allocator redistributes land annually, the Baoulé tend to maintain the same parcels from year to year. "Slaves" existed within the Agni system, and worked not only their own plots, but also those of the royal family.

In the southeast corner of Ivory Coast one finds a cluster of small ethnic groups, most of which exercise matrilineal descent. In contrast to the Agni to the north, these groups have few formal inter-village political structures. The chief of each lineage/village allocates land. Age groups sometimes provide a communal agricultural labor pool.

The Senoufo, Lobi, and Koulango, in the north and northeast, are characterized by hierarchical social structures on a village level. The oldest male in the lineage which first settled in the village allocates land to the extended family. These rights are partially matrilineally inherited. As with the peoples of the southeast, age groups provide communal farming labor.

Although the Krou and the Mande-tan speaking groups of the southwest are in different language classes, they are both patrilineal societies. Each lineage normally corresponds to a village. The lineage head allocates land to the extended family. Although "slaves" were utilized, their exact obligations and position are not clearly defined in the literature. Age group labor is also common.

Finally, the Malinke and other Mande-tan speakers of the northwest have strongly hierarchical social structures based on patrilineal descent. Historically empire builders, both groups had fairly rigid castes and "slaves" within the society. The oldest male in the longest-established lineages allocates land to the nuclear family.

2. Freehold and Leasehold

A 1961 law vests all land in the state, which in turn can grant concessions for varying lengths of time. (See Section C below.) The longest-term grant is a "definitive concession," but it is not clear whether this is the equivalent of a 99-year leasehold or freehold.

C. State Land

By virtue of the 1961 law, the State claims to own all land, but nonetheless has allowed continued use of any land that was put into production. As a consequence, many people have tried to put more land into use to forestall government claims, and in the process, destroyed valuable resources including forests. To counter these efforts to circumvent State claims, laws in 1964, 1965, and 1974 delineated potential mining, forest, and tourist lands.

A 1963 law passed unanimously by the National Assembly would have: (1) abrogated all customary rights in land; (2) given the government power to allocate vacant lands; and (3) made individual rights to land revocable and uninheritable until the land was registered for full ownership. However, fearing that ensuing resentments might retard economic development, the President refused to promulgate this law.

Currently, the state advocates a three-tiered sytem of land allocation. The first tier consists of areas under 50 hectares which require "occupation permits" from the sous-prefet. In practice few land users have complied with

this law, possibly for fear of being taxed. The second tier consists of a "provisional concession" approved by the Ministry of Agriculture. This concession allows the holder five years to develop the land after which it may be renewed. Again, very few people have complied with this section. The third and last tier is a "definitive concession" which gives either full title or a long lease to the land. Land for this system is obtained in a curious fashion. After surveying the land in question and giving 90 days public notice, the state takes the land. However, since the cost of surveying the land is borne by the potential grantee, the desire to follow this procedure is lessened. More importantly, the State reserves the right to retake land "insufficiently" developed. As a result of all these factors, very little land is titled in Ivory Coast at this time.

D. Urban Land Tenure

Although theoretically title to urban land is obtainable, the literature fails to mention its current status.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Due to the lack of enforceable statutes and the resulting ad hoc nature of dealing with tenure in the Ivory Coast, there is no clear description available of the administrative structure for handling land tenure. It would appear that land tenure matters are managed in two fashions. First, as described above, the sous-prefet appears to be responsible for small-sized areas, while the Ministry of Agriculture controls larger parcels. Secondly, the literature suggests that some amount of control rests with certain development organizations within the government, notably ARSO and AVB (the Southwest Regional Authority and the Bandama Valley Authority, respectively). These two organizations are empowered to control farm sizes within their respective jurisdictions. The impact of these bodies and officials seems rather limited when one considers that as late as 1979, it was estimated that 90 percent of the land in the Ivory Coast remained under customary tenure.

B. Pressures for Change in Legislation and Administration

The very prosperity of the Ivorian economy, and especially the success of coffee and cocoa farmers in the forest zone, has produced change in the customary land tenure systems as well as pressures for yet more change. Immigrants from both within the Ivory Coast and from poorer countries such as Mali, Burkina Faso, and Guinea have been drawn into the area and many have acquired land of their own. By the late 1970s so much of this land had been alienated to immigrants--through gifts to early settlers and sales to the late-arriving strangers--that maps of farm ownership had come to resemble checkerboards of half a dozen or more ethnic groups. Furthermore, with the Ivorian government guaranteeing tenure to anyone bringing land into production, lineages no longer had effective control over its allocation: rights of usufruct and unrestricted transfer had become vested in individual households, autochthonous and immigrant.

The introducton of coffee and cocoa farming has also brought some degree of inequality of land distribution. Whereas in the past land was controlled by heads of lineages and divided by them among the group, the profits to be made from these perennial tree crops have encouraged young men to clear forest areas on their own and attracted investors (in addition to migrants) from outside the area. As yet, the inequalities in land distribution are not severe, but there is an increasing tendency for larger areas of land to be held by a small number of individuals.

Despite these pressures for tenure change, there is no evidence suggesting legislative or administrative changes are under consideration at this time. While the prosperity of the Ivorian economy tends to hasten individualization of tenure, it also obscures the need for formal legal change. As long as the economy remains strong, the government is unlikely to change its ad hoc approach.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The most obvious tenure issue revolves around the Ivorian reluctance to enact or pursue clear tenure guidelines, either judicially or administratively. The failure to adopt a stated, coherent strategy has nevertheless worked remarkably well in that the government takes land as needed without establishing a general policy that could antagonize rural land-users. However, as traditional bonds and obligations deteriorate further, resulting in more land alienation, the need will emerge for a more coherent strategy. Given the quality of the Ivorian civil service personnel, administration of any new tenure policy could probably be handled without creating a special service.

B. Land Tenure and Agricultural Production

Agricultural productivity is at a high level in the Ivory Coast, and the increases that have been achieved in the past decades have been made within an evolving land tenure system that remains primarily customary in nature, albeit increasingly dominated by the family unit instead of the lineage. The very success, however, gives rise to pressures toward the customary system of land tenure. The very success, however, gives rise to pressures toward privatization, although at present less than ten percent of the land in the country can be said to be privatized.

With the extensive cropping of cash tree crops, traditional users have effectively established perpetual tenure rights, thereby reducing the land pool available for distribution by customary allocation. This exacerbates the breakdown of traditional authority while also heightening resentments on the part of other traditional users (or potential users).

In addition, government policies themselves, which assure good prices for producers, contribute to the desire to individualize tenure. This pressure is to some extent lessened by the government's effectiveness in extending credit to farmers through such agencies as the BNDA (Agricultural Development Bank), which does not require individual title in order to make loans for improving production.

The Ivorian government emphasizes the training and motivation of rural land users to organize and control their own development through the ONR, or Office of Rural Promotion. These efforts aimed at improving rural life diffuse some of the pressures on tenure, thus buying time for the government to formulate agricultural tenure policies.

C. Implications for Project Design

Given the pragmatic, ad hoc approach to land tenure and the attendant emphasis on economic development, project designers should focus on the customary systems of tenure operating in the proposed area while also bearing in mind that these systems are not unchanging and, especially in recent years, have been subjected to pressures that have brought alterations in land tenure practices. Just as in the past customary systems have been responses that allowed the farmer to best utilize a particular set of ecological and economic conditions, so too is the rural farmer today likely to accept only those features of a new tenure system which he sees as advantageous for him and his family. Nor is what is acceptable to the farmer necessarily in line with the objectives of the state, and it will be necessary to balance the two, often conflicting perspectives in such a way that insures continuing operation of a project.

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LAND TENURE PROFILE: KENYA

Summary: Despite the extensive programs of land consolidation, registration, and redistribution implemented in Kenya in the 1950s and 1960s, landlessness and fragmentation of holdings are once again at critical levels. Agricultural production, which rose in the years immediately after these reforms, has failed to keep pace with population increases in recent years. Problems of landlessness and fragmentation affect other areas of the country as well, as would-be landholders buy land in new regions, bringing areas into more intensive use than formerly and crowding out the original inhabitants. Government policies toward land problems represent a series of ad hoc responses to specific sets of circumstances rather than aspects of a coordinated program of land development.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Land and land tenure issues have been and continue to be at the heart of events in twentieth-century Kenya. Founded as a settler colony, Kenya's colonial government set aside substantial amounts (c. 44,000 km^2) of the most productive land for Europeans, while Africans were shunted into reserve areas. Demands for land by Africans remained a constant theme and in the colonial era culminated in the Mau Mau rebellion. Landlessness, fragmentation of holdings, and crowded conditions became increasingly critical, as indeed they are once again today despite the extensive programs of land registration and consolidation undertaken in the 1950s and 1960s and the resettlement programs implemented in the Highlands and other areas since independence. In areas where the title registration moved ahead of felt needs for individual tenure, landholders often continue to follow customary procedures. But customary practices too have altered to some extent, and even outside the registered areas there is an unmistakable trend toward individualization of title.

B. Private Tenure

1. Customary Tenure

The population of Kenya is divided into over twenty ethnic groups, and land tenure systems vary widely, as do patterns of land use. Rather than attempt to describe customary land tenure patterns for each group, this

summary outlines briefly that of the Kikuyu, whose tenure practices and whose lands have (quite literally) been at the center of economic and social change in twentieth-century Kenya, and then moves on to discuss changes in this system and their implications.

The pattern of settlement in pre-colonial Kikuyuland was one of dispersed households scattered along the ridges of central Kenya. Although land was considered to be held by the clan, the unit of cultivation was the individual household. At the death of the household head, the lands cultivated by the household would be divided among the male children. A man's fields were often scattered between several different micro-climates, a pattern that provided a certain amount of security against natural disasters. As long as there was adequate land, migration counter-balanced the inherent tendency to fragmentation of holdings in the system.

As Europeans began to settle in the Highlands of Kenya in the early twentieth century large amounts of the most fertile land were aside for their use. Some Kikuyu were allowed to remain in the Highlands, now classified as "squatters" on the land they had once held, while others were moved into reserves, areas set aside for African occupation. Population growth and the increased movement of Africans out of the Highlands into the reserve areas over the years created crowded conditions. Land holdings in the reserves that even at the outset had not been large were, by the 1950s, fragmented into very small plots. Landless Kikuyu suffered as well; in the past it would have been possible for them to obtain land as tenants in exchange for a nominal rent. Now such land was either unavailable altogether or available for a rent few could afford.

The very real threat of the Mau Mau Emergency in the 1950s, together with the Swynnerton plan which proposed that only with land consolidation could African agriculture become productive, provided the incentive for the colonial administration to implement a program of land consolidation and registration. (The Swynnerton plan, drawn up in the early 1950s and concerned with raising both the production levels and incomes of African farmers, also prescribed guidelines for careful land use planning which were aimed at providing each holding with enough food for subsistence plus a cash income from such crops as coffee.) The purpose of the land reform was to create viable economic units out of the hopelessly fragmented farm plots that had evolved in the reserves and to establish a class of small- and medium-sized producers who would, among other things, provide political support for the government. Local committees were established to provide a list of those local residents with rights to land, lands were demarcated and registered, and freehold title distributed among the eligible. By 1960 all of the Kikuyu reserves had been registered and the following year the program was extended to Embu, Meru, Nandi, and Baringo.

2. Freehold and Leasehold

The program of land registration in the Kikuyu reserves in the 1950s was the first to provide Africans with freehold title to their holdings; in implementing the program, the British considered that Kikuyu customary tenure had already evolved to the point that individual ownership existed. Since independence, registration of customary holdings has not only continued but also expanded to include freehold grants to the farms in the Highlands and the establishment of Masai group ranches. Between 1956 and 1981, 6,222,800

hectares of land had been registered, over half of which was in Rift Valley Province. Granting freehold title has not achieved all the ends designers originally planned, and each of these different registration programs--of customary holdings, of farms in the Highlands, and of Masai group ranches--is worth separate consideration.

It was assumed at the time that the land consolidation and registration programs were implemented that social and economic practices would change to conform with the written law and new land distribution. Instead, many of the old practices continue but are without any legal force, a situation that most often victimizes those without power or influence. There have been a number of separate micro-studies of the reform's impact, and they have produced consistent evidence of certain important trends. The process of tenure conversion has generally made the husband the owner of the land, granting him a new position of dominance in the household. While women continue to do a large part of the agricultural labor, their role in management decisions and their amount of economic security are greatly reduced. Nor have the holdings themselves remained consolidated. It was originally assumed that the increased agricultural production (and income) would act positively to reinforce consolidation, and that growth in other sectors of the Kenyan economy would absorb sons who in earlier times would have expected to inherit a part of the father's holdings. In fact this has not happened. Holdings in many areas have once again become fragmented, the product not only of the continuation of customary inheritance rules but also of the inadequate growth in other sectors of the economy, insufficient incentive (i.e., inadequate returns to the farmer) for agricultural production to be consolidated further, and increasing demand for land by those who would otherwise be landless, or by speculators and other absentee owners. Sellers frequently sell only a portion of their holding, and the result is that holdings which grow by purchase are formed in a fragmented state. Land transaction contol mechanisms put in 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.

The design for the transfer of European-owned large-scale farms in the Highlands to African smallholders, known as the "Million-Acre Scheme," involved the subdivision of lands originally held under 999-year leases into smaller units held in freehold. The scheme, under which both large- and small-scale African farmers were to be able to buy land in the Highlands, involved the purchase of 1,000,000 acres of underdeveloped land from European farmers. Intended on the one hand to allow European farmers to sell their land at high prices and, on the other, to help alleviate the problem of African landlessness, the scheme achieved its first goal but fell short of its second. Smallholder farmers, settled in high-density areas that were often on more marginal lands, were saddled with substantial debts and inadequate services. Large-scale farmers, in contrast, of whom greater resources were required at the outset, received better land in low-density settlement areas. Many of the farms failed to achieve the levels of production planners had expected, and, particularly among the smallholder farmers, defaulting on loan repayments not uncommon. But overall production levels remained as high, if not higher, than they had been before the program and the high-density settlements were found to be more productive than the low-density ones, a result that at least in part may have been due to the increased population working the land.

A third and very different program was that which created group ranches for the Masai. In order to protect their lands against encroachment by non-Masai, Masai pastoralists agreed to plans to establish ranches whose freehold title would be held on a group, rather than an individual, basis. The government, for its part, hoped by granting freehold title for a defined area of range to reduce and control the number of cattle on the range and the amount of territory the Masai considered open range. The ranches did not achieve these goals; freehold title was vested in a group which had no customary basis in Masai society, and the constraints imposed by the government required the Masai to give up practices (e.g., sharing range with outsiders) that in the past had provided them with economic and social security. As with the land consolidation and registration, it was assumed that the acquisition of freehold title would facilitate social and economic change.

C. State Land

Government land, formerly known as Crown land, occupies roughly 20 percent of the area of Kenya and includes national parks, forest land, unalienated and alienated land.

LAND DISTRIBUTION IN KENYA IN KM^2
(as of 31 December 1980)

Government Land		117,878
Forest reserves	9,125	
Other government reserves	1,245	
Townships	1,911	
Alienated land	37,013	
Unalienated land	34,858	
National parks	22,653	
Open water	11,073	
Freehold		7,135
Smallholder schemes	5,016	
Other	2,119	
Trust Land Not Available for Smallholder Registration		34,965
Forest	7,092	
Government reserves	443	
Townships	1,398	
Alienated land	13,915	
Game reserves	9,285	
National parks	2,832	
Trust Land Available for Smallholder Registration		
Already registered		27,217
Not yet registered		398,124
Total Water		11,230
TOTAL AREA		582,646

Source: Kenya Statistical Abstract, 1983.

D. Urban Land Tenure

Only Europeans and Asians could hold land in freehold in urban areas during the colonial era; Africans were allowed merely to occupy certain quarters set aside for them in Nairobi and other towns. Urban land remains freehold land, although the racial strictures have disappeared.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Land administration is the responsibility of the Ministry of Lands and Settlement, which consists of five departments: (1) Department of Lands, which has the responsibility of land administration throughout the country; (2) Department of Settlement, which deals with the establishment of settlement schemes; (3) Department of Surveys which, among other functions, conducts land surveys in preparation for land registration and titles; (4) Department of Land Consolidation, which performs consolidation and enclosure of land throughout the country; and (5) Department of Urban Planning, which is responsible for urban planning in Kenya.

At the local level Land Registrars are responsible for maintaining local records of land transactions, and deaths of title holders are to be reported to them. Often, however, deaths and other transfers of title go unreported, with the result that the registers no longer reflect reality.

B. Pressures for Change in Legislation and Administration

Landlessness and land hunger are increasingly prevalent in Kenya today. Disputes over land have risen, and in some areas squatters have moved in and claimed lands. Private buying schemes have also been organized which allow individuals to band together for the purpose of buying large tracts of land to be subdivided among the members; in the twenty years from 1963 to 1983, 24,000 such companies were registered in Kenya. Often the companies have been poorly managed and sometimes members have been bilked. Many of the problems the original consolidation and registration program was intended to end are once again very much in evidence.

To date, the government has declined to initate reform, blaming conditions on corruption and individual lapses rather than seeing them as structural problems to be corrected. It has, however, enacted a law dealing with jurisdiction over land disputes that appears to have important implications. Under the Magistrates' Jurisdiction (Amendment) Act, 1981, the power to settle disputes over land ownership, subdivision and boundary disputes, and claims to land is no longer the jurisdiction of magistrates' courts. Instead, such cases are to be decided by panels of elders, with magistrates' courts intervening only in cases where there has been a clerical error or omission or if the record is imperfect. There have, as yet, been no appeals beyond the local level, and it is not yet clear exactly what the effects of this new law are. It does appear, though, that this law is counter to the provisions of the Registered Land Act, and that renewed emphasis is being placed on customary tenure practices by empowering councils of elders rather than magistrates to settle land disputes.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

Landlessness and land hunger continue to create problems for Kenya today. On the one hand, in the areas where extensive amounts of land were registered in the 1950s and 1960s there are once again problems of fragmentation and increasing numbers of disputes over land; land registers established at the time of consolidation and registration no longer reflect the situation on the ground. The economic mechanisms that planners believed would encourage further consolidation of holdings have not come into play, and instead landholders frequently subdivide their holdings. The government has so far not attempted to correct the problem beyond the passage of the law empowering panels of elders to settle disputes. The critical issue in the consolidated areas remains the question of how to stem the tide of fragmentation of holdings.

On the other hand, pastoralist peoples such as the Masai are finding their lands encroached upon by "outsiders," and efforts such as the group ranches, which gave freehold title to an area of range to ranch members, have not been successful (see Section I.B. above). As increasingly marginal lands are put under intensive cultivation, pastoralists are forced into yet more marginal areas and land is occupied and used by more people and animals than the environment can bear. In those areas that have not been registered the government is facing the serious problem of how to allocate land efficiently and equitably in the midst of continuing land hunger.

B. Land Tenure and Agricultural Production

Agricultural production in Kenya in the 1960s and early 1970s rose at a high rate, and some researchers have attributed the increases to land reform. In the Highlands, for example, high-density settlement schemes, with small-holder farmers, produced higher yields than did the low-density, larger-scale operations. But it is not entirely clear that tenure reform, rather than more intensive use of land and labor, is responsible for these increases.

In recent years, agricultural production has failed to keep pace with increases in population, and land tenure problems (such as fragmentation) no doubt contribute to inadequate levels of production. Other problems, however, are posed by the cooperatives, which often operate to favor the more influential and may be poorly managed, and by the Ministry of Agriculture's policies that seek to limit production of some crops (e.g., coffee). Careful research is needed to sort out the variables that have contributed to lower levels of production.

C. Implications for Project Design

The principal point that emerges in discussions of Kenya's land reforms and their results is that changes in the law, and even on the ground, do not necessarily produce change in people's behavior. Some customary practices continue in force, and the recent law regarding dispute settlement appears to be a recognition of this. Project designers need to take into account the fact that incentives to date for the maintenance of the land consolidation and registration have been inadequate.

The need to raise agricultural production as well as to satisfy, at least to some degree, continuing land hunger pose very real, if somewhat opposite, problems. Many of the assumptions that have guided planners in the past--e.g., that registration would eliminate fragmentation--need to be re-examined, not only to understand why they have proven false, but also to decide if, in fact, they are still appropriate goals.

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LAND TENURE PROFILE: LESOTHO

Summary: With the passage of a new Land Act, enacted in 1979, the government of Lesotho has made the first steps to deal with increasing landlessness. Under this act, the customary system of tenure is modified. Whereas in the past chiefs had the power to reallocate land upon the death of the holder or to accommodate new households, now reallocation is to be done only in cases of abuse or non-use of land. Although the new act has yet to be applied, plans for its implementation are under discussion.

I. LAND TENURE SYSTEM

A. Dynamics and Direction of Change in Agricultural Land Tenure

The traditional tenure system remains largely intact pending implementation of a recent reform law. Faced with increasing population pressure on land and a rapidly rising level of landlessness, Lesotho promulgated a new Land Act in 1979. Over the past year, plans for implementation of the Act in rural areas have been under discussion.

B. Private Tenure

1. Customary Tenure

Land was viewed as the property of the nation, symbolized by the King, and was allocated to individuals by chiefs. Arable land was administered by local chiefs. A household head was entitled to allocation of three "lands," for maize, sorghum and wheat respectively. Land was not inheritable but on the death of the allotee reverted to the chief for reallocation. In fact, land was often passed to a son or sons of the allotee while the allotee still lived, with the chief's consent. In any case, a son had a reasonable expectation of receiving some of his father's land. Most land therefore remained in the family, in male lines. A widow was entitled to retain two of her husband's lands until her own death. Sales of land were unknown, but there were gifts and occasional loans of land. Sharecropping was common, particularly among men with plow oxen who leased in land from capital- and labor-poor households. Pasture was communal. Winter pasture near hamlets and villages was administered by local chiefs, but the summer mountain pasture was administered by principal chiefs.

The Land Act 1979 modifies the traditional system. By the 1970s population pressure on land was intense. The average size of holding was 1.4 hectares in 1980 and over 20 percent of all rural households were landless. Chiefly powers of reallocation were seen as a threat to security of tenure and as having little useful purpose because holdings had grown so small. Donors stressed the need by farmers for security of tenure. Passed over bitter opposition by chiefs, the Land Act provides as follows:

1. The power to make reallocations simply to accommodate new households is withdrawn. Reallocation can be resorted to only in cases of abuse or non-use of land. Compensation is to be paid for improvements. Land is inheritable, and can now pass to new households in that manner, without reallocation by a chief.

2. An heir or heirs (presumably including for the first time a female heir) can be designated by the holder. Failing such a designation, land is inherited by the eldest male heir, under a duty to share the land with his brothers in accordance with the family's advice.

3. Land Committees are to be instituted, chaired by chiefs, to make land allocation decisions by majority vote.

Sales of land remain illegal, and daughters continue to have no rights in intestate successions to land. To date, the Act is being implemented only in urban areas. The new Land Committees have not been created and in the interim their functions are being performed by existing Development Committees, which are, however, only advisory to chiefs.

2. Freehold and Leasehold

There is no freehold in Lesotho, nor has there ever been; white settlement in the country was not permitted. Share-cropping is recognized by customary law, however, and the Land Act 1979 institutes leasehold from the state as a major tenurial alternative for agricultural land. The Act provides that any allottee of agricultural land may apply to the Commissioner of Lands for a lease of his holding from the state. Alternatively, government can declare a "selected agricultural area" (SAA), within which traditional allocations are voided and landholdings can be rearranged and redistributed as leases. In considering applications for those leases, the Minister is to give "first consideration" to previous allottees of land there. A lease can be sold, sublet or mortgaged only with the consent of the Minister, but is inheritable on approximately the same terms as a traditional allocation. To date, no selected agricultural areas have been declared, and less than half a dozen leases concluded for agricultural land.

C. State Land

All land in Lesotho is owned by the State, as representative of the Basotho nation.

D. Urban Land Tenure

Land in urban areas is also affected by the Land Act 1979, and in urban areas the Act is being implemented. Residential, commercial and industrial

properties are converted to leaseholds, and the holders are being given leases and registered as fast as personnel and other constraints permit. Agricultural land within municipal boundaries (substantial in the case of Maseru) is held on a markedly insecure tenure known as a license.

E. Distribution of Types by Region or Ecological Zone

The primary distinction is at the moment between urban areas, where the 1979 Land Act is being implemented, and rural areas which remain under customary tenure arrangements. The customary tenure system is relatively uniform throughout this ethnically homogenous nation.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

The power to grant allocations of farmland is conferred on the Land Committee in each Chief's area of jurisdiction, chaired by the Chief. The committee is to decide matters by majority vote. Until arrangements are made for establishment of Land Committees under the Act, their functions are being performed by the Development Committees for each Chief and Principal Chief established under earlier land regulations, in 1974. An appeal from a Committee decision goes to the next senior Committee, up through a hierarchy which parallels that of chiefly authority, and ultimately to a Land Tribunal appointed by the Minister of Interior.

Leases of agricultural land are made by the Commissioner of Lands, Ministry of Interior, upon application by allottees. The Commissioner also has broad discretionary power to compel application for written leases, by individuals or by all landholders within a given area. He is responsible for ensuring that all leases are registered. (The Registry of Deeds is a part of the Law Office.) He also has a general responsibility to advise and assist the chairmen of the rural land committees in performing their duties.

B. Pressures for Change in Legislation and Administration

Donors and officials in the Ministry of Agriculture have shown considerable interest in implementation of the 1979 Act in rural areas. There has been particular interest in the provisions on selected agricultural areas, and the flexibility they confer upon government in rearranging holdings in project areas. A 1984 Land Act Policy Seminar organized by the Ministry of Agriculture has resulted in the drafting of a set of regulations for implementation of the Act in rural areas, and these are currently under discussion. Chiefly authorities are not reconciled to the dilution of their authority, however. It is possible that there will be opposition to promulgation of the regulations, or a negative reaction to promulgation. It is not clear that there is a significant public constituency in favor of implementation of the Act in the rural areas.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The obvious issue at the moment is whether or not government will implement the Land Act in the rural areas. It is not simply a question of promulgating regulations, but of committing the funds and staff necessary for implementation. The Commissioner of Lands office has no district staff and the staff which Interior does have at district level are not well equipped to deal with agricultural issues which will arise. A good deal may depend on the cooperation by Ministry of Agriculture district staff.

Less obvious but all important is the issue of Land Committees. The regulations in draft still do not create a framework for Land Committee elections and this is a critical first step in the Act's dilution of chiefly control of the land allocation process.

Finally, there is the underlying issue of whether government officials will use the 1979 Act in the broad public interest, an issue which aroused much concern and was discussed in the 1984 seminar. The extensive powers given to government in the SAA context have potential for land-grabbing by elites as well as effective planning.

The 1979 Act does not attempt to deal with the issue of control of access and use of communal pastures, but it is nonetheless a critical issue. The Range Conservation and Land Management Project at Sehlabathebe is an experiment in reliance upon chiefly authority to restrict pasture use, and to date the results are promising. The alternative is more direct intervention by national political institutions, to be resorted to only if the present experiment fails or proves non-replicable.

B. Land Tenure and Agricultural Production

Lesotho is unusual in Africa in that landlessness on a national level is a problem of growing seriousness. The two tables on the following page indicate the situation.

The growth of landlessness is intimately related to the fact that Lesotho is very much a part of a regional labor market. Both landless and smallholder rural households receive an important part of their income as remittances from family members working in the modern sector in Lesotho or South Africa. Agriculture alone can no longer support many of those households with small holdings. But because the size of holdings even in the fifth quartile in Table 2 below is not really large, redistribution of land is not a serious option for the landless and the many other households with very small holdings.

It is important that land policy recognize the fragility of the economic position of these smallholder households. The danger is that they will be pushed over into the ranks of the landless, when most jobs outside the agricultural sector lie across international borders and are hardly reliable opportunities. At the same time, it is important that government move under the 1979 Act to provide security of tenure to those with sizes of holdings

Table 1

Changes in Land and Livestock Holdings of Rural Households Lesotho 1979-80

Household Category	Households 1969/70	1979/80
With Land and Livestock	107,029 (50.4%)	112,399 (46.9%)
With Land, no Livestock	78,280 (36.9%)	77,639 (32.4%)
With Livestock, no Land	25,093 (11.8%)	14,577 (6.1%)
Sub-total Farming Households	210,402 (99%)	204,615 (85.4%)
No Agricultural Resources	1,826 (1%)	34,972 (14.6%)
Total Rural Households	212,228 (100%)	239,587 (100%)

Source: Bureau of Statistics, Agricultural Census of 1969/70 and 1979/80 (1979-80 data are preliminary estimates).

Table 2

Changes in Land Distribution of Rural Households, Lesotho, 1970-80

Quintile Household Category	Distribution of Households 1969-70 Agricultural	1969-70 Rural	1979-80 Agricultural	1979-80 Rural
First Quintile	4.6%	4.5%	2.0%	0.0%
Second Quintile	11.6%	11.6%	9.0%	6.2%
Third Quintile	15.8%	15.9%	18.1%	16.4%
Fourth Quintile	23.2%	23.3%	23.7%	24.8%
Fifth Quintile	44.7%	44.7%	47.2%	52.6%
Total Hectares	395,000		324,000	

Source: Bureau of Statistics, Agricultural Census of 1969-70 and 1979-80 (1979-80 data are preliminary).

which permit production on a commercial scale. The 1979 Act provides the basis for a market in leaseholds which has both negative and positive potentials: that of increasing landlessness and that of permitting more commercially viable holdings to be assembled. Government planning of land policy in this regard is an unenviable task when opportunities outside agriculture are subject to political and other vicissitudes of relations with South Africa.

C. Implications for Project Design

The legal basis exists for dealing effectively with most tenure issues which might arise in the course of project design. This would seem to augur well, but at the moment few rural inhabitants are aware of the tenure changes planned. If implementation in rural areas begins but is ineffective and halting, then there may be an extended transition during which expectations are confused and tenure seems uncertain. Where a project is of a nature which seems likely to be affected by tenure arrangements, the project may need to plan and budget to cover Ministry of Interior Land Act implementation activities.

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LAND TENURE PROFILE: LIBERIA

Summary: Land tenure will be a critical issue for whatever government is in power in Liberia over the next few decades. Under two administrations previous to the 1980 coup landholding patterns in rural areas became increasingly divided between large estates held in freehold by urban elites, often of Americo-Liberian origin, and small holdings under ever more insecure customary tenure by indigenous peoples. Moreover, it appears that, with much of tropical Africa, Liberian agriculture is on the threshold of the transition from shifting to settled cultivation, a change with important implications for land tenure. The Doe government stated an interest in land tenure reform in its first year in power, but no clear policy was formulated and that interest appears to have lapsed. Project designers should build land tenure strategies into their projects, and should be aware that existing information on indigenous land tenure systems is very scant.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Since the first settlement of Black Americans on the coast over 150 years ago, land has been a source of conflict between settlers and indigenous peoples. The Liberian land tenure system evolved in ways reminiscent of settler colonies elsewhere in Africa. By the late nineteenth century, the Americo-Liberians had through a variety of legal and extra-legal means established freehold rights over significant amounts of the land along the coast. Their land tenure system was based on the American common law of property. All land not held by valid deed--that is, land under customary tenure--was declared state-owned, but in practice, land in most parts of the country continued to be controlled by customary rules of land tenure. Even today those rules govern access to land for most rural Liberians.

Historically, two policies created increasing insecurity of tenure for those who relied on customary use rights. Firestone entered into a concession agreement to establish a rubber plantation with the Liberian government in 1926, and after World War II the Tubman administration embarked on a program aimed at attracting other foreign concessionaires (rubber, minerals and timber). The program was successful, and in a short period of time over forty

new large concessions, in addition to a larger number of small ones, had been awarded. While many concessions were set up in sparsely populated areas, some displacement of customary holders occurred.

At the same time the government began to sell "public land," resulting in the alienation in freehold of significant areas of land in the interior, particularily along new roads. These transfers of land became numerous during the Tubman administration and even more frequent under Tolbert. Land was sold at $1 per acre, and some buyers acquired estates of 20,000 acres or more. In theory, land occupied by indigenous peoples was respected, and those areas sold were usually sparsely utilized, but again there was displacement of customary users. Law provided for the declaration of Tribal Trust areas for indigenous groups, but this mechanism was utilized only to a very limited extent, primarily in the immediate vicinity of Monrovia and other towns on or near the coast. The patterns of shifting cultivation practiced by traditional cutlivators left much land "uncultivated" in long fallows, and traditional leaders certified this land as available for sale. Bribery of local land administrators was common. In some cases the land purchased was developed, in other cases held for speculation.

B. Private Tenure

1. Customary Tenure

There are many ethnic groups in Liberia, despite its small size, each with its system of land tenure. Unfortunately, only for a minority have land tenure and land use patterns been investigated, and the description that follows is a generalized picture of customary practices among some of the larger groups in the country.

Liberia's indigenous populations can be divided into five groups as regards their land tenure patterns. Among the Vai of the western coastal plains, inalienable rights to land come from membership in a recognized patrilineage. Each patrilineage has its point of origin in the village of the founders who came from the North several centuries ago. All others are land borrowers.

The second group are the Southwestern Mande speakers, and include the Loma, Kpelle, and Bandi. Among this group, land is normally village territory and membership in one of the shallow patrilineages gives one rights of access and use to the village's land. Village land is not separated, in most cases, into distinct portions belonging to particular lineages. Land that is not in use can be alloted by the village chief to land seekers. There is a concept of the most senior lineage being the "owner of the land," but this plays no role in day-to-day tenure decisions.

The third basic system is represented by the Southern Mande speakers, the Ma (Mano) and Dan (Gio). Among this group land is claimed by kinship units based on stipulated descent (often called a sib or a clan in the anthropological literature and distinguished from administrative districts called "clans" which are agglomerates of historically related villages). Each of these units jealously guards its territory and they form the various quarters of a village. The senior lineage of the oldest established sib is called "owner of the land" but as among the Southwestern Mande societies, its role is mainly ritual.

The fourth group are the Mel (West Atlantic) speakers. In Liberia they are represented by the Kissi and the Gola. These are among the oldest established ethnic groups in Liberia and probably introduced rice cultivation into this part of Africa. One has access to the land to which one's father had access. The last and fifth group is composed of the Kruan-speakers of the coastal region: Kru, Bassa, Wee (Kran) and Grebo. Access and rights to land are dependent on membership in both a patrilineage and a village.

2. Freehold and Leasehold

The concepts of freehold and leasehold were introduced in the early nineteenth century by the Americo-Liberians, who gradually acquired freehold title to considerable land in a forty-mile wide strip of coastline and introduced the American common law of property. They expanded their holdings further inland in succeeding years by a variety of legal and extra-legal mechanisms. This process has been described above.

Ownership of land has always been limited to persons of African ancestry. By the time Liberia declared its independence in 1847, there had already been three cadastres and general adjudication programs in the settler areas. A system of deeds registration was early introduced, but the deed recording system is in such disarray that it is impossible to estimate accurately the amount of land held in freehold. Deeds are registered with a variety of other transactions, rather than in separate registries. Whole decades of records have been lost. Whenever there is a major land sale, it is announced in the newpapers so that all interested parties can assemble with their deeds in hand at the site of the sale to sort out conflicting claims. Much property is handled as though it were freehold when in fact what people call a "deed" is no more than the first form to be filled out when seeking a deed. Share-cropping is often practiced on freehold land. Leasehold is a legal institution well understood in those areas which produce cash crops.

C. State Land

All land that is not held in freehold, demonstrable by a valid deed, is in legal theory state land, though traditional rights of occupation are to be honored. Extensive concessions have been granted for a variety of purposes, from forestry to mineral prospecting. As with freehold titles, there is a lack of adequate documentation on the size and precise location of many concessions. This is the result of two institutional constraints: poor land survey and abysmal land records. A concession holder can lease out his concession, and it has not been uncommon for a forest concessionaire to sublease sections of his concession for short periods to wildcat lumber companies. (The results on the forest are predictably disastrous.) Large blocks of state land have been legally set aside as national forest reserves. However, the declaration by one ministry (e.g., Local Government) that an area is a national park in no way hinders another ministry from granting a concession (e.g., for mineral exploration) within the park boundaries. At the seizure of power by the Doe government, considerable confusion prevailed with respect to some concessions. Many of those concessions have since lapsed, and a reassessment of the current position is badly needed.

There is little or no data on sales of public lands in the interior. It is understood that the practice is continuing, but information on such land transfers are not so readily available as under previous governments.

D. Urban Land Tenure

Land in Monrovia and other cities and townships is held freehold and must be deeded if it is to be considered legally saleable. A difficulty sometimes arises in land transactions, however, when the deed does not match the property being transferred. It may instead refer to the original plot set out over a century ago, which over the years has undergone change in both boundaries and use. In the 1960s a project was initiated to resurvey Monrovia, but the government insisted that all deeds refer to the original plot demarcation--no matter how irrelevant it now was. This resulted in extensive litigation, and in over ten years of work only the central part of the city was resurveyed.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Under the Doe administration, authority over land is exercised by the Ministry of Lands and Mines. In addition, the Ministries of Agriculture and Planning are involved in the making of land policy. The land registry is in the Judiciary.

The administration of land in rural areas is handled on a day-to-day basis through traditional institutions. Any purchases of land held and used under customary tenures must be approved by local elders, the county commissioners and the county superintendent. Disputes concerning land held in freehold are heard in the national court system. The deed registration system remains in force in the counties and while legislation for title (as opposed to "deeds") registration is on the books, it has not been applied outside downtown Monrovia.

B. Pressures for Change in Legislation and Administration

Land is a critical issue in Liberia and pressures for change in its administration and in legislation have been growing in the past fifteen years. The extensive land grabbing that occurred under Tolbert was one of the factors in the polarization in Liberian society between an urban-based elite and the rural poor. There is both political and economic need for reform in land administration and legislation. There has been considerable insecurity of tenure, and there is a need for fundamental legal reforms which reaffirm the right of traditional cultivators to their land.

The Doe government early made statements that it intended to end abuses and reform land administration. The critical question is whether the new leadership will attempt widespread, fundamental reform or slip comfortably into the structures of privilege vacated by the old elite. Though the situation remains somewhat confused, performance to date has not been encouraging.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The Liberian economy is in dire straits, and any program which seeks to achieve long-term change must deal with the problems of land tenure. Gus Liebnow, the dean of Liberian Studies in the U.S., has testified that "a continuation of the status quo would doom the present regime or its civilian successor to a precarious existence . . . Land tenure is at the heart of rural discontent." Insecurity of tenure for the smallholder farmer not only discourages investment in the land but also provides an impetus for migration off the land. Land tenure is only one of a number of fundamental issues with which government must deal creatively if the agricultural economy is to be revitalized, but it has been perhaps the most neglected of those elements in policy discussions to date.

Another critical need is that for reorganization of the administration of titles and transactions in land. As mentioned earlier, deeds often do not match the actual pieces of land being transferred.

B. Land Tenure and Agricultural Production

Liberia is fortunate in that, despite the speculation in land by a few in the past twenty years, land is not yet in short supply. Falling production levels appear directly correlated with bad marketing and pricing policy and a lack of timely access to inputs. In terms of land tenure, Liberia is not bedeviled by intractable problems of overpopulation and fragmentation of holdings, but rather by problems of security of tenure which have themselves been created by national land policy.

Moreover, in some areas of Liberia the combination of growing population and new technologies is already exerting pressure on shifting cultivation practices. As new technologies are introduced there will be an increasing tendency for cultivation to stabilize, converting to regular rotations of shorter duration. This change will pose many challenges for the traditional land tenure systems, such as the need for clear rights in fallow, an increasing importance of inheritance law, and generally a higher level of competition and conflict over the best land.

Tree cash crops are already important in Liberia, and are critical in this shift in land use patterns. Farmers have turned to tree crops as a way of protecting their customary claims to land. This is because the Liberian law says that land held under traditional tenure cannot be alienated if there are demonstrable improvements. In the rural context this means trees (usually cocoa and coffee). It is possible that this land-securing aspect of tree-planting has led farmers to plant and select genetic stock less carefully than would otherwise have been the case.

C. Implications for Project Design

Project design has shown some awareness of tenure as an issue, but planning to deal with it has not been impressive and follow-through has been weak. In a number of integrated rural development projects papers identifying

land holdings have been given to farmers by the project, especially for swampy areas newly placed in cultivation with swamp rice. These papers appear to have no legal force, but obviously have a certain evidentiary value. Projects should seek to secure sound tenure conditions for cultivators. The legal structures necessary to do so are largely in place, but projects must be willing to assume the costs of bringing them into play in the project areas. It is important, however, that project designers recognize that there is considerable diversity in land tenure systems in Liberia, and that there are few countries in Africa with poorer information available on indigenous land tenure systems than Liberia. This will make land tenure research in the project design phase a clear necessity in many cases.

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LAND TENURE PROFILE: MADAGASCAR

Summary: The Government of Madagascar at the present is reorganizing its entire system of land administration and plans to establish specialized regional offices to keep track of land transactions. A program to redistribute the large plantations that were formerly foreign-owned has broken down amid conflicts as to who should receive the land and under what kinds of tenure. Pressure on land remains high, and there is both widespread rural poverty and extreme fractionalization of holdings.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Land tenure in Madagascar is characterized by a great variety of systems. Land pressure is great in the central highlands and has been a problem for generations; it is in this area that there is the greatest amount of concern over land tenure issues.

With independence in 1960 came the concept of the social obligation to develop land, and legislation provided for the seizure of any estate over five hectares that had been uncultivated for five years. New surveys of land were to be undertaken but did not actually occur until after the 1972 coup. That coup ushered in a more radical approach to land tenure following a more Chinese or North Korean model. State farms were set up and communes established. By the mid-1980s the failure of these state enterprises had led to the current revaluation taking place in Madagascar.

B. Private Tenure

1. Customary Tenure

Customary tenure practices in Madagascar can be best described, without too great an injustice to facts, by reference to population density and land quality. In the south and along much of the Western coastal region, population pressure is low, the land arid, and pastoralism predominates; here land is held in common by patrilineal groups. On the river basins that cut through the arid plains, however, recession agriculture is practiced, and the land units are more carefully defined and secured. They are held by segmentary patrilineages, and access to land is determined by a group of senior kin.

The eastern coastal plains receive rain throughout the year and are home to about 23 percent of the island's population. In the past land was under the control of important families, referred to in the literature as upper, or noble, castes, and all access to land was through these families. For those who were not members of these families the avenue to land was through share-cropping. The eastern coast has been more strongly influenced by Islam than other areas of the island, and among these important families Islamic inheritance procedures (which grant equal shares to male heirs and half-shares to female heirs) are loosely followed.

The highest population density and the most fertile soils are found in the central highlands, and here there are two contrasting land tenure patterns. Among the Betsileo, one finds irrigated fields of rice held by patrilineal kin groups. Access to land is through the father, and each extended family has rights over a portion of lineage land. Due to land shortage, more than a quarter of the Betsileo now live outside the region. In contrast, the Merina, who are culturally similar to the Betsileo in most matters, differ radically with regard to land tenure and political organization. Their social organization has traditionally been associated with a rigid class hierarchy headed by royalty. Only freeborn, nobles, and royalty could own land, and those at the upper end of the social scale possessed the largest amounts of land. Both men and women could inherit land, with the result that holdings often became divided into very small fractions. Among the nobility and royalty, the practice of endogamy acted to some extent to counteract this fractionalization of holdings.

The basic division of land has been between the rice paddies and the tanety, hillsides above the river valleys. Recent research has shown that much of the paddy and better tanety is held by the same important families that held them in the pre-colonial period. Commoners and descendants of the lower caste gain access to paddy through share-cropping arrangements. These groups have recently turned to using marginal lands to grow vegetables for the urban market, an activity that has proven the principal source of income for these small producers.

2. Freehold and Leasehold

The notion of individual ownership of land is one that precedes the colonial era in Madagascar: in 1881 the Merina royal council set forth the idea in a Code of 305 Articles. The French colonial regime took the concept one step further, introducing the possibility of land alienation and privatization in 1896 with the goal of encouraging European settlement. The following year a Torrens system of land registration was adopted, and it has henceforth required that all land sales had to be registered to be legal. Settler freehold was most common along the eastern coastal region, where large plantations were established.

In the central highlands in the area around the capital of Antananarivo, all land was surveyed and registered beginning in 1929. Unfortunately, registration has not been kept up to date, and most of the records still list the person in possession of the property at the time of the original survey as the current property holder. Whether this situation is a product of the unpopularity of the project or merely the result of neglect is uncertain.

C. State Land

The Code of 305 Articles (1881) was the first legislation to propound the concept that all land comes from the state; it also stated that unoccupied and abandoned land was to revert to the state. This notion was similarly adopted by the French colonial regime, which divided state lands into two categories: domaine public and domaine privé. Domaine public included parks, roads, and other such land, while domaine privé was land that could be granted as concessions to commercial and individual enterprises. A 1911 decree, which stated that shifting cultivation--practiced in large areas of Madagascar--could not be recognized as a basis for establishing rights to land, further enlarged the powers of the state over land.

Additional laws, passed in the 1920s, enhanced the already extensive powers of the state over land. One in 1926 established indigenous reserves and separate settler areas, simultaneously setting aside as inalienable public lands all river banks, ocean beaches, and rights of way for infrastructure including irrigation canals. Settlers could request allotments of up to 100 hectares of government land, with title granted after three to nine years of development, whereas Malgache were limited to grants of ten hectares.

D. Urban Land Tenure

Land in urban areas is largely in private hands and has been registered since the late 1920s. (As mentioned above, however, this is not to say that records have been maintained.)

E. Distribution of Types by Region or Ecological Zone

See Section B.2. above.

II. LAND ADMINISTRATION SYSTEM

At this time (May 1985), the entire system of land administration is in the process of being reorganized. Since 1975 land registration and administration have been the responsibility of elected local government institutions and the Service de la Réforme Agraire. The primary purpose of the Service de la Réforme Agraire is to appropriate and redistribute the larger foreign-owned plantations, but the program has stalled amid conflicts as to who should receive the land and under what kind of tenure.

At the local level under the 1975 law it is the village councils, or fokontonolona, who have authority over land matters. They have largely proved unable to keep the specialized records necessary to deal with land transactions, however, and new legislation, enacted in 1982, allows for the creation of national offices of Lands, Surveys, and Agrarian Reform. Both the Lands and the Surveys offices have facilities in the provincial capitals where the land registries are kept, and these sub-agencies have the responsibility of reappropriating any large land holding that has not been kept in production over the past five years.

Finally, there is a Service de l'Irrigation as part of the Ministry of Agriculture and Agrarian Reform. Since water rights are neither controlled nor charged for, the service is mainly concerned with construction problems. One of the issues under discussion today is whether or not to modify this by creating water-users associations.

B. Pressures for Change in Legislation and Administration

The pressures are not so much for new legislation as for the implementation of the legal machinery that has already been passed. The two extremes of the current debate are whether or not it is the time to implement a full-scale land reform to redistribute and consolidate holdings or to take a much greater market orientation. As of this writing, the trend seems to be away from government involvement and toward market orientation.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

Land pressure and equitable distribution of economic rewards in the rural sector are the two most pressing policy issues. In many irrigated zones the average holding has dropped to a tenth of a hectare and a majority of the producers are forced to share-crop. This situation is exacerbated by widespread rural poverty.

B. Land Tenure and Agricultural Production

It is recognized by policy makers that the very small size of holdings, and poverty of the majority of Rural producers will make the implematation of any new technology most difficult. The better-off (relatively) families may own one or two very small irrigated plots, are share-cropping several others, and have dryland garden sites. All of these may add up to less than two hectares. Attempts at collective production as a way of circumventing this problem have all failed. In general, it is felt by these policy makers that agricultural production will not increase substantially until a resolution to the land tenure problem is found.

C. Implications for Project Design

The implications for project design are several. First, it must be recognized that traditional tenure practices have proven remarkably resilient in the face of onslaughts by colonial administrators, agrarian reformers, dedicated North Korean agronomists and well-intentioned planners. Secondly, innovations such as land registration have been largely ignored in day-to-day practices. Third, the real opportunity for projects to play a positive role in alleviating the land pressure problem is to assist Madagascar in developing new irrigation works outside the highlands, primarily in the western river basin systems, where it will be easier to establish land tenure innovations.

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LAND TENURE PROFILE: MALAWI

Summary: Land use in Malawi is divided between large export-crop plantations and small-holder farms. In the former land is held under long-term leases, whereas customary practices prevail for the latter. Government policy has been especially favorable to the larger estates, and their presence has decreased the area of land available for small-scale, customary farming. In the southern, more densely populated areas of the country, land is in increasingly short supply and can be expected to become a critical issue shortly.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Agricultural production in Malawi is divided between export crop cultivation on large estates and small-holder food production. Although the government emphasizes that both sectors are crucial to the country's economy, the large estates have received more encouragement than have the small-holders, and in the past fifteen years production levels of tea, sugar, and tobacco have risen appreciably. Establishment of these large estates has resulted in less land being available to small farmers, who traditionally practiced a system of shifting cultivation that was based on land abundance. Pressure on land is rising in heavily populated areas of the south and central parts of the country, and there is evidence that land rights are becoming increasingly individualized in these areas.

B. Private Tenure

1. Customary Tenure

In the pre-colonial era shifting cultivation was the most common form of agriculture, a method that required relative abundance of land and land tenure practices that emphasized rights to use and occupy land. Land was held by the lineage, descendants of the first individual to clear and cultivate the land. Although individual families were given specific areas to cultivate, it was the wider group, the lineage, that actually held rights to the land. Land inheritance patterns varied from one ethnic group to another. Among the Chewa, for example, matrilineal succession was the rule, while the northern Chewa practiced patrilineal inheritance, and sons inherited land directly from their fathers.

Pre-colonial Malawi was divided into chiefdoms, with individual villages under the authority of headmen, who, among other things, acted as land allocators. Chiefs had the powers to grant unoccupied land to individuals who wished to occupy it, but these powers were not unchecked and in the late nineteenth and twentieth centuries were the source of considerable controversy. As European settlers and missionaries began to move into the fertile Shire Highlands in the south of the country, they made arrangements with local chiefs to acquire land. To the Europeans, these transactions were sales of lands and thus they had acquired absolute control over the land. But to inhabitants of Malawi these were only contracts to use the land, not arrangements for its permanent alienation. The legal question was solved early in the twentieth century when the colonial government proclaimed that all vacant land was the property of the Crown which then had the power to issue Certificates of Claim to Europeans. These certificates granted freehold rights to their holders.

The results of this large-scale alienation of land were twofold. First, it permitted the establishment of European plantations in the Shire Highlands. And second, it reduced the area of land available to Africans, a fact which was to become critical as the population increased in the twentieth century. The need for labor on the plantations and for land for Africans gave rise to two new sorts of farming arrangements. In the Southern Region, where most of the European plantations were located, an arrangement called the thangata system permitted Africans to live on and use plantation land in exchange for furnishing labor or a fixed annual rent to the landowner. In the central region of the country, a "visiting tenant system" was introduced. This system allowed Africans who held land elsewhere in the country (on what were called "tribal lands") to migrate to the central region for the season to plant tobacco. Under this arrangement, the non-African landholder would supply land, seeds, and other needed materials to the African farmer in exchange for, at the end of the growing season, the harvest, which the landholder then marketed himself. This system provided the African with a small cash income and the European with a crop more cheaply than if he had hired and supervised the labor himself.

The critical difference between the two systems was that the "visiting tenant" held land elsewhere whereas the thangata farmer did not. This latter system was particularly onerous, and in the 1950s the government adopted a policy of buying up unused freehold land in the Shire Highlands and resettling on it families who otherwise were landless. In 1946 it had been estimated that some 49,000 families were tenants on private estates. By 1962 the number of such families had been reduced to 9,000 through resettlement programs.

2. Freehold and Leasehold

Under the Land Law of 1965, land in Malawi is divided into three categories: Public Land, Private Land, and Customary Land. Private land may be held either freehold or leasehold. Rural freehold private land is an outgrowth of the certificates of claim granted by the colonial government to European settlers. Under urban freehold, land was originally available to Europeans and Asians only, but since independence there is no racial restriction. Unoccupied areas of freehold purchased by the government in the 1950s have reverted to customary land tenure practices.

C. State Land

All public land and mineral rights in customary land are vested in the President, who in turn delegates authority to the Minister of Natural Resources to manage these lands. Public land may be leased by the government to individuals. Public land consists not only of those lands used or acquired by the government but also land which reverts to the government should freehold or leasehold be terminated or surrendered.

Tenure Categories in Malawi 1979
(million hectares)

Category	Size	Percentage
Customary Land	8.091	86.02
Public Land	1.119	11.88
Freehold Land	0.198	2.10
TOTAL	9.408	100.00

Source: Agricultural Development in Malawi. Land Tenure Center Library, University of Wisconsin-Madison.

D. Urban Land Tenure

Both freehold and leasehold titles to land are found in urban areas. Land in Blantyre was registered during the colonial era, and more recently the government of Malawi has undertaken a registration project in Lilongwe.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Various land laws have given the Minister of Natural Resources substantial authority over land and land allocation. Land Act No. 31 provides that the Minister may devise provisions for overseeing the use of land, methods of cultivation used and type of crops grown, the keeping of livestock, maintenance of proper drainage of such land, fencing and the conservation of soil, water, woodland, pasture and other natural resources. The law also empowers the Minister to acquire any lands required for public purpose and to pay appropriate compensation to its original users.

In 1974, Act No. 7 was passed to enable the government to monitor and control freehold land as it does public and customary lands. This law provides that any person who intends to sell, lease, or otherwise transfer any private land should give 30 days' notice in writing to the Minister.

The 30-day notice to the Minister is to enable the government to decide whether or not it wants to acquire the land in question and get the Minister's consent for the transaction. The law also stipulates that land buyers must disclose sources of finance to determine whether the applicants are capable of developing the land within a given period, usually five years.

B. Pressures for Change in Legislation and Administration

The existing system of administration and legislation with regard to land has enabled Malawi to develop a strong export-oriented agricultural sector. Public lands have been made available for development as sugar-, tobacco-, and tea-producing estates. Those who have benefited from this are generally powerful politicians and high-level civil servants. Small-scale producers, on the other hand, are increasingly faced with shortages of land, especially in the Southern Province, and with declining returns for their crops. As this situation becomes more critical, and as migration becomes less able to provide a safety valve for land pressure, the government will need to focus on problems of small-scale producers.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The most critical issue with regard to land tenure is the increasing shortage of land in the more densely populated regions of the country and the effects of this. Provision of Public Land for large-scale estates has meant that there is less land available for small-holders in the future. Moreover, the solution of migration, a solution that has been especially important in Malawi's economy throughout the century, is beginning to reach its limits. Population growth, diminished amounts of available land, and flat rates of migration are all combining to make access to land for small-scale production increasingly critical. And indications are that as land becomes more scarce and valuable, rights to land are more likely to become individualized. Around Lilongwe, for example, where lands were registered in the 1970s, there have been a number of instances of lands originally registered as family land being transferred to individual names.

B. Land Tenure and Agricultural Production

The tea-, sugar-, and tobacco-producing estates established in the 1960s and 1970s are held under long-term (99-year?) leases and the attractive terms of the lease have been a factor in their success, as has the government's willingness to invest in infrastructure. Among small-scale producers, on the other hand, land tenure practices are less critical factors in production levels than is the government's control over marketing and pricing.

C. Implications for Project Design

Land tenure practices are likely to be important considerations in projects that focus on small-scale agriculture production and in irrigation projects. The allocation of large amounts of land for export-crop producing estates necessitates that new ways of using underdeveloped land be

investigated. In project design planners will need to consider the existing customary tenure practices and their effects on the project. If inheritance patterns are matrilineal, for example, will this make landholders unwilling to invest money and labor in the land? It has long been assumed that matrilineal inheritance patterns are a barrier, but careful study is needed to determine if this is true or merely an unwarranted assumption. In addition, consideration needs to be given to changes in customary tenure practices that may ensue. Customary tenure practices are not, and never have been, static but are rather adaptations to specific sets of conditions. Individualization of holdings is one possible effect of increased value of land, and the implications of this too need to be investigated and considered.

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LAND TENURE PROFILE: MALI

Summary: Land tenure in Mali is characterized primarily by continuing traditional subsistence use. The state claims ultimate sovereignty to all lands. No national legal or administrative code exists that covers the coexisting variety of traditional and administrative land tenures in the country. Using French colonial land law as a basis, some laws have been passed which have for the most part resulted in a confusing and haphazard mix of customary and state land allocation. Only in commercial areas or areas targeted for development has individualization of tenure occurred.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Customary land use still predominates in Mali's rural areas, where over 70 percent of its population is engaged in subsistence agriculture and fishing. The state holds ultimate title over land and ostensibly controls land allocation. However, due to incoherent and often contradictory land laws, coupled with confusion between administrative levels, traditional allocators continue to operate, especially in remoter areas. Nevertheless, the state reserves the right to take lands not properly developed or in the public interest. Although privatization of tenure is evolving only slowly in most parts of the country, individualization of land tenure, introduced in the colonial period, has increased through investments by the various ODRs (Opération de Développement Rurale). This is discussed more fully below.

B. Private Tenure

1. Customary Tenure

Mali's pre-colonial land use was characterized by shifting cultivation in a context of land abundance. Indeed, with the exception of the floodplains of Mali's riverine areas, land pressures are still relatively minor compared with other regions of the Sahel today. As would be anticipated in a drought prone region, the more secure the water resources, the more dense the population. There are interesting differences between the major ethnic groups in Mali.

The Bambara/Malinke, in western and central Mali, exercise land usage rights through the extended family, which is the basic economic unit. The

overall rules of land tenure derive from the oldest mentally competent male (very occasionally female) of the village's founding patrilineage, the land chief or land master. Most of the villages, however, are associated with the historical consequences surrounding the development of the predecesors and successors to the Mali empire. This means that most communities have the important political offices held by the current leaders of the conquering patrilineages. Therefore, land tenure matters really lay in the realm of a two tier authority. One is in the realm of reproductive power of the soil and requires the approval of the "land chief." The other is the political reality and here the chief's influence is paramount.

Similarly, the ritual relation of people to the land is a very important land tenure issue among the Dogon. The oldest male in the patrilineage allocates usage rights within the extended family, the lineage usually being synonymous with a village. However, this group tends to be very hierarchical, with younger kin working the elder's land four days of the week and the land of other senior members according to descending lineage rank. Further, "age sets" sometimes serve as a pool of agricultural labor when necessary.

The Songhai (Sonrhais, etc.) present an exception to the generalized patterns of land tenure described above. The Songhai are spread along the Niger River from Timbuctu to Say in Niger (where they are usually referred to as Djerma or Zarma Niger) and along the Bourem-Gao-Ansongo river corridor. Because only annually flooded land can be farmed, there is land scarcity. Historically, this land was worked as "slave" plantations to feed towns of the Songhai Empire. This later evolved into land allocation by chiefs who in return received labor and/or a percentage of a farmer's harvest as part of classical redistribution systems. Due to the unpredictable climate, most people find it necessary to supplement their diet with wild plants or cash income.

Another and very interesting exception to the general customary land tenure systems existing in Mali is that of the Fulani (Peul) in the interior delta of the Niger River. Originally settled by sedentary agriculturalists (Bambara, etc.), this area was overrun by the Fulani in the late 1700s. Conflict over land use quickly developed between the conquered farmers and the Fulani herders. This conflict diminished with the introduction in 1818 of "Dina" by the Fulani leader Checkou Ahmadou.

Basically the Dina is an indigenous range management plan aimed at reducing land-use conflicts. Dina defines the rights of both pastoralists and farmers by regulating the use and timing of pasture as well as sedentarizing the Fulani. Although the system is administered by the chef de leydo, annual meetings of concerned parties are held to make necessary adjustments. Despite the subsequent invasion of the Toucouleur in 1862, the French, and independence, Dina's main provisions still pertain today. This is not to ignore that it is the Delta region where the greatest number of land conflicts take place. One can only imagine how many more there would be if there were no institutional mechanism at the local level.

2. Leasehold and Freehold

The French colonial laws of 1932 and 1955-56 established a land registration system whereby customary users could "legitimize" their claims to

land. Also, permits to "inhabit" and "occupy" were issued for residents and businessmen, respectively, for urban areas. Although these laws primarily affected urban areas, their legacy has proven to be a crucial factor in post-colonial land tenure considerations.

C. State Land

Unlike most African states at independence, and despite the socialist direction espoused through 1968, Mali has made few efforts to recodify land tenure. Surprisingly, the French colonial laws remain valid and form the basis for the laws or ordinances that have been passed since then. A 1961 law blocked transfers of land without state approval and places the state as ultimate de jure holder of the land. However, it was not made clear what government unit controlled the land. Until the coup d'etat in 1968, it was putatively the comité, or local party organ, that exercised allocative rights to the cooperative lands in each community that were worked by the Groupements Ruraux de Productivité et Secours Mutuel (GRPSM). These intstitutional arrangements were actually established in extremely few areas. They are largely only of historical interest now. Under a 1974 law, land abandoned in the last ten years or not put into production in ten years reverted to the state. This was to be overseen by administrative officers at the cercle level. This is largely hollow legislation as in almost all cases traditional authorities make the day-to-day decisions. Government interference by use of this law is largely confined to project specific acts or to those motivated by questionable motives. Thus, no clear intent or system of legal justification has emerged in Mali concerning land tenure. New laws are grafted onto colonial land law resulting in contradiction and confusion.

D. Urban Land Tenure

Under the French colonial regime, residents of urban areas were issued permits of habitation, while commercial interests were granted occupation rights. A 1959 law changed habitation rights to ones of ownership, while occupation rights remained unchanged.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

As stated above, the effective land administration for most of the country's agricultural land remains that of customary procedures. State land in rural areas designated for development purposes can be allocated (and controlled) by the Commandant de Cercle if the land is less than ten hectares in area. In actuality, the Commandant normally allocates land only in the case of disputes. In most cases land is first acquired from traditional authorities (the "cost" of land is not determined by market forces or economic potential, rather the "price" is often little more than a traditional gift) and then the fait accompli is registered with the commandant's administration. For land over ten hectares, jurisdiction passes to the State Land Service (Service des Domaines de l'Etat). Above the administrative level of the cercle is the region, while below one finds the arrondissement and village levels. Thus, state allocation is practiced two administrative levels removed

from the land, making it difficult for the cercle officer to determine correctly whether land is being productively used or not. Further, such distance gives a wide latitude for the continuing operation of traditional allocations. Indeed, much land remains under traditional authority locally, although the stresses induced by the increasingly commercialized view of land serve to erode the power of customary allocators.

B. Pressures for Change in Legislation and Administration

No major changes in land tenure by the Malian government appear to be slated at this time. Land remains relatively abundant except for in riverine areas. Individualization of land tenure is most evident along major routes of commerce and in areas under development by ODRs (Opération de Développement Rural). This, it has been suggested, is evidence of a widening generational gap whereby younger men wish to assert more personal control over land than they would have in the past. For example, among the Bambara, young men have started so-called "secret fields" (individual fields) outside the customary allocative structure in order to secure the sole economic benefits from these fields. Furthermore, droughts in already marginal areas may place pressure for change on existing land tenure systems in certain localities due to migration from the most affected areas. One must be careful to avoid the pitfall of assuming that in this incipient trend toward individualization a true land market is developing. Such is not the case, either in the ODRs or in more commercially oriented customary areas. Young Bambara may be establishing their own "secret fields" but they are doing so to avoid the transaction costs of kinship obligations, etc. These fields, once developed, are not put on the market.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The amorphous approach to land tenure practiced both judicially and administratively in Mali creates a patchwork of contradictory practices. Colonial laws targeted at privatizing tenure contrast sharply with avowed socialistic aims such as cooperative land use. No direction is provided for replacing the slowly weakening authority of traditional allocators. Although it is theoretically possible to obtain legal title, very few rural inhabitants have done so. Indeed, it is the people of means, the military and the civil servants, who have tended to acquire title by taking advantage of the vacuum in land tenure adminstration. In the pastoral/agricultural complex of the Fulani and Songhai areas, traditional chiefs still collect tithes from farmers despite the banning of such practices. These chiefs also tend to acquire personal control over former community lands as these lands become more valuable. For rural development to occur, some form of coherent land tenure policy on the part of the Malian government is indicated.

B. Land Tenure and Agricultural Production

Until 1968 Mali tried to establish a country-wide system of cooperatives called GRPSM. Everyone over the age of 18 in a village was a compulsory member, and each family was expected to work a half-hectare plot for the

GRPSM. Produce was to be marketed by groups of GRPSMs called Groupements Ruraux Associés (GRA). In turn, the cooperative structure on the cercle level was to sell directly to the government parastatal organization. Although half of the villages had GRPSMs by 1964, the rest of the structures existed primarily on paper and progress was already limited by the time the 1968 coup occurred.

A much less socialist path emerged under the new government. After 1968, cooperatives that were least profitable lost subsidies and disbanded, while control of the remaining cooperatives passed to a cercle-level unit, the Centre d'Assistance. In addition, the state reduced its role in purchasing and marketing.

In 1972, ODRs were created. Instead of trying uniform development, it concentrated development projects in localities seen to have the most promise of economic success. Rice, millet, and peanuts have been targeted in different places. These projects emphasize an individualization of land tenure in that each participant and his family are assigned their plot. As discussed above, this does not imply a land market. All transactions involving the assigned parcel must be done through the specific ODR administration. Studies have pointed out repeatedly that tenure is less secure on these projects than under the customary system. The participants are at the mercy and whim of ODR and have none of the institutional guarantees that are found in the traditional sector. Despite individually assigned tenures within ODR areas, the vast majority of farmers are left practicing subsistence agriculture under customary land allocation.

C. Implications for Project Design

Given the contradictory signals inherent in the present administrative and judicial systems of land tenure, project design must certainly ascertain governmental intentions concerning tenure. Equally important, the designer should take into account local perception of tenure in the project area since traditional tenure practices continues in most rural areas. Particular attention should be given to potential conflicts between groups resulting from the lack of a coherent national tenure policy. Finally, planners should investigate the logic behind the local rules of land use and allocation. Mali has had a long history of pastoralists, cultivators, irrigators and fisherfolk all using the same resource base. The customary rules have allowed this to take place in relative peace. Attempts from the colonial period to the present to change production patterns by changing land tenure have had a very poor record. Caution and understanding are called for.

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LAND TENURE PROFILE: MAURITANIA

Summary: Although in the past pastoralists' rights to land have taken precedence over those of cultivators in Mauritania, the situation is now reversed, with new land tenure legislation in force that promotes agriculture and emphasizes the role of irrigation. This new emphasis translates into increasing focus on development and land tenure issues in the southern region of the country, and particularly in the areas along the Senegal and Gorgol Rivers.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Mauritania's land tenure system encompasses a variety of types of tenure which reflect both Mauritania's mixed heritage of pastoralism and agriculture and the importance of water in an arid environment. The most important traditional rights over land include rights to seasonal pasturage, rights to tree crops without rights to what is grown between the trees, hierarchical rights to water, and a variety of rights to irrigated and non-irrigated cultivation. Pastoralists' and cultivators' rights have traditionally conflicted and continue to do so today. Currently, irrigated agriculture, and in fact any viable form of agriculture, is viewed by the state as having priority over pastoralists' rights to graze their animals.

Traditionally, the advantage was with the pastoralists, whether Bidane, Peulh, or Haratine. Today the whole focus of Mauritania's new land tenure legislation is to de-emphasize pastoralism and promote agriculture with most of the emphasis on irrigated agriculture. This change has virtually been forced upon Mauritania by the drought which has continued more or less unabated since 1968. In 1985, it is clear that so much ground cover has been lost to over-grazing and erosion that it will be a long time before the land can again suppport comparable herds even if the rains return to pre-drought levels.

The new emphasis on agriculture translates directly into a regional emphasis on the southern area of Mauritania and in particular the areas bordering the Senegal and Gorgol Rivers. This summary focuses on these same regions for this reason.

B. Private Tenure

1. Customary Tenure

The southern areas of Mauritania have been cultivated for many centuries but the current distribution of holdings is primarily the result of the events of the nineteenth and twentieth centuries. While the earliest large land holdings in the Middle Senegal River Basin pre-date the sixteenth century, most derive from bequests made by ruling families to consolidate their power between 1515 and the mid-nineteenth century. The majority of cultivated land, however, is divided among a relatively large number of small property holders.

By the end of the nineteenth century the French had taken over the process of handing out lands. Though the French gave out lands as early as 1865 on the Senegal side of the river, Mauritania experienced the same process somewhat later. In the Mbout region, one of the major land-holding groups are the Mbout Liberte who, composed largely of Haratine, are nominally descended from a contingent of the Tirailleurs Sénégalais (Senegalese Riflemen) who were settled and given deeds to land in the region after honorable service in World War I. The other landholders in the Mbout region are the Bidane and numerous Haratine groups who settled in the region during the nineteenth century.

In the Boghe region, as well as much of the river valley east to Kaedi, the Toucouleur own the great majority of arable land. A few Haratine and some Bidane also own arable land. In this region there are both large land owners and smaller land owners, with the rights of the former generally ante-dating those of the latter.

The southern regions of Mauritania along the Senegal and Gorgol Rivers contain most of Mauritania's irrigable land. In these regions traditional soil classifications divide land into two main types: dieri and walo lands. The former are lands which are not flooded even during years of high rainfall, while the latter are lands which are flooded at least during years of high rainfall. Walo lands are further subdivided into fonde, medium halalde, and halalde soils which differ according to their proximity to and height above the river and their clay content. Fonde soils are lighter, are usually more elevated, and have better drainage than halalde soils. Fonde are also less regularly inundated, receive fewer deposits from the river and, consequently, have a lower clay content. Fonde, meaning forest, traditionally refers to the slightly elevated and forested lands along the edges of the rivers and marigots. Dieri lands support rainfed agriculture when there is enough rain but are little cultivated in years of low rainfall. In consequence, land tenure on dieri lands tends to be more flexible: in many cases people without ownership claims can cultivate the land without paying anything to the nominal owners. The qadi (judge) of Mbout considers that, of agricultural lands, only walo, not dieri, qualify as traditional private property (mulk). In the Boghe region dieri lands are claimed but others can cultivate them free of charge when their owners do not require the dieri for themselves.

Of Mauritania's ethnic groups (Bidane, Haratine, Peulh/Toucouleur, Soninke, Wolof), all but the first are now primarily agriculturalists (or urbanites) for whom livestock-raising, if practiced, is of minor importance.

Before the drought, pastoralism was the primary activity of Bidane, Haratine, and Peulh. As agriculturalists each ethnic group has developed different forms of land tenure but these land tenure relationships are by no means homogeneous even within ethnic groups.

The present distribution of ethnic groups is in many cases of fairly recent origin. Generally speaking, in most of the southern agricultural regions there are both relatively anciently established groups and fairly new arrivals coexisting on the same resource base. In the Mbout/Foum Gleita region the earliest arrivals still remaining in the area date from early in the nineteenth century while the most recent date from twenty-some years ago. The details differ from region to region but several factors have affected all areas in the past several decades; these are the French colonial policy of encouraging more intensive pastoralism with resultant higher densities of nomads during the fifties, continuation of this trend into the sixties, and, most recently, large-scale sedentarization after the beginning of the drought in 1969.

2. Freehold and Leasehold

Although the concepts of freehold and leasehold are not applied within traditional land tenure systems in Mauritania, customary practice recognizes superior and inferior claims to land that approximate these two concepts and are essentially rights of ownership and rights of occupancy. Thus, dieri lands are cultivated during times of adequate rainfall by groups whose rights to the land take precedence over those of groups who occupy the land during times when it is uncultivable.

C. State Land

The Law of 1960, passed in the closing days of the French administration of Mauritania, recognized traditional claims to the land but nationalized all land which was not then under recognized use. Although there is little evidence that this law had much effect on actual practice, it remained in force until recently and one still finds references in villages and administrative centers to permis issued by the government in support of individual working claims.

The new land tenure law passed in 1983 (see Section II.B. below) further grants the State rights to declare particular lands Domain lands. Domain lands may then be given out as concessions to individuals or groups.

D. Urban Land Tenure

The section of the 1960 law concerning urban lands provides for the division of Nouakchott into lots and grants legal title to those occupying the lots at the time while providing for the rest to be sold. The law provides that subsequent transactions in either improved or unimproved lots will be through private contract.

In the years after the passage of the 1960 law, land in Nouakchott proved an attractive investment for low-status groups. Under traditional tenure systems, such groups and individuals could only acquire land through patrons, whereas in Nouakchott, patronage has little to do with access to land. In

Nouakchott there are now two sources of land: (1) high quality lots can be purchased from the Direction des Domaines; or (2) the poor can get low quality peripheral lots by initially squatting in a bidonville in the path of development and then pressuring their representatives on the Commune Urbaine to obtain lots for them somewhere acceptable to Nouakchott's development scheme in exchange for a nominal fee. Large areas between Nouakchott and the new port are squatted on for expressly this purpose. With the establishment of a land market in the capital, land values skyrocketed as individuals bought and sold lots as speculative investments. Since 1980-81 land has become more expensive in Nouakchott. Lots which were formerly sold by the Direction des Domaines for 100 ouguiya a square meter have risen to 600 ouguiya a square meter. This is in part due to a circulaire from the central bank (responding to over-construction) that raised the interest rate on loans to construction from 5 percent to 13.5 percent while at the same time limiting loans to a maximum of 24 months and eliminting the former 6 month grace period allowed before payments had to begin which prevailed before 1980. These changes and the over-construction turned the Nouakchott housing market into a buyers market by the mid-1980s.

E. Distribution of Types by Region or Ecological Zone

There are regional differences in land tenure arrangements which have little to do with the main ethnic differences and are instead specific to a region. Thus in the Mbout/Foum Gleita region most Haratine groups are recognized as land owners by resident Bidane and Peulh groups and do not have the status of sharecroppers that they have in some other areas of Mauritania. Haratine, or black Maures, are freed slaves. When they cultivate the same lands they did as slaves, even if they were freed more than a century ago, they are usually considered to be still cultivating their masters' lands. In the Mbout region, the Haratine came and cleared forested lands after already acquiring the status of Haratine so tne lands became theirs according to standard Islamic practice. In areas where they cultivate the traditional lands of their former masters, Haratine may own some of the land by purchase but traditionally regard the rest as still their former masters' land.

Similarly, while most Pulaar in the Mbout/Foum Gleita region are recent arrivals as agriculturalists and acquired land only through an arrangement with the land owners, this is not generalizable to Mauritania as a whole. In the Boghe area the Pulaar owned virtually all the agricultural land and so have acquired the great majority of the parcels in the Boghe irrigation scheme.

The table on the following page summarizes the land under irrigation along the Gorgol River and the Mauritanian side of the Senegal River. It should be born in mind that this is only a fraction of the irrigable land in these river valleys.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Ordinance No. 83.127 of 5 June 1983 and Decree No. 84.009 of 19 January 1984 lay out general principles of land tenure and provide a framework which is to be followed by all development efforts making use of rural or urban

Irrigated Land in Senegal and Gorgol Valleys (in hectares)

	1979	1983	1984	1985
Large Perimeters				
Mpourie (Senegal River)	1800	1652.6		
Boghe (Senegal River)	0	153	380	700
Kaedi (Gorgol and Senegal Rivers)	700	600	700	700
Foum Gleita (Gorgol River)	0	60	435	600
Other Sonader Perimeters				
Rosso Section of Senegal River	104	769		
Boghe Section of Senegal River	380	500		
Kaedi Section of Senegal River	335.5	397.24		
Village Perimeters				
Rosso Section of Senegal River	126	303.5		
Boghe Section of Senegal River	?	20		
Kaedi Section of Senegal River	?	99		
Other Private Irrigated Perimeters				
Rosso Section of Senegal River	569.5	852.1		
Boghe Section of Senegal River	?	10		
Kaedi Section of Senegal River	?	92.5		
Total	4015	5508.94	1515	2000

lands. Their main provisions have general implications which are relevant for the specific application of the law. Ordinance 83.127 and Decree 84.009, which applies the Ordinance, were distributed to Mauritanian officials during the summer of 1984. Since then the Ministry of Interior has held a number of press conferences around the country to publicize the new land tenure law and explain it to the local population. The law itself is a complex document that provides a series of general principles, a context within which those principles are to be applied, and a procedure for applying the law. The general principles enunciated are thus carefully conditioned by the two other parts of the law.

The basic principles of the new law are set forth in the ordinance. The most fundamental are:

a. Article 1: This article states that all Mauritanians have an equal right to be land owners. It therefore sights in particular the Haratine who in some areas of Mauritania are not considered to have full ownership of the real estate they cultivate. It also refers indirectly to the traditional presence of slaves who by definition owned no lands. Slavery has been outlawed in Mauritania but there are nevertheless many former slaves and descendants of slaves who are not generally viewed as land owners and do not view themselves as owners of the lands they cultivate.

b. Article 2: This article declares tnat the state recognizes private property as the standard form of ownership. The contrast here is between private property and lands held collectively by each fraction of each of the ethnic groups. The purpose of this article, and related articles in the Decree, is to encourage the individualization of property. Its effects will be to undermine the current economic basis for the political power of the major clans and fractions of clans. (It remains to be seen whether the law will actually erode their political power or if new economic bases will be developed.)

c. Article 3: This article abolishes traditional land tenure in principle. While it states unequivocally that traditional land tenure is abolished, the rest of the law makes it clear that what is really abolished is the right to appeal to traditional land tenure against the state when the state decides to declare particular lands as Domain lands. The law actually leaves traditional land tenure alone except when it comes in conflict with the development effort. It also provides a land registration procedure as the simplest way of establishing individual ownership. Registration is encouraged but does not entirely replace the standard shari'a procedures.

d. A series of articles refers to the continued validity of Islamic shari'a in areas where it does not conflict with the current law. Article 9 and following articles set up two ways for land to leave the jurisdiction of shari'a: by being officially registered as private land or a legal cooperative and by becoming Domain land (which may then be given as concessions to individuals).

e. A series of articles sets up the basis and procedures for declaring lands Domain lands and the procedures for making concessions of those lands to individuals or corporate entities.

f. The Ordinance also states that the "essential space" of every community will be decided upon. Land outside this limit must be owned by private parties or legal cooperatives. If not, it is open to being declared Domain land. In particular, boreholes and wells which are built in lands not owned by their builder become public utilities and the builder only has a right of priority (Article 22).

The Decree adds a number of details to each of these points and notes that collective lands can be preserved as collective lands only by forming a legal cooperative that meets the criteria for cooperatives; all members have equal rights and equal duties (Article 21).

A number of administrative procedures are set out which must be followed when lands are to be declared Domain lands but the principle on which the procedures are based is the shari'a idea of indirass. The doctrine of indirass is simply the idea that land which is not used for a certain period of time reverts from private ownership and becomes available to the Islamic community for private or public acquisition. Indirass in its most basic form relies on the absence of signs of cultivation or occupancy to determine the time when former ownership lapses. In Maliki doctrine ten years of neglect is considered sufficient even if signs of former use remain. Because the essential determinant of indirass is absence of any trace of cultivation,

irrigaton works, or constructions, the indirass principle has a great deal of flexibility. The Qadi of Mbout feels that indirass can be applied in that region after two years of neglect under present ecological condition.

Indirass is a key to understanding the new land tenure law because with present climatic conditions dieri lands show little or no signs of cultivation after two years. This is true as well as for walo lands, where no construction or irrigation infrastructure has been erected. This means that a major part of cultivable land in Mauritania could legitimately be declared Domain land. As the law is written this must be done in specific cases and not generally. Further, the former owners are given a grace period of two months to produce evidence that the land is theirs and in use before a declaration that specific lands are Domain lands can take effect. In practice such a declaration is not likely to prove as straight-forward as one might think. Shari'a emphasizes the priority of testimony over written documentation so in principle a land owner need only produce honorable testimony that the lands are his and are currently in use. In addition, even should the lands not be in use it might suffice to produce testimony proving that they had been in use until forces beyond the individual's control such as ecological change (force majeur) removed them from production. This means that for most dieri and walo lands, when the state decides it is necessary in the context of a development project to declare particular walo or dieri lands Public Domain, it will have to follow the procedures for just compensation provided by the new land tenure law.

B. Pressures for Change in Legislation and Administration

The drought that has continued since 1968 has provided the principal impetus for change in land tenure practices. It has become clear to the government of Mauritania and development officials that it is only through changes in patterns of land use, including irrigation, that agricultural production can be raised. Moreover, these new development projects will only succeed when tenure patterns are altered. New land tenure legislation, enacted in 1983 and early 1984, provides the necessary first step toward major change in tenure patterns and agricultural production.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

Land tenure is a highly sensitive issue in Mauritania. If drier than usual ecological conditions persist, Mauritanians are faced with the prospect of having a country in which only the southern edge is capable of sustaining any significant level of agricultural or animal production. In such circumstances the residents of the northern two-thirds of Mauritania have an interest in being able to acquire some form of access to the productive lands in the southern third of the country. On the other side, those already owning or exploiting lands in that region are concerned that they may lose lands to people from other regions.

B. Land Tenure and Agricultural Production

The decline in agricultural production has been due less to the land tenure system than to the persistent drought. Improvement in agricultural

production in the future, on the other hand, has been linked by the government of Mauritania to change in the land tenure system, a position made clear by the enactment of new land tenure legislation.

C. Implications for Project Design

Although the new land tenure law abolishes customary land tenure practices where they conflict with development efforts, it has not extinguished pre-existing claims to land entirely, and these pre-existing claims are likely to be pressed at some point in the life of the development project. That is, those with claims to the land that is being "developed" are likely to try to enforce their continued rights to the land. And this is not surprising, given that the land will take on new value. For project planners, it is necessary to take into account that such claims are likely to arise and to consider how best to deal with them. Nor will the claims necessarily be put forward by one group or individual. In the past land in Mauritania has been subject to a variety of uses that may be seasonal or even occasional, and each of these uses may give rise to claims on the land. In short, project designers will need to realize that conflicting claims to the land are likely to arise and will need to be resolved in a way that assures the survival of the project; it is not sufficient that the new land law gives precedence to the development effort.

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LAND TENURE PROFILE: MOZAMBIQUE

SUMMARY: The Portuguese administration of Mozambique really dates from the late nineteenth century. Land policy can be best described as ad hoc, under-financed and exploitative. During the fight for independence the Frelimo movement introduced communal land organization in the "liberated" zones. When the government gained the rest of the country it was not able to implement its policy in an effective manner. Civil war and policy shifts have prevented any coherent agricultural planning and land policy to develop.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Portuguese colonial rule of Mozambique, which lasted until 1975, emphasized the importance of large, export-orientated plantations and European commercial farming ventures. African agriculture was almost completely neglected, and policies of forced labor, resettlement (for both economic and military reasons), and labor migration did little to encourage indigenous production. Independent Mozambique, in contrast, under the leadership of Samora Machel, has chosen to follow a socialist path which centers on the role of state farms and cooperative production.

Most Portuguese plantations and farms were abandoned at independence, and these have become state farms. The 1979 Mozambique land law, which vests ownership of all land in the state, emphasizes the role that state farms and central planning are to play in Mozambique's development and lays out the conditions for land use rights. A recent report, presented at the Frelimo's 1983 Fourth Congress, brings into question the utility of this policy, however, noting that production levels on the state farms have been disappointingly low, despite the heavy investment in mechanization and other inputs. Peasant production (generally referred to as "family production") has also decreased, largely due to poor returns to the producer, an inadequate marketing system, and, in general, little incentive to increase production. The 1983 report recommends that the family sector be given immediate priority, but it is not yet clear what measures have been or will be implemented to achieve this goal.

B. Private Tenure

1. Customary Tenure

Virtually no research has been done exploring the systems of customary tenure among African societies of Mozambique, a subject the Portuguese found largely irrelevant and one that, given the war of independence waged from 1964 until 1974, few foreign researchers directed their attention to. In general, it can be said that African agriculture was practiced amidst conditions of sufficient amounts of land to allow for slash-and-burn techniques of cultivation. Clearing the land brought rights to it, rights that applied so long as the land remained under cultivation. Once the land had been exhausted, a new field would be cleared and thus rights to it established. Only in areas along river valleys was land likely to remain under more or less permanent cultivation. Land could be passed from one generation to the next; in the north inheritance was matrilineal, while in the south it more often followed a patrilineal pattern.

The presence of the Portuguese, dating from the sixteenth century, brought little change to tenure practices until the twentieth century, when emphasis on plantation production and on the importance of European (i.e., Portuguese) settlers to economic development of Mozambique led to the displacement and resettlement of substantial numbers of Africans. Still others were displaced, particularly in the northern part of the country, during the war for independence fought by Frelimo between 1964 and 1974; some were resettled in villages which the Portuguese hoped would be secure against Frelimo, while others were set up by Frelimo in villages of communal production.

2. Freehold and Leasehold

When the Portuguese first began to settle in Mozambique, all uninhabited land was declared to be Crown land. From it large tracts of land (prazos) were granted to individuals under terms of either perpetual hereditary rights (the equivalent of freehold) or for three generations (equivalent to leasehold). This system was abolished in the late nineteenth century and replaced by one which granted land to three large commercial enterprises, which in turn could make sub-concessions to other companies for their development. During the 1950s and 1960s, in further schemes to encourage European immigration, colonists were given substantial amounts of already cleared land for their own use. (It is not clear whether these were grants in freehold or in long-term leasehold.)

Private property was abolished under the 1979 land law, and although the government has taken over the farms and plantations abandoned by the Portuguese at independence, it continues to recognize the rights of those who remained in Mozambique. Rather than recognizing these rights as freehold, however, it grants leases of from five to fifteen years.

C. State Land

Ownership of all land is vested in the state, which grants the use of it for its development. Land cannot be sold, rented, or mortgaged, but rights to the use of it can be passed from one spouse to another or to their heirs.

D. Urban Land Tenure

A limited nationalization of housing took place at independence, and homeowners were permitted to retain two residences for personal use. Landlordship was abolished, and a government office established to oversee housing and conditions or urban residence. Rent is now determined by income, and the figure is not to exceed ten percent of the tenant's salary.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

The land administration system of Mozambique is centralized under the direction of the Ministry of Agriculture, which also oversees state farms, communal villages, and producer cooperatives. The Ministry of Agriculture has the responsibility for the designation of areas of land for agricultural purposes and for the determination of which areas shall be set aside for farming, animal husbandry, and forestry uses. Only with regard to the family sector of agriculture (i.e., peasant producers) is planning less centralized, under the control of the provincial governments. In reality, though, there is less centralization of production, largely due to the fact that a number of districts are isolated because of activities of the South Africa-backed resistance.

The 1979 land law provides for the establishment of a National Land Register, in which all land in Mozambique is to be registered and its use reviewed periodically. There is no evidence, however, that even the first steps have been taken toward the drawing up of such a register.

B. Pressures for Change in Legislation and Administration

During the war for independence that waged from about 1964 to 1974, communal villages and producer cooperatives were established in the northern areas by Frelimo. Grouping farmers together allowed not only for better defense of the area, but also for the provision of educational, medical, and agricultural services. Production rose higher than it had been in the past under traditional cultivation patterns, and since independence the government has sought to establish producer cooperatives and communal villages in otner areas of the country.

The government's other emphasis in the area of agriculture has been on the establishment of state farms on those plantations and large farms abandoned by the Portuguese at independence. Workers on state farms are salaried, and production is highly mechanized. The state has invested heavily in these enterprises, and originally it was planned that they would produce the bulk of the food crops for sale in the cities and for export.

Despite the government's emphasis on these forms of production and, in the case of the state farms, despite subtantial investment, agricultural yields have been disappointingly low. This has been true in the family sector as well, where low prices to producers and inefficient marketing systems have

provided little incentive for raising production. In 1983 at the Fourth Congress of Frelimo, it was decided that in the future the government will consolidate rather than expand the state farm sector and instead turn its attention to the producer cooperatives and even provide encouragement for the family sector. This marks a change of emphasis as regards agricultural policy and land tenure systems from what had existed up to 1983, but no specific policies and programs have as yet been announced and it is not clear what the effects of this shift will be.

III. TENURE ISSUES IN CURRENT AGRICULTURAL POLICY

A. Critical Tenure Issues in National Policy

The most critical issue in Mozambique at the present is the food crisis, which has led to massive starvation in some areas. The government's shift of emphasis announced at the 1983 Frelimo Congress away from the state farm sector to the cooperative and peasant sectors is an attempt to deal with falling levels of food output by encouraging less centralized, more individual forms of production. These changes, however, have not yet shown results--largely because internal resistance by the MNR to the government continues.

B. Land Tenure and Agricultural Production

Agricultural production has fallen since independence in all sectors, on the state farms, in the communal villages, and in the peasant sector. Statistics that document carefully this decrease are non-existent and it is impossible to positively link forms of land tenure and production levels. Part of the fall has been due to internal fighting and to natural disasters, mainly drought. But it is also apparent that the government believes that low production levels are at least in part related to land holding patterns, and its new focus on peasant production and producer cooperatives is an acknowledgement of the disappointing results on the state farms.

C. Implications for Project Design

Despite the fact that agricultural production has fallen in Mozambique in the past decade, it is difficult to pinpoint the exact causes of policy failure. There have been a number of contributing factors, including internal struggles and droughts, and no research has been done to analyze the problem. The lack of adequate material for earlier years only compounds the difficulty of incorporating land tenure issues into project design. Nevertheless, there are several issues raised by present land tenure policy of the government that need to be considered. Was it appropriate to emphasize production for internal and external markets on the state farms? Many of the crops were what we would consider luxury products (e.g., meat and dairy products), and the government invested substantial sums of money in this sector. Although the program which sought to establish communal villages has so far shown little real return in terms of agricultural production, there are other benefits of such a program: medical and eductional services can be offered to areas where none existed before; technical assistance can also be provided to peasant producers.

Government policy toward land tenure and agricultural production appears to be undergoing revision at this point, but it is as yet unclear just what specific measures may be instituted to achieve the shift. Moreover, given the paucity of data about production levels and land tenure systems--for any period--project design cannot take into account land tenure questions merely by relying on previous research. Such material does not exist. Careful collection of data and analysis of the findings must be done at the earliest stage of project design.

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LAND TENURE PROFILE: NAMIBIA

Summary: Namibia is similar to other southern African nations in that it has been subjected to colonial administration and has been divided into "reserves" where the indigenous people may only hold land under trust tenure. Unlike these other countries, however, it has been the center of a major political battle that has attracted interest from all parts of the globe. In the Namibian struggle for independence several land tenure-related problems are of central concern.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

The colonization of Namibia began in the mid-nineteenth century with the arrival of missionaries, traders and prospectors. The German colonization efforts in 1883 encouraged Germans to settle in the country and led to a wave of white immigration. An increasing number of blacks were displaced to make way for the settlement of these German farmers.

In 1898 the governor passed a decree confining blacks to "native reserves" in order to make space for large farms to be occupied by white farmers. When the Germans were defeated in World War I, Great Britain mandated Namibia to the South African government. The discriminatory policies set up during the German period were continued by the South African administration, who concentrated on the "adjustment, consolidation and moralization" of these policies.

The Prohibited Areas Proclamation of 1928 consolidated the "native reserve" policy of the German administration and effectively divided the country into black and white areas. This was followed in 1954 by an act which placed all existing and future "reserves" under the trusteeship of the South African Bantu Trust, thus limiting the tenure options of indigenous Namibian people to trust tenure. Under this system blacks could only hold land that was owned by the South African Trust and could not own their own land. The South West Africa Act of 1968 laid down the legislative foundation for the creation of a "national states" or "homelands" system whereby each ethnic group was given its own state which would be self-governed. This was modelled on the system that was being implemented in South Africa (see South Africa Profile).

The strongest opposition to South African initiatives has come from the South West Africa People's Organization (SWAPO), who view agrarian reform as a vehicle for removing poverty and bringing about social justice. The major objectives of SWAPO are:

1. To make Namibia agriculturally self-sufficient, particularly with regard to food.
2. To improve the standard of living of Namibians who are forced to live in impoverished reserves.
3. To attain social justice by "the elimination of exploitation, the destruction of the dualistic economy and by encouraging a spirit of self-reliance."

The programs they envisage would include substantial state aid to farmers, particularly in the form of modern technology, cooperative production efforts such as collective farming, state-owned ranches and cooperative farms. This would be accompanied by a comprehensive agrarian reform program aimed at returning the land to the tillers.

The South African administration, on the other hand, wishes to retain the status quo and further entrench the system of self-governing national states for different ethnic groups. Although its mandate was revoked in 1966, the South African government continues to play a major role in most spheres of Namibian life.

B. Private Tenure

1. Customary Tenure

Customary tenure is still practiced in the homelands or national states, but it is not generally viewed as a viable tenure option for independent Namibia and there does not appear to be much written on the topic. Overgrazing is common in pastures under customary tenure as every livestock owner has the right to graze animals wherever he wishes. The system does not allocate the responsibility for the maintenance of pastures to anyone, presumably because in earlier times pasturage was far more abundant.

The rights to land under customary Namibian tenure have been described as usufructuary in nature, "impermanent and governed by the traditional unwritten law." One weakness of this tenure system is that it does not encourage individual or community investment in such improvements as fencing, soil and water conservation, and housing. It does not therefore address any of the problems related to the prolonged exploitation of the land.

In the more populous northern areas, the scarcity of land has caused a change in attitudes towards land. Land has acquired value and is being bought and sold. Although land is not regarded as a marketable commodity, it is possible that the customary tenure system could evolve into a feudal system with the more powerful community members acquiring more and more arable land for themselves and their families.

The integral relationship between the customary land tenure system and the traditional African social system makes it difficult to implement new

tenure systems in the short term. A longer term adaptation of existing customs and institutions should prove more acceptable and would probably be more successful.

2. Freehold and Leasehold

Sixty percent of the land in Namibia is held by whites who constitute ten percent of the total population. All of this white farmland is held under freehold tenure and can be divided into three categories:

1. Farms owned by individuals;
2. Mission-owned farms belonging to the Catholic Church and Rhenish Mission;
3. Company farms.

The Minimum Areas of Farm Size Commission recommended in 1948 that farm sizes be fixed at 3,000 to 5,000 hectares in the north, 7,000 to 10,000 hectares in the central highlands and over 10,000 in the southern regions and along the desert fringes. These figures were arrived at by analyzing factors such as capital costs, soils, rainfall, carrying capacity and problems of inheritance of property without subdivision. Although the lower limits of farms are enforced, no upper limit is observed and farm sizes range up to 80,000 hectares.

Blacks are not allowed to own or lease land nor are there any credit facilities for black farmers living in the homelands. The Land Banks of South West Africa and several South African banks provide credit to white farmers while coloured farmers have access to credit through the Coloured Development Corporation. The Rehoboth Investment and Development Corporate offers similar facilities to the Basters.

In 1970 approximately five percent of the beef farms were leased, 0.1 percent held on a share basis and the remainder owner-operated. Land is leased from company farms or from the government.

C. State Land

Approximately 17 percent of the land in Namibia is owned by the state. Game parks and nature reserves account for 7 percent of total state landholdings. State land is also set aside for urban areas, leased to mining companies and used as emergency grazing for livestock. The government also owns farms that are used as experimental and agricultural demonstration farms.

D. Urban Land Tenure

Urban areas occupy a mere one percent of the total land area in Namibia. The urban population is estimated to be in the region of 27 percent of the total population with the largest city, Windhoek, having a population of approximately 62,000. It is anticipated that the abolition of pass laws and the system of apartheid will lead to an increase in rural-urban migration. Little has been written on urban land tenure in Namibia, but with an annual population growth rate of 2.7 percent and limited prospects in rural areas, policymakers will have to give this subject more consideration.

E. Distribution of Types by Region or Ecological Zone

The map on the following page shows the distribution of the homelands, white freehold farmland and state-owned reserves.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

The South West Africa Affairs Act of 1969 has led to a situation where administratively, legislatively and financially Namibia is a satellite province of the Republic of South Africa. This act gave the State President of South Africa the power to:

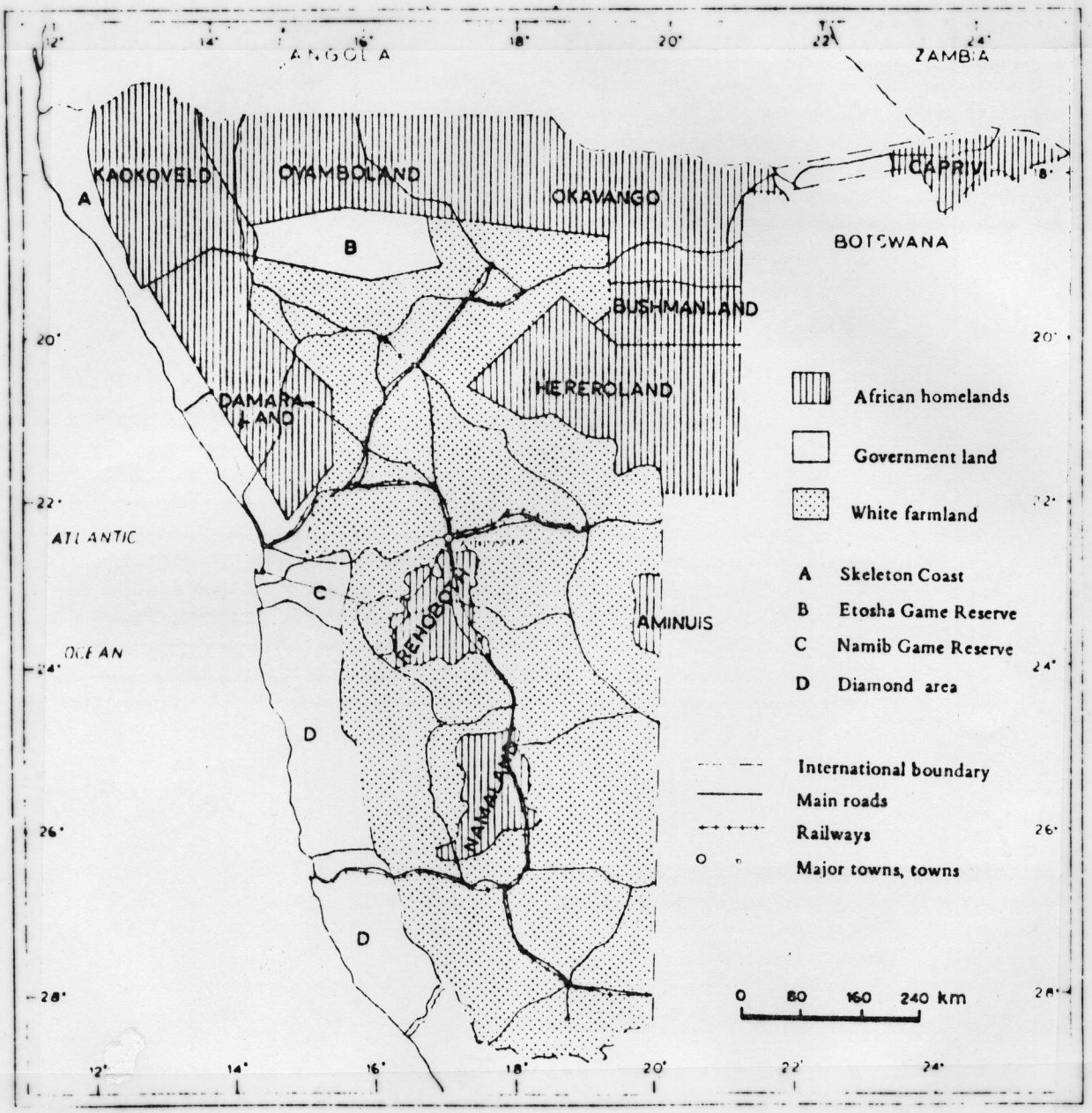
a. Declare any provision of any law of the Republic which relates to a scheduled matter, to apply also in the territory, and;
b. Repeal, amend or modify any provisions of any law in force in the territory relating to certain matters.

By 1972 the land administration system in Namibia closely resembled that of South Africa. The South African Deeds Registries Act was made directly applicable to Namibia through an amending act passed in 1972. Until the creation of a deeds registry in the self-governing "district" of Rehoboth, the Deeds Registry in Windhoek handled all deeds and documents relating to land in Namibia. The Deeds Registrar for Rehoboth is appointed by the Minister of Coloured, Rehoboth and Nama Relations.

Soon after Namibia was mandated to South Africa, a Surveyor General's Office was set up in Windhoek in order to facilitate the transformation of the German system into the land registration system in operation in South Africa. In order to obtain title to a piece of land, the land parcel must first be surveyed by a registered land surveyor and a diagram framed from this survey. The diagram is attached to a deed drawn up by a qualified conveyancer and together they constitute legal evidence of title to land. Information such as the owner's name and references to the relevant documents is extracted from the deed and diagram and placed in a property register which provides an up-to-date record of the title status of all land parcels. All deeds and diagrams are examined prior to registration by the Registrar of Deeds and Surveyor-General respectively.

An administrative division has been created between the so-called "Police Zone" and the major "reserves" in the north. The Police Zone comprises the white areas, which are divided into magisterial districts, and all the reserves with the exception of the major reserves of Ovamboland, Okavango and Caprivi situated in Northern Namibia. In the past a white official under the district magistrate was responsible for allocating land to blacks in the "reserves" within the Police Zone. These responsibilities have been transferred to the state president who has the "political power and authority of the paramount chief or the supreme chief of the Africans." The duties of the state president in this regard are administered through the Minister of Plural Relations. Although there is some attempt to retain traditional land

Land Distribution in Namibia Since 1963



allocation practices, the shortage of land and the imposition of systems based on the principles of apartheid have seriously eroded the status of traditional institutions and customs.

In 1977 the chief executive authority, carrying full administrative powers, was transferred to the Administrator-General, an official appointed by the South African government. The mission of the Administrator-General is to make the necessary changes required to pave the way for independence. One of the minor changes that has already been made was to place the Surveyor-General's Office under the Department of Justice in order to bring it closer to the Deeds Registry.

B. Pressures for Change in Legislation and Administration

Pressures for change in land distribution (as well as in other matters in Namibia) have come mainly from the indigeneous Namibian people and the international community through the UN. When Namibia finally gains independence, one can expect major reforms to the land administration system and to the distribution of land. The South African government have made it clear that they would like to see an independent Namibia modelled along the lines of the republic. They have attempted to do this by promoting discussions (such as the Turnhalle Conference) designed to propagate the principle of separate development of different ethnic groups. This would, of course, mean the perpetuation of the divisions in land that exist today.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The primary issue in the long-term agricultural development of Namibia is the redistribution of land. Land acquisition by blacks, restricted by colonial powers since the beginning of this century, effectively excludes blacks from the economic "mainstream." This unbalanced division of Namibia's land base has produced popular pressure that makes inevitable post-independence land reform. Possible policy options include the following:

Freehold. Due to chronic drought conditions in Namibia, small producers would probably be forced to sell off their land thereby creating an elite group of large landholding black farmers. Replacing a white elite class by a black elite class would most likely be unacceptable in terms of social equity.

Customary Communal Tenure. Aside from the "commons" debate which questions communal incentive to invest in conservation of the resource base, there also exists the very real potential (realized elsewhere in Africa) for abuse by land allocators as the economic value of land increases. However, the foremost problem with this option is that true customary tenure has been restructured by the colonial power into a form whch buttresses the current system and is therefore of questionable use in post-independence Namibia.

Nominal Public Ownership allows land use control by the state and is based on long-term leases. It facilitates the implementation of social goals by the state while retaining the flexibility to utilize land by capitalist or

social production means. Within this framework, three types of production units are possible. The individual family unit would be allotted land by local administrations for specified lease periods. However, the lack of infrastructure, credit problems, and problems with small-scale production in a marginal climate are serious constraints. Group farming units (cooperatives?) present another possibility whereby each individual works his own plot and accrues the benefits, while cooperating on production aspects that are too difficult or expensive for single individuals. This provides some economy of scale, while still facing the constraints of credit and management organization.

Public Ownership would entail the nationalization of freehold farms with (a) no compensation, (b) moderate compensation, or (c) compensation at market value (infeasible from a treasury standpoint). State farms would be a means of maintaining production in the transition period, but face difficult constraints in organization and accountability to avoid abuses by managers. Self-Management units, similar to state farms, would be run by former contract workers with looser ties to the state, but this system again risks encouraging a new elite class. Collectives also potentially provide economies of scale and better resource management through institutionalized control. However, this requires extensive government administration capabilities difficult to attain quickly. Also, some studies argue that the African culture context of gender and age labor divisions conflicts with the equal division envisioned in collectives.

In general, all these options face the constraints of limited skilled manpower for government administration as well as for extension services. The climate and lack of infrastructure argues against very small operations in all but the northern areas. Despite Namibia's low population density and moderate availability of new or underused land area, the general marginality of the resource base makes it particularly susceptable to accelerated degradation through overuse and poor management. Thus, it is crucial for the post-independence government to carefully balance both the social and production ramifications of proposed tenure reforms.

B. Land Tenure and Agricultural Production

Land tenure is an important issue in the agricultural sector of any country, but in Namibia water is at least as important. Surface and ground water is scarce and most of the country obtains its water from very deep boreholes. Access to boreholes is therefore essential if any farmer is to make a living.

Although the customary tenure system in the "reserves" does not facilitate the most productive use of the land, it cannot be separated from other related factors, such as land shortage, which interact with tenurial practices leading to poor agricultural performance. Overstocking is due partly to the importance of cattle as a status symbol and partly to the restriction on land acquisition. Many blacks are forced to enter the contract labor system, particularly in the mining and white agricultural sectors, thus removing them from their own farms. In this respect the "reserves" have become more like labor "pools" or "dormitories" than farming units.

If tenure reform is to be successful, it must be accompanied by physical infrastructural development. This could prove very costly owing to the relatively underdeveloped state of the existing infrastructure and to the extremely low population densities. The latter factor will inevitably lead to high per capita costs for physical infrastructure investments, but these could be minimized by establishing centralized state and cooperative farms.

C. Implications for Project Design

Namibia's post-independence experience will probably be similar to that of other African countries. In this respect it may be useful to examine the land tenure policies of these countries in an effort to find land tenure solutions for Namibia. There are, however, some serious differences between Namibia and countries such as Botswana, Kenya, Malawi and Tanzania, which must be taken into account in the project design stage. These factors may be summarized as:

1. A severe shortage of water and an unpredictable rainfall;
2. A very low population density, second only to the Western Sahara in Africa;
3. The artificial division of the country into "reserves" based on certain ethnic qualities;
4. A valuable mineral resource base;
5. A weak civil service, largely seconded from South Africa, whose continued presence after independence cannot be relied upon.

Any proposed development strategy for Namibia will have to deal with the problem of matching unavoidable practicalities with national ideals. This often suggests conflicting strategies, evident, for instance, in the equity-versus-productivity issue. This will not be a simple task, particularly in view of the diversity of beliefs and interests in the country.

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LAND TENURE PROFILE: NIGER

Summary: Customary land tenure practices remain in force throughout Niger. Low levels of agricultural production as well as recent drought have provided the impetus for the government's new campaign to raise production. Although to date it is seeking to do so by increasing prices to producers, the success of future projects intended to raise production levels, including land irrigation, will very much depend on satisfactory solutions to land tenure issues.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

The major changes in land tenure practices in Niger have been caused by the recent drought, by a breakdown in traditional trade and exchange relationships between ecological zones in the twentieth century, and by a complete destruction by the French military of the old hegemony of such groups as the Tuareg. Droughts have been cyclical in this part of the world's desert belt for more than two millennia. In the pre-colonial period pastoralists organized the trade and exchange relationships between the desert, the Sahel and the open forest land to the south. The system, though unacceptably repressive even to colonial administrators, made it possible to survive droughts and other natural disasters. Tenure practices remained flexible to accommodate the transfer of populations from one zone to another as conditions changed.

Colonialism changed all this. Groups like the Taureg were seen as a military threat and their power was broken. The old exchange relationshps were largely suppressed, and production re-oriented toward Europe. Land tenure became much more localized during the colonial period. Since independence, the state has tried to introduce new "cross-cutting" tenure institutions, structures which are flexible to allow for integration of a group into another ecological zone in times of disaster. The current series of droughts has emphasized the fact that most regions of Niger can never have been self-sufficient entities. The direction of change in tenure practices will continue for some time to be influenced by efforts to find a new form of security compatible with the necessary ecological demands of flexibility.

B. Private Tenure

1. Customary Tenure

Tenure in Niger is almost everywhere a form of customary law and practice that has been modified in response to the historical dynamics discussed above. In broad terms, the tenure situation can be divided into two major categories: the tenure of those who are primarily cultivators and that of pastoralists. Among the agricultural Songhai and Djerma of the western Niger river basin, land is controlled by the town chief, who allocates it to extended family heads. Theoretically, he can call it back for redistribution but this is extremely rare. Among the Hausa and settled Fulbe- (Fulani or Peul) speakers, land ultimately belongs to the community and is unalienable; acceptance into the community gives one use rights. In the southeast of Niger, the Kanuri hold land under the authority of the senior male of the patrilineage. This land too is unalienable.

Land tenure arrangements among pastoralists, on the other hand, can be divided into two major types. One type is found among the Tuareg (and other Tamachec speakers) where there is a regular transhumant circular movement that corresponds to the rainy season. In the dry season, herd movement is organized around a series of wells that have been put in by the group. The other land tenure/range management system is best represented by the Fulbe-speaking Wodaabe, nomadic cattle keepers who were able to move into areas under Tuareg control after the French established their rule. In general, they migrate along an East-West axis, thus crossing the traditional Tuareg routes. In both pastoral groups it is the control of water that gives control over land.

2. Freehold and Leasehold

The holding of land as private, registered property has theoretically been possible since the Decret of 24 July 1906, which established freehold tenure in French West Africa. This law, together with its subsequent updating in 1959 (Ordonnance no. 59-113), has to date had minimal effect on rural land holding in the country.

Associated with this concept is the 1974 declaration by the President that land belongs to the tiller. The statement, however, has not lessened the use of share-cropping as a means of gaining access to land belonging to other kinship groups. Use of a formal lease in rural areas is, for all practical purposes, never considered. Rather, use of the land held by another is handled through customary arrangements.

C. State Land

Laws number 60-28 and 61-31 established the power of the state to manage agricultural land for the benefit of the people and laid out the rules of compensation. Most projects where tenure control passes out of the hands of traditional authorities are located in the Songhai/Djerma irrigation zone. It is in this zone that new policy is being forged that will eventually be applied to the rest of the country.

D. Urban Land Tenure

Only Niamey, the capital, has a cadastre that is more or less up to date. The other urban centers have a form of plot tenure that is customary in origin. Many of these small urban centers were marketing hubs in the ancient empires and customary concepts allow for urban plots to be rented and exchanged in response to changes in price and relative value. Even though this practice has many similarities on the surface with private, freehold tenure, the two should not be conflated.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Administratively the country is divided into prefectures, sub-prefectures, arrondissements and cantons. But since the majority of land decisions are made within the kinship group, one might say that most land use administration in the country is done by the family moot. This is not to say, however, that general administrative guidelines have not been put forth, but rather that the harshness of the environment (two-thirds of the total area of Niger is classified as arid or semi-arid) and the continuing reliance on customary tenure practices do not lend themselves to use of a single, national structure.

B. Pressures for Change in Legislation and Administration

Pressures for change in legislation and administration are being produced on the one hand by the ravages of the drought and, on the other, by the unworkability of the current governmental machinery for dealing with land matters, which is largely irrelevant. A series of laws, for example, limits the northern extent of cultivation. Its purpose is to prevent cultivators from advancing beyond reasonable environmental limits and thereby to avoid further range degradation and soil erosion. The laws have had little effect on actual practices and are unenforceable without great numbers of monitors and expenditures of money.

New agro-industrial projects, including ones involving irrigation, will also require careful scrutiny to land tenure considerations on a project-by-project basis, something that has not always been undertaken.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

Because uranium has failed to have the favorable impact on the Nigerien economy that was originally predicted, President Kountche and his government are putting increasing emphasis on raising agricultural production. Only 3.15 million hectares, however, or about 2.5 percent of Niger's total land area, are under cultivation, and of this amount, only 30,000 hectares are irrigated. One way in which the government hopes to achieve production

increases is through irrigation projects, such as the Kandadji dam project, which is designed to start in 1990 and would irrigate some 110,000 hectares of land. Land tenure issues in these newly irrigated areas will be important factors in the success or failure of the projects, and must be resolved.

Another critical issue is the increasing desertification of northern areas in the country. This is due not only to droughts but also to the fact that the national herd doubled between 1930 and 1970 and has thus placed more stress on grazing lands than in the past. Range management in some form is a necessity, but will perhaps disrupt pre-existing tenure patterns and require limiting customary transhumance patterns.

B. Land Tenure and Agricultural Production

Land tenure issues for the present are not important factors in the low level of agricultural production in Niger. Rather, the principal cause of low production levels is the government's control of marketing through the official agency, the Office des Produits Vivriers du Niger (OPVN). The OPVN has a formal monopoly on all crop purchases, and the prices it pays, which have been low, are set by the government. Because of this, most peasant producers prefer either to produce solely for their own use or to sell their crops privately. The government has recently begun to relax its control over peasant producers, to allow them greater control over their own cooperatives, and has also raised prices to be paid for their crops. It hopes by these measures to increase agricultural production.

C. Implications for Project Design

Projects in which foreign development agencies are likely to be asked to participate by the Nigerien government will probably be those which deal with irrigation, livestock management, and peasant cooperatives. In all of these cases land tenure issues will be important, for land is not in short supply in Niger, but rather must be brought into production in ways that will satisfy the peasant producers, who have shown themselves unwilling to produce for low returns, and yet insure that land is used carefully and its resources, as well as those of the project, not wasted.

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LAND TENURE PROFILE: NIGERIA

Summary: By virtue of the 1978 Land Use Decree, Nigeria's land tenure system is characterized by governmental land allocation by administrative units at both the state and local levels. These units are empowered to issue "rights of occupation" that transform most rural dwellers into tenants of the government. Although the decree allows continued use of land by the holders of that land, the government reserves the right to revoke the rights of these holders when necessitated by the public interest or for failure to comply with the terms set out in the rights of occupation. Despite the implementation of this decree, however, the majority of rural people still hold and occupy their land as they did traditionally.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Although most land holders still hold land under customary tenure, the Land Use Decree of 1978 places all land under the trusteeship of the state and replaces traditional land allocators with bureaucratic administrators. This decree attempts to bring uniformity to land tenure rules throughout Nigeria by restricting multiple rights and access to the same parcels of land. The decree also facilitates state land acquisition, which prior to 1978 frequently involved protracted litigation. The Nigerian government is attempting to replace the community as the trustee of the land and thereby to convert the smallholder into a state tenant. Despite this recent legislation, the concept of individualization appears firmly established, as evidenced by a 1971 study showing that 7.75 percent of Nigerian land had been involved in sale transactions.

B. Private Tenure

1. Customary Tenure

Population parameters (e.g., census figures for absolute population, annual percentage growth of population, and distribution both between ethnic groups as well as between rural and urban centers), a major factor in any analysis or measurement of growth or development, are with certainty absent in Nigeria. Indeed the entire issue of "population," distribution, and growth rates are all volatile and extremely sensitive subjects in Nigeria.

This sensitivity is due in part to the demographic characteristics attributed to Nigeria's population. Compared to many other states in Africa, Nigeria is a land of extremes--population is estimated between 75 and 100 million, with a three to four percent annual increase. Nigeria is "blessed" with a great diversity in ethnic groups, last estimated at approximately two hundred. The last accepted census in Nigeria was in 1953, prior to independence. Censuses after this date have all been disputed, and it is argued that the results of the 1967 census were a contributing factor to the start of the Nigerian civil war. Population parameters have thus been extrapolations based on the 1953 and 1967 censuses. Also highly debated is the "precise" size or distribution of the three major ethnic groups, Hausa-Fulani, Yoruba, and Ibo (located in the north, southwest, and southeast respectively), and the remaining ethnic groups dispersed throughout the country. Some estimates note that the three major ethnic groups constitute a majority (approximately 55 percent) of the population, while other estimates show the combined totals of the minorities constituting a majority. Whether majority or minority, the three main groups tend to dominate politics and economics in their respective regions and compete aggressively in business and politics at the state and federal level.

In delineating customary tenure practices with respect to later post-independence developments, a North-South dichotomy provides a convenient basis for making comparisons. In general terms, customary tenure in the southern part of Nigeria is based on lineage control of land. The oldest male in the lineage allocates land to extended families, who hold heritable usage rights to the allocated land but who may not permanently alienate it to others. Among the Ibo, Nupe, and Yoruba (to name a few), land allocation, transfer, and issues of dispute are decided by the lineage head. The Tiv, an example of a community organized at the level of the family compound, recognize the compound head as the allocator of land and arbitrator of disputes. In addition, with the exception of the Yoruba, these southern groups possess less rigid hierarchical and stratified social structures than those found in the North. Formerly, and in contrast to northern practices, slaves could inherit the land on which they paid tribute.

In the North, the customary land tenure pattern consists of indigenous Hausa practices over which Islamic Fulani customs have been superimposed. In these societies it is the theocratic elite who allocate land to subordinates who in turn distribute it to their "serfs," indigenous Hausa. The Hausa pay not only a ten percent religious tithe, but also tribute to the immediate "fiefholder." Often the use rights are not inheritable, but instead revert to the "fiefholder." In other instances where the land is inheritable, it is passed on according to customary patrilineal inheritance practices. During the colonial period the tribute to those with superior claims to land which had formerly been paid in produce frequently was converted to a cash payment.

Although land sales occurred only rarely among most ethnic groups in Nigeria in the past, most groups allowed for a system of land alienation through gifts, pledging, and loans. With gifts, land usage rights could be transferred to others in specific circumstances; pledging, similar to pawning, allowed the land to be used for loans upon repayment of which the land could be redeemed. Loans of land are temporary, but may be for shorter or longer periods of time.

Under colonial rule a dual system of land tenure was instituted that continued until 1978. In this system, land in the northern portion of Nigeria was nationalized and the state assumed allocative powers. Land rights were restricted to "Northerners," and they alone had "rights of occupation." Nevertheless, most tenure continued along the lines detailed above. Southern Nigeria, in contrast, was considered Trust Reserve Land in which traditional tenure systems remained intact. Although these systems did not change customary tenure practices, the colonial land tenure law in the North served as a basis for the Land Use Decree of 1978, which is applied nationally.

2. Freehold and Leasehold

Under the provisions of the 1978 Land Use Decree (see IA and IB), all land is vested in the State, which delegates the power to grant "rights of occupancy" to individuals and groups for specific areas of land. Thus, freehold is theoretically abolished, and the new tenure arrangements provided for under the law are a form of leasehold.

However, in reality, much land in Nigeria has become and remains what is known as "family land," and represents land formerly in community hands and allocated to families. This concept developed in "common law" court decisions, with a family generally defined in terms of the descendants of the founder of property unless definitely proven otherwise in local custom. In court disputes, the burden of proof is placed on the party representing the less common form of tenure in an area (eg., individual, family, or communal). Thus, the party claiming a family holding in a predominantly communal area has to prove the transfer of land to his founder. Land registered as individual or family land prior to the 1978 decree remains vested in these holders, but is now held under a right of occupancy rather than freehold. Occupancy permits have only been issued in limited areas, such as development projects. Actual tenure practice for most farmland remains unaffected by the decree.

C. State Land

Before March 1978, land holding in the northern states of Nigeria had been governed by the Land Tenure Law of 1962. This law had reproduced most of the features of its predecessor, the Land and Native Rights Ordinance, which had been introduced to the protectorate in 1910 following the recommendations of the Northern Nigerian Lands Committee. The Land and Native Rights Ordinance had declared all lands in Northern Nigeria to be "under the control and subject to the disposition of the Governor," to be "held and administered for the use and common benefit of the natives of Northern Nigeria." The Governor was given the power to grant and revoke "rights of occupancy," and to demand rents. In exercising the powers conferred upon him by the law, however, the Governor was to "have due regard to the native laws and customs existing in the district in which such land is situated."

On 29 March 1978 the Federal Military Government of Nigeria promulgated the Land Use Decree, which, with immediate effect, vested all land in the territory of each state of the Federation in the Governor of that state. The land was to be "held in trust and administered for the use and common benefit of all Nigerians" in accordance with the provisions of the Decree.

All land thus becomes State land. Specific provisions of the decree, however, are less unambiguous and actually appear to contradict each other. Inheritance procedures, for example, are still to follow customary practices, while transfers of land may or may not require administrative approval to be valid. Moreover, local land allocation committees have the power to expropriate almost any land within their jurisdiction and to redistribute it for either public or private purposes. Subsequent interpretations of the law and changes of government have done nothing to clarify these ambiguities.

D. Urban Land Tenure

Urban land tenure and land rights are laid out more clearly under the 1978 decree than are rural practices. Land in urban areas is under the control of the State Governor, and it is he who grants "statutory rights of occupancy," rights to use of land in areas where customary tenure practices have no application. Intended to eliminate increasing land speculation in urban areas, the decree appears merely to make the situation more confused and to foster speculation and irregular transfers of land. What the actual effects of the measure on land tenure practices are not yet entirely apparent.

E. Distribution of Types by Region or Ecological Zone

See Section B.1.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

The 1978 decree distinguishes between urban and non-urban (rural) land and provides for administrative framework for land in each area. In urban areas Land Use and Allocation Committees are to be appointed by the Governor and to advise on the administration of land, while Land Allocation Advisory Committees are to have comparable powers in the rural areas.

Land rights in rural areas are "customary rights of occupancy," rights granted by local government to any person or organization "lawfully using or occupying land in accordance with customary law." Such grants of land cannot exceed 500 or 5000 hectares for cultivation or grazing purposes, respectively. Local government may expropriate land for public purposes and revoke customary rights of occupancy in doing so. It must also approve all alienations of customary rights of occupancy (e.g., sales of land).

B. Pressures for Change in Legislation and Administration

Inasmuch as the Decree of 1978 is a fairly recent attempt at tenure reform, no new laws appear forthcoming at this time. Nevertheless, pressures for modifying the decree have arisen. Firstly, the lack of judicial control over all aspects of the decree is seen by many Nigerians as an invitation for abuse by state allocators. Nor does the decree address the problem of unequal access by the influential and the rich witnin Nigerian society and this problem remains a potential area of considerable resentment. The very ambiguities and contradictions in the decree's provisions point to the need for at least some revision or clarification, but the present government appears little inclined to do so.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

In addition to the issues stated in the last section, the question of land tenure security remains unresolved with the issuance of the Land Use Decree. Although many people argue that traditional tenure is inherently insecure, it is questionable that "rights of occupation" are an improvement when the government has the right to divest the smallholder of his land for failure to meet standards the government itself sets. These standards are ill-defined in the decree and are therefore open to diverse interpretations on the part of each government administrative body dealing with land tenure. Perhaps it is for this reason that the majority of smallholders have been reluctant to comply with the law's provisions, resulting in the generally slow implementation of this plan except in areas where the government is setting up large development projects.

B. Land Tenure and Agricultural Production

Various agricultural economists have blamed customary land tenure practices for failures of agricultural production levels to rise markedly in the past twenty years. Vague and indefinite terms of leases, subleasing, crop restrictions, and uneconomic rents are all said to be responsible for low production levels. Moreover, insecurity of tenure on the part of the tenant militate against investments of capital or labor which would result in higher yields. The evidence for this, however, is not unanimous. Customary tenure practices have permitted the expansion of cocoa production in the forest area and provided little obstacle to ground-nut cultivation in the North earlier in the century. And of most immediate importance, it is highly unlikely that whatever the defects of customary tenure practices they will be remedied by the Land Use Decree. If insecurity of tenure is a characteristic of customary practices, it is even more marked under the provisions of the new decree.

C. Implications for Project Design

The contradictions and inconsistencies in the Land Use Decree and its application have far-ranging implications for project design. Until the government either clarifies or modifies the provisions of the decree, project designers will have to consider a range of possible tenure solutions. Given that the powers of the state and of its civil servants over land tenure matters are vast, project design will need to insure the cooperation of those government officials concerned with land matters as well as to provide for the continued participation of landholders involved in the project.

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LAND TENURE PROFILE: RWANDA

Summary: The critical issue with regard to land in Rwanda is the extreme fragmentation of holdings, the product of high population density and a system of inheritance which divides a man's fields among his sons. There are few alternatives to agriculture as a livelihood, and the government of Rwanda is committed to a policy of maintaining as equitable a distribution of land as possible. It has given legal force to this policy with the passage of a law in 1976 which prohibits sales of land over two hectares in area. The government is also establishing paysannats, agricultural settlements of small farmers relocated from more heavily populated areas. Agricultural production on these paysannats, however, has not been high and the reasons for this disappointing level of production need to be thoroughly investigated.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

With the highest population density on the African continent (over 200/km^2 and as high as 600/km^2 in a few areas) and with almost the entire population dependent on agriculture for its survival, land in Rwanda is a critical issue. The shortage of land has become especially marked in the past several decades as family size has increased and the average land holding size fallen.

In the years since the 1959 revolution, in which the ruling Tutsis were overthrown, the government has enacted legislation intended to prevent individuals or groups from accumulating large land holdings and to insure as equitable a distribution of land as possible. By abolishing the traditional exchanges of cattle and land between patron and client, the government has sought to end the hierarchical ties that were at the heart of pre-colonial and much of colonial Rwandan society.

B. Private Tenure

1. Customary Tenure

A great deal has been written on the division of Rwandan society between Tutsi and Hutu and on the cleavages and consequences of this division, and

much of the literature is ill-informed and ill-considered. To simplify the problem for the purposes of this brief survey, let it merely be pointed out that in the pre-colonial period the Hutu-Tutsi cleavage was not absolute nor as central in the society as it was to become in the colonial period. Chiefs and patrons were more likely, but not necessarily, to be Tutsi than Hutu, and clients and subjects were more often Hutu than Tutsi. Although pastoralists were usually Tutsi and agriculturalists Hutu, the categories were not exclusive. Furthermore, it also appears that the very terms Hutu and Tutsi were not widely used to define individuals' status and memberships during the pre-colonial period as they were later to become.

The settlement pattern in Rwanda, as in neighboring Burundi, is one of dispersed households rather than small villages. These households are scattered on the hills, with the fields belonging to each household (rugo) normally found on the same hill. Although the household is generally comprised of a nuclear family and the farming unit is this small family group, the land itself is considered to belong to the lineage, descendants of the man who first claimed and cleared it.

Under the customary system of land tenure, land was (and is) inheritable, passed from father to sons. Only when a man died without male heirs would the land revert to the wider lineage, and the chief of the lineage, usually the eldest male, would then reallocate the fields and other lands within the lineage. As long as land was plentiful the system of land tenure and inheritance posed few problems. Indeed, outsiders might be absorbed into the lineage with grants of land or taken on as clients. On most hills the settlement pattern was mixed, with agriculturalists and pastoralists coexisting and exchanging products. Land was not set aside for exclusive use as crop land or pasture. A section of pasture might be lent out for cultivation or fallow land given over for grazing for a period of time.

A second pattern of land tenure and relations was superimposed on this one as the central Rwandan kingdom expanded in the nineteenth century. Whereas in earlier years there had been a number of chiefdoms and small kingdoms that from time to time came under the control of the central Rwandan kingdom, now the mwami (king) sought to establish a more permanent authority over these areas through the appointment of his own men as chiefs. Men whom the mwami designated were given areas of land (sometimes hitherto unclaimed, but also no doubt at times seized from those already established on the hills) for their own use and allocation. In addition, these administrative chiefs were empowered to collect tribute from the inhabitants, part of which would then be sent on to the court, and to muster labor forces for work on their own fields and with their own herds. The installation of this hierarchy transformed Rwandan society. Relations between hill and court were tightened and regularized, and the new chiefs had a measure of discretionary power over the land and people under their authority. With the growing authority of these new chiefs, the powers of the lineage chiefs proportionately declined. (In some areas there were two kinds of lineage chiefs, land chiefs and cattle chiefs, and sometimes the same man was both cattle chief and administrative chief.)

At the time of the death of Mwami Kigeri IV Rwabugiri in 1895, the new chiefs had been imposed only in the central and southern areas of the country. Under the colonial rule of first the Germans (1897-1916) and then of

the Belgians, the process of centralization was consolidated and extended. Governing under a colonial system of indirect rule, the administrative chiefs became the agents of the colonial regime, and their powers to allocate land and muster corvée labor were even greater than before. Whereas earlier the limits to their powers were the amount of force they could employ and the need for at least a modicum of local acquiescence, now it was the central, European authorities that sanctioned their rule. Furthermore, the new chiefs were established in the northern areas of the country where centralized rule had not been imposed before. The effect of this was to diminish further the authority of the lineage chiefs and to give greater impetus to the establishment of hierarchical ties between patron and client: a powerful and influential patron might intercede on his client's behalf and perhaps act to temper the authority of the chief. Land tenure, as other economic and social relations, became increasingly individualized, and the collectivity of the lineage exercised less and less authority.

The colonial system, with its reliance on the authority of chiefs and its perception that Tutsis were the appropriate group to exercise power set in place a system that opposed Hutus and Tutsi. The result at the end of the 1950s was a society polarized between ruler and ruled, a division which, because chiefs were almost always Tutsi and their subjects more likely to be Hutu than not, coincided with ethnic membership. In neighboring Burundi, where the pre-colonial state had been less centralized and the ethnic divisions more confused, the colonial era did not bring the extreme polarization that it did in Rwanda. In Rwanda the result was the revolution of 1959, in which the Tutsi chiefs were overthrown, and the subsequent events that led to the massacre of many Tutsi and to the exodus of thousands who survived.

2. Freehold and Leasehold

Although the terms of freehold and leasehold were not used with regard to customary tenure practices, a distinction between ownership and tenancy was implicit in the establishment of patron-client relationships involving land. That is, the fact that the patron, a chief or other large landholder, could grant the use of land to another and continue to claim part of the crop for himself rested on the notion that there could be rights to land other than by occupation and that these rights in certain specific situations took precedence. The distinction continues today in the occasional rental of agricultural land.

During the colonial period, individual European settlers, church missions, and private companies were given concessions of land by the colonial government. They held these concessions on a freehold basis, and their titles were registered. Africans in urban areas (e.g., Kigali) during the colonial era, on the other hand, held only occupancy rights to plots of land in their separate housing quarters. Although they were required to build upon the plots and might profit from the sale of any buildings, title to the land was held by the state.

C. State Land

Several categories of land are considered to belong to the state: land used for state functions (roads, military camps, offices), land held

communally and not allocated to an individual (including, presumably, lands formerly held by chiefs and other ousted Tutsi), land set aside as parks and forests and vacant land. The state also has the power, upon payment of an indemnity, to claim land for the establishment of various facilities such as paysannats (see Sections III A and B below).

D. Urban Land Tenure

It is only in the urban areas (Kigali, Butare, et al.) that there are significant amounts of registered land. During the colonial era, these registered lands belonged to European and Asian residents while Africans in urban areas merely enjoyed the right of occupation. The distinction has obviously not survived independence. Most land in urban areas remains in the public domain.

E. Distribution of Types by Region or Ecological Zone

Immediately following the revolution in 1959, councils set up in Ruhengeri and Gisenyi territories proclaimed the restoration of traditional bakonde land law, under which the chief of the lineage which first cleared the land might distribute vacant land, and denied the validity of various Tutsi customs, including the right of the administrative chief to allocate land, which had been imposed in these territories in the first half of the twentieth century. Elsewhere in Rwanda, the critical land regulation was the suppression of ibikingi, the custom under which large areas of land were set aside as pasture and the owners of these lands (almost always Tutsi) had the right to extract various services and products from the agricultural Hutu in the surrounding area. A 1961 edict was aimed at creating uniformity of land tenure practices throughout the country and at muting the power given to the land-clearing lineage chief under bakonde law: under this later regulation a family or individual who had occupied a piece of land for many years, although not a member of the original lineage, was considered to be assimilated to the land-clearing lineage and thus to have secure title to his holdings.

Although only a single system of land tenure is legally recognized for the entire country, there are undoubtedly de facto regional variations such as those described above for Ruhengeri and Gisenyi. (In Butaro commune in Ruhengeri, for example, it is said that government officials still have customary ownership rights to larger parcels of land which are farmed by others.) These local variations very likely have a great deal to do with the way and the time in which central rule was imposed in earlier periods, but until specialized studies are done, one can only speculate that such differences exist.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Under the Rwandan constitution of 1962, all sales or gifts of land must be approved by the Minister of Agriculture. The Registrar of Land Titles is responsible for the registration of titles.

B. Pressures for Change in Legislation and Administration

The single most important pressure for change in land holding and tenure patterns has been the revolution of 1959, and the need both to dismantle the old hierarchical system of patron-client relations and unequal rights to land and to insure that land remain available to all Rwandan citizens has been the motivation behind the provisions with regard to land in the 1962 constitution and for the more recent 1976 land law. A second crucial factor in land legislation is the scarcity of land: with the highest population density in Africa, the average holding per family is about one hectare. There is little unused land and few alternatives to agriculture as a means of livelihood.

Under the provisions of the 1976 land law, land cannot be sold or given away without the prior authorization of the Minister of Agriculture. Moreover, permission for the transaction is given only when the buyer does not possess more than two hectares already and only when the seller has at least two hectares remaining. In practice, however, the two-hectare maximum is seldom enforced, and the requirement may be circumvented through gifts of land to other family members (especially sons). Sales are also often registered as gifts.

At the local level, land disputes have increased, and it is interesting that in one commune in northern Ruhengeri the residents themselves demanded in the late 1970s that their fields be measured and registered with witnesses. This was done by commune officials at a cost of about $1 per family, and farmers in the area have handwritten notebooks in which are recorded their registered fields, dimensions, and witnesses. In the case of sales, both buyer and seller have witnesses and register the transaction.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The critical issue with regard to land in Rwanda is one of scarcity, with security of tenure a secondary, and not unrelated, factor. The high population density and the custom that holdings be divided among the sons when the father dies have led to fragmentation of holdings and, in some areas, soil exhaustion. There is also reluctance on the part of farmers to improve the land because of insecurity of tenure. Some fragmentation of holdings can be beneficial, permitting the farmer to cultivate in several micro-environments and thus providing a measure of insurance against the failure of one crop. But when the average holding per family is only one hectare, and each field only a fraction of this whole, then fragmentation has gone beyond its original utility and land can seldom be left fallow. Nor would changing inheritance patterns provide a solution, for the Rwandan economy at present provides few alternatives to agriculture.

There have been several, partial solutions to the problem of scarcity of land. The oldest solution has been migration, both within the country, to less densely settled areas, and without, to Uganda and Zaire. Where migration was once a viable solution to land shortages, however, it is less so today.

The Bugesera region, for example, had a population density of 20 persons per km^2 in 1970, but by 1978 it had increased to 120 per km^2. Nor is migration to Uganda or Zaire the viable solution it once was in the colonial era. In fact, with continuing unsettled conditions in Uganda, migration is now occurring in the opposite direction, into northern Rwanda. Another way of dealing with land shortage has been through the rental of land, a solution prevalent in the most densely populated areas including Ruhengeri and Butare.

The third solution to the problem of land scarcity has been the establishment of paysannats by the government. First introduced in the 1950s by the Belgian colonial regime and continued by the present government of Rwanda, paysannats are settlements of small holders brought from more to less heavily populated areas. Although certain activities and services are provided on a communal basis, land holding is individual. Each family head is given rights to two hectares of land. In exchange he or she is expected to comply with various regulations of the Ministry of Agriculture concerning crops and production techniques. The two hectares holding is not divisible and only the wife has the strict right to inherit her husband's land in the paysannat. If both parents die, the son (usually eldest) designated by the father before his death as the new head of the family reports the death to commune authorities and if this son is to continue to have rights in the land, he must sign a new contract with the government. There is no paternal inheritance, and sales and rentals of parcels in the paysannats are not permitted (but rentals occur). Paysannat residents are allowed to have only one wife (it is in the contract they sign), but in practice many have another wife and another parcel of land in their natal regions.

B. Land Tenure and Agricultural Production

Research on the paysannats has shown that they are not more productive than individual units, but the critical factor in the low level of production is probably not the limited security of tenure. Among the reasons the paysannats are not thriving agriculturally are low returns to farmers for some of the industrial crops they are required to grow there. Tea, for example, required of farmers on many paysannats, is unpopular because of far lower returns to labor and labor than for potatoes and other food crops. Pyrethrum, grown on some paysannats outside Bugesera, elicits a similar response, with low returns and delays in payments to farmers from the official marketing and processing board.

C. Implications for Project Design

The commitment of the government of Rwanda to the establishment of paysannats will probably remain strong, and aid-granting organizations will no doubt continue to be asked to participate in their foundation. The most important issue, therefore, with regard to paysannats is to determine exactly what is responsible for the disappointing levels of production achieved to date. Unpopular government pricing and marketing policies may be the principal factor, but the role of other factors, including the tenure arrangements, also needs to be examined.

Other projects concerned with small-holder agriculture must obviously consider the problems of fragmentation of holdings and soil exhaustion,

results of a combination of high population density and the division of holdings among the males of each new generation. Moreover, tenure appears to be less secure than in the past, and disputes over land have increased in recent years. An understanding of how and in whose favor such disputes are being settled would be important in project design, for it would provide information as to whether access to land in fact remains equal or whether powerful individuals are establishing a new hierarchical system with regard to land.

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LAND TENURE PROFILE: SENEGAL

Summary: National Domain laws, enacted in 1964 and 1972, allocate to the State far-reaching authority over land, including the right to make grants of land not occupied under customary authority or not already registered. In addition, these laws provide for the establishment of local councils to replace traditional authorities in supervising land use and distribution. Although the two laws have now been applied throughout the country, only in rare cases have the councils begun to draw up the registries of land (livrets fonciers) provided for under the laws. Rather than initiating change in land tenure practices or insuring security of occupancy for those settled on the land, the new laws and the local councils have instead introduced an element of insecurity in customary practices.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Although customary land allocation authorities have been replaced by central authority and newly empowered local councils (conseils ruraux), Senegal's land tenure system remains predominantly customary in practice. Implementation of the National Domain laws, enacted in 1964 and 1972, has occurred gradually and unevenly, starting the Cap Vert region and then spreading into the Peanut Basin. By 1980 the Casamance and Fleuve regions had come under the laws' jurisdiction as well. Nevertheless, despite the goals of formalizing existing user rights to land and reducing the powers of traditional allocators of land and local elites, lack of consistent application of the laws has created uncertainty rather than change.

B. Private Tenure

1. Customary Tenure

Customary tenure systems in Senegal can be broadly divided between caste societies north of the Gambia river, wnere access to resources is disproportionately vested in specific social groups, and more egalitarian cultures in the Casamance region, where access to land and land holdings are more equitably divided among members of the society. The Wolof, Toucouleur, and Serer ethnic groups are the most numerous among the caste societies, while the Diola are the principal example of an egalitarian society.

Among the Wolof, who inhabit the area on the coast and inland between Dakar and Saint Louis, right to allocate land within an area is vested in the lamane, head of the lineage whose founder first cleared the land. Fellow lineage members receive use rights to the land and are not required to pay an annual rent or other form of tribute as are "strangers," outsiders who ask for and are given use rights to land. Although members of the lineage may lend land to outsiders, they cannot alienate it permanently.

In the area south of Dakar and extending to the Gambia River, the Serer practice a system of land tenure not unlike that of the Wolof, with allocation rights held by the head of the lineage. In contrast to the Wolof, however, these rights are inherited matrilineally rather than patrilineally. Like the Wolof, the Serer permit newcomers to obtain use rights to land in exchange for gifts and tribute to the lineage head. Despite the lack of absolute title to the land on the part of the newcomer, only in exceptional circumstances (if, for example, the newcomer ceases to recognize the authority of the lineage head) would the lineage head be likely to evict him.

Among the Toucouleur and Soninke, in the Middle and Upper Valleys of the Senegal River, society is similarly hierarchical, with the highest castes of nobles and religious leaders having effective (though not undisputed) control over land use and receiving tribute from users. A further element of complexity in the land tenure system is provided by the fact that some lands along the river are flooded annually, while uplands farther away from the river are not. The former, known as walo land, is unequally distributed among households along the river, while the latter, dieri lands, have few or no social constraints on the amount of land a household may farm.

Finally, among the Diola in the Casamance, south of the Gambia River, distribution of the land is relatively equitable. Land is inherited patrilineally, and those whose holdings are inadequate may obtain more land through loans or by clearing new plots. Loans of land are often made by the mother's brother, and the loan does not require any repayment in kind and may often continue for generations.

During the colonial period, customary tenure practices were recognized and protected by the French administration, although the state also reserved the right to appropriate land for its own use. Economic and demographic growth, however, introduced elements of change into these indigenous systems. Perhaps the most important changes were those brought about by the increasing emphasis on groundnut production for export in the area of the Peanut Basin. As ever larger areas were brought into groundnut production, land values increased as did population densities. In some areas there was a trend toward individualization of holdings, while in other areas of the Peanut Basin, the Mourides Islamic brotherhood established large plantations on which disciples (or talibes) provided the labor.

2. Freehold and Leasehold

Although the French colonial regime permitted both Europeans and Africans to register land holdings, it was generally urban lands held by Europeans that were placed on the registers. But not all of the 50,000 hectares of land registered by the end of the colonial era were in heavily built-up areas. In

the area of Kaolack in the Peanut Basin and (according to one source) in the Bignona region Casamance, where land disputes had become ever more common, significant amounts of land were registered in the 1950s.*

Under the National Domain law of 1964, it is now no longer possible to register land, although those lands registered either prior to the passage of the law or within the two-year period of grace provided for under the law remain registered and in the private domain. Nor does the 1964 law recognize leases of land allowed for under customary systems of tenure such as that of the Diola. Instead, the State has become the residual land holder.

C. State Land

Under the 1964 Loi relative au domaine national, all land not in the public domain and unregistered is classified as part of the national domain and the property of the State. The national domain comprises four categories of land: zones urbaines, zones classées (including forests), zones de terroir (occupied village land), and zones pionnières (settlement zones). The law makes clear the authority of the State over all these lands, including those previously under customary tenure (which are included in the category of zones de terroir), and states that members of the local communities occupy and develop the land "under the control of the State."

D. Urban Land Tenure

Urban land consists of registered, privately owned parcels of land; land in the public domain, including government facilities and roads; and land in the national domain, including land used for agriculture in peri-urban areas. It is this last category of land that is problematic. The 1964 law implicitly distinguishes between urban land used for urban purposes and urban land used for rural occupations (à vocation agricole). And yet, as one author points out, lands in peri-urban areas have both urban and rural uses at one and the same time.

E. Distribution of Types by Region or Ecological Zone

In addition to the variations in land tenure systems between ethnic groups, described in Section B.1. above, distinctions in authority over land tenure have been created with the gradual application of the 1972 law which established new local-level bodies to deal with land matters. The law was applied in the region of Thiès in 1972, in Sine Saloum in 1974, in 1976 in Diourbel, in 1978 in Casamance, and in the Fleuve region in 1980. A second law, passed in 1976, was required for Louga and Sénégal oriental regions where there are no pre-existing rural communities; for these two regions, authority over land matters is vested in the sous-préfet, who represents the administration at the level of the arrondissement. Moreover, the pre-existing

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* Note: A 500,000 hectare figure for registered land in Senegal by 1960 is often given in articles. The figure is wrong, however, and should be 50,000 hectares, a typographical error in the original report being responsible for the error.

customary systems of land tenure have had important implications for the implementation of the National Domain. The greatest success in implementation has been in the Casamance, where societies are generally more egalitarian than in the north, and in the Cap Vert region, where individual private property is common.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

The 1972 law lays out the system to be established with authority over land. Intended to provide a structure that does not rely on the powers of traditional land-allocating authorities yet at the same time maintains local say in matters of land use and distribution, the law provides for the designation of local councils consisting of both elected and appointed members and of a council president. The councils are given the power to allocate land in keeping with the national priorities for development within their area. Decisions of the local councils are ratified by the sous-préfet, with ultimate direction resting with the Ministry of the Interior.

Registered land remains the responsibility of the Direction Générale des Impôts et Domaines, which has local offices in the regional capitals.

B. Pressures for Change in Legislation and Administration

The 1964 and 1972 National Domain laws were designed to reform both local administrations and land tenure systems in which a small number of land owners lived off the rents and produce of their "tenants." The application of the laws, however, has been inconsistent and their goals are far from being achieved. The government has been having difficulty implementing the laws and has had to make numerous compromises between the offical system and the customary system in many parts of the country. In some areas government officials have to date declined to attempt to implement any changes at all. This is true, for example, in the Fleuve Region, where the governor has received many requests for land along the Senegal River, land which is soon to be irrigated. As yet, none of these requests has been acted upon nor has a plan of procedure yet been drawn up.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

Perhaps the most critical problem created by the passage of the new legislation is that it has given some individuals less secure tenure while granting others more secure access in ways that are not always conducive to raising agricultural production. The 1964 law recognizes the right to continued occupancy of those individuals cultivating land at the time of the law's enactment. But not all of these individuals necessarily held continuing rights to the land under customary tenure practices; that is, an individual might arrange for the loan of land from another, and this arrangement was regarded as only temporary under customary tenure practice. Under the 1964 law, however, occupancy was given a legitimacy comparable to that of

"ownership." The law also provides that land must be developed, but does not define what "development" is to consist of. In some cases urban-based landholders have hastily thrown up structures that pass as "development" while doing little to bring the land into use; they are satisfying the letter rather than the spirit of the law. Others have extended their claim over more area than they can effectively utilize themselves by seeding larger areas of land with the help of wage labor.

In its failure to take into account that there may be overlapping claims to land, the law has also strained (and sometimes abolished altogether) longstanding ties between individuals and groups. In the past loans of land served to integrate into the community those who would otherwise be landless and forced to seek work outside. Landholders are now reluctant to enter into such arrangements, fearing that they will be declared permanent. Pastoralists' claims to land have been especially badly served by the new law, particularly in areas where access to land was shared with cultivators. While the law recognizes rights of those actually occupying the land, it makes no provision for seasonal or other occasional use of the land. In areas where pastoralists and cultivators have shared land in the past, it is now the cultivators' claims that are recognized and those of the pastoralists may be ignored altogether.

Another problem is posed by the local councils empowered to deal with land questions. The domain law has politicized what used to be primarily an economic group, thereby compounding the problem of vested interests. The relative scarcity of qualified government appointees in the councils to act as liaison between the government and a largely illiterate population also hamper its effectiveness. Additionally, basing usage rights on the production interests of the State further serves to decrease tenure security from the viewpoint of the peasant.

The problems of uncertainty of tenure are nowhere more immediately critical than along the Senegal River, where the completion of the Diama Dam in 1986 and of the Manantali Dam in 1983 will reduce salt intrusion and seasonal fluctuations in the river flow to a considerable extent. Year-round irrigation will be possible on upwards of 250,000 hectares of land on the Senegal side of the river, while several thousand hectares now devoted to flood-recession agriculture will be rendered unusable for that purpose. The changes in land use patterns that will be generated by the construction of the dams are obvious, but as yet there have been only rumors as to how the government intends to handle the problems and prospects for land-holding in the area.

B. Land Tenure and Agricultural Production

Agricultural production has fallen in recent years, and much of the decline in production can be attributed to drought. But there is also fragmentary evidence that indicates that some of the drop may be due to uncertainties about the security of holdings generated by the new land laws. It appears that at least in the short run an unwillingness to invest in the land, increased use of farm labor, and the acquisition of land for speculation rather than cultivation, in part side-effects of the new laws, have contributed to decreased production levels.

C. Implications for Project Design

The Government of Senegal, in its New Agricultural Policy announced in the spring of 1984, is committed to the goal of raising agricultural production. And one of the crucial factors in achieving this end will be the reduction of uncertainties in the current land tenure situation. The enactment of national policy is not sufficient to insure that change will take place in the desired direction, or even that it will take place at all. In some areas of the country national policy and local interests have reached compromises, while in other areas they remain unreconciled. Planners must be aware of this unevenness and in designing projects take into account not only the goals laid out on the national level but also the interests of local cultivators and pastoralists who will be affected by a project. Land tenure issues must thus be considered on a project-by-project, locale-by-locale basis.

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LAND TENURE PROFILE: SIERRA LEONE

Summary: Sierra Leone's land tenure system is characterized by the continuance of traditional systems with land allocation vested in essentially traditional authorities whose powers were codified under British colonial rule and remain unchanged to this day. Land is relatively abundant and only in the Western Area and Freetown itself is there a market in land.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

With the exception of parts of the Western Area and Freetown itself, traditional land tenure practices are still followed in Sierra Leone. Farming practices based on bush fallow or shifting cultivation continue within a context of relative land abundance. Over 70 percent of the population are still engaged in the agricultural sector. In the late 1970s, a Customary Laws Office was established to evaluate customary laws with a view to making recommendations for national land tenure organization. However, despite discussion over the proper direction of land tenure, no legislation has been forthcoming.

B. Private Tenure

1. Customary Tenure

Although there are some 18 ethnic groups in Sierra Leone, the Mende and Temne constitute over 60 percent of the poulation and therefore deserve the closest consideration vis-à-vis their land tenure practices. The Temne land tenure system is based on lineages, with the lineage which first settled an area claiming the land in that area. Land is inherited patrilineally and allocated by the oldest male in the lineage.

In contrast with most ethnic groups in Sierra Leone, Mende follow both matrilineal and patrilineal descent lines even though patrilineal descent is the prevalent mode of land inheritance. The extended family forms the basic land holding unit and receives land from the head of a group of extended families in a locality. These groups of families are tied together by both marriage and kinship. As with the Temne, a group's right to land derives from their original clearing of the land. Generally, the land allocators among

both the Temne and Mende correspond to the so-called "paramount" chiefs who were "legitimized" as local administrative authorities in the colonial period.

Brief mention should also be made concerning the Fulani and Koranko groups. They possess highly stratified societies with caste structures and land is usually controlled by more central authorities than is the case with the Temne and Mende groups.

Lastly, the Creole group bear mention since they came as settlers and therefore have few original rights in land. As a result, they tended to accumulate urban land under colonial rule since that land was open to alienation by sale.

C. State Land

Under the 1927 Protectorate (or Provincial) Land Ordinance, which remains in force today, land in Sierra Leone is vested in the "Tribal Authorities," who hold the land on behalf of their communities. Because the State does not claim this authority for itself, it must negotiate with the paramount chiefs and arrange compensation for lands which it wishes to acquire.

D. Urban Land Tenure

Within the small Western Area formerly known as the Colony, land is more subject to commercial transactions than in the three provinces that comprise the old Protectorate. Land is sold within Freetown, primarily to and by Creoles. However, the literature does not delineate the exact nature of these sales except to say that they occur according to the more westernized legal concepts that apply within this small enclave.

E. Distribution of Types by Region or Ecological Zone

Rights to land are becoming increasingly individualized in areas where population densities are high. In addition to Freetown and the Western Area, where population density averages over 250 persons per square mile, this is also true of areas of Port Loko and Kambia Provinces, parts of Kailahun Province, and in Bo Province. One author writes that among the Temne, who live in Port Loko and Kambia Provinces, high population density and increased value of land have resulted in extensive individualization of title.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

By virtue of the Protectorate Ordinance of 1927 and the Tribal Authorities Ordinance of 1938, rights to land are vested in traditional authorities. Despite the vague definition of what constitutes customary authority, this concept remains valid today. However, in practice, it has been the paramount chiefs who have gained from this concept and who are currently the primary land allocators. To obtain land, the state utilizes negotiation and compensation.

Although not specifically stated, it appears that land questions arising within the Western Area may be dealt with by officials in the administrative hierarchy. At the lowest level of this hierarchy are the Village Committees. Above these committess are the Rural District Councils which are in turn subordinate to the Rural Area Councils. Freetown is run by an elected city council, but its role in land decisions is unclear.

B. Pressures for Change in Legislation and Administration

There do not appear to be any major changes in land tenure planned by the government at this time. However, discussion about change continues, with the urban Creoles acting as the leading advocates for tenure change. They complain that they are unable to obtain rural land and therefore advocate a system of private tenure. Such a shift in land tenure policy appears unlkely in the face of popular sentiment against it as demonstrated in a survey conducted in 1979 which reveals that while 57 percent of land holders might favor the registration of land in the extended family name, only 32 percent favor registration in the household head's name and 13 percent in an individual name (see Tables 1-3).

In addition to prevailing popular sentiment, the continuing abundance of land and the apparent flexibility of the traditional land tenure systems to deal with change serve to neutralize any pressures for land tenure reform in the immediate future.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

As detailed in the last section, individualization of land tenure is considered a critical need by some elements in Sierra Leonian society. They justify this need by claiming that traditional systems hinder national development primarily through the insecurity inherent in customary tenure. However, this does not seem to be the case. First, for those who wish to utilize larger tracts of land, pledging has become a very widespread means of accumulating land. Similar to pawning, pledging allows the temporary alienation of land. In many instances, this transfer of land may last a generation. Second, leasing is another common way of obtaining use of land. In fact, the government made use of both pledging and leasing in acquiring land for government-sponsored cooperatives along floodplains in the Bonthe area. In general, there is a reluctance to tamper with the traditional tenure systems, which seem to be able to adjust to changing circumstances.

An additional concern to some is the position of the paramount chiefs. They have augmented and consolidated their powers, thus opening up the possibility of abuse of their authority over land, among other matters. However, it appears that traditional community bonds and obligations still serve to limit such abuse.

B. Land Tenure and Agricultural Production

Given the low priority (1 percent of GDP) allotted to agriculture in the national budget as late as the mid-1970s, it is difficult to judge the effect

of rural land tenure on agricultural production. The general availability of land would explain why farming continues to be predominantly slash-and-burn, although fallow periods are showing marked declines. Further, despite the introduction of Integrated Rural Development Projects, which attempt to link agricultural development with the provision of social services and infrastructure, traditional tenure has not been greatly affected.

C. Implications for Project Design

Obviously, project design within the context of the land tenure situation in Sierra Leone must account for the tenure system of the ethnic group in the project area. The project should minimize the impacts on the security the landholder perceives in his customary system. Further, the designer should explore how the goals of the project might affect or exacerbate tenure problems and then consider ways that these effects can be minimized. Of particular concern for the project designer are goals that necessitate long-term participant investment as these are the most likely to involve significant potential tenure conflict.

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Table 1
Land Registration Under Extended Family Name

	Number	Percent
Total Interviewed	4362	100.00
Accepting Registration	2506	57.45
Rejecting Registration	1856	42.55
Reasons for Accepting Registration		
It will prove ownership	946	38.47
The family owns the land	568	22.66
To prevent quarrels	423	16.88
Maybe government will help improve the land	356	14.21
Provided the Paramount Chief agrees	73	2.91
I am the head of the family and I know what is best	38	1.52
Others	84	3.35
	2506	100.00
Reasons for Rejecting Registration		
This has never happened	572	30.82
Government plans to seize our lands	333	17.94
This is communal land	219	11.80
I don't have permanent land	214	11.53
We are not used to it	168	9.05
I have no reasons	135	7.27
The lands we don't use are in fallow	31	1.67
Future children will not claim ownership	23	1.24
I am the family head and I know what is best	48	2.59
The family owns it and cannot be registered	56	3.02
I am too old to take decisions	10	0.54
Others	47	2.53
	1856	100.00

Source: Harry Turay. "Land Tenure Systems in Sierra Leone: Perceptions of Land Owners of Problems Related to Land Tenure Development." Project Report for Njala University College, February 1980.

Table 2
Land Registration in Household Head's Name

	Number	Percent
Total Interviewed	3508	100.00
Accepting Registration	1129	32.18
Rejecting Registration	2379	67.82
Reasons for Accepting Registration		
I am the head of the family, I know what is best	749	66.34
Family land can be subdivided	261	23.12
I will be able to guide land better	21	1.86
I have no permanent land here	15	1.32
Others	84	7.35
	1129	100.00
Reasons for Rejecting Registration		
Family land is indivisible	602	25.30
Family members will be unable to claim ownership after my death	351	14.75
Communal land cannot be subdivided	258	10.84
Land does not belong to me alone	198	8.32
I have to consult village elders	193	8.11
We are not used to this	178	7.48
Other members of the family will be annoyed	149	6.26
I am not the head of the family	128	5.38
I don't know	66	2.77
The NDMC owns the land	56	2.35
My children's names may not be included	50	2.10
I have no permanent land here	40	1.68
The chief belongs to every rgistered family as if he owns land	40	1.68
Fallow land is indivisible	36	1.51
Others	34	1.43
	2379	100.00

Source: Harry Turay. "Land Tenure Systems in Sierra Leone: Perceptions of Land Owners of Problems Related to Land Tenure Development." Project Report for Njala University College, February 1980.

Table 3
Individual Right Holder Registration

	Number	Percent
Total Interviewed	3770	100.00
Accepting Registration	506	13.42
Rejecting Registration	3264	86.58
Reasons for Accepting Registration		
To avoid future quarrels	207	40.91
To obtain permanent ownership	186	36.76
To enable children to inherit their father's lands	55	10.87
Families are now sharing land	42	8.30
Eldest son should inherit father's lands	6	1.19
Our children will not unite as we are	3	0.59
We work separately in the bush	3	0.59
Others	4	0.79
	506	100.00
Reasons for Rejecting Registration		
We have never practiced it	1010	30.94
It will not tell well on the family	467	14.31
The eldest son should inherit father's lands	407	12.47
Land is insufficient to share	355	10.88
Relatives will be annoyed	254	7.78
Some may not make good use of their share	155	4.75
Some members may have no offspring	142	4.35
I will lose community respectability	111	3.40
Registration is only possible in a case of land disputes	92	2.82
We work in the bush in common	48	1.47
Our forefathers never shared their lands	44	1.35
I am a stranger	42	1.29
There will be a split in the family	19	0.58
Others	118	3.61
	3264	100.00

Source: Harry Turay. "Land Tenure Systems in Sierra Leone: Perceptions of Land Owners of Problems Related to Land Tenure Development." Project Report for Njala University College, February 1980.

LAND TENURE PROFILE: SOMALIA

Summary: Although pastoralism has taken precedence over settled cultivation in Somalia in the past, since independence the emphasis of the government and of economic planners has been on cultivation and to more secure and more formal systems of land distribution. Until recently, the policy of the government was to establish state farms and to foster the development of cooperatives. Now, however, a shift in international alignment and economic philosophy has led to encouragement of private farming ventures. Under a 1975 land law, the State has the power to grant long-term leases of land and with this measure hopes to encourage long-term investment in farming.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Since independence in 1960, increased emphasis on farming has led to more secure and more formal land distribution. This resulted from a number of factors. First, national development programs emphasize the importance of agriculture both as an input for industrial development and for upgrading the standard of living. The state, with the support of the international aid agencies and the developed countries, encourages and subsidizes farming. Second, staple diets have changed. Rural communities have begun to consume more than milk and now buy farm products such as corn, wheat and sorghum. In addition to the increase in the demand for agricultural products, the relationship between farming communities and exclusively pastoral communities has changed, with the latter, who once despised the former, coming to a respect and appreciation of farming activities. Due to these changes in social values, many pastoralist groups are increasingly interested in settling fertile areas and farming themselves. Third, urbanization and deforestation both encourage farming, and frequent drought leads to people moving away from traditional pastoralism to farming wherever and whenever possible. Fourth, development strategy emphasizes settlement to facilitate provision of services such as schools and health centers.

Initially, the revolutionary government advocated and provided incentives for cooperative farming. More recently, however, this emphasis has begun to change back to support for individual farming as the nation's development strategy has shifted toward policies more in line with Western economic thinking.

B. Private Tenure

1. Customary Tenure

During the colonial period, about 90 percent of Somalis were pastoralists, receiving all of their livelihood from their livestock (sheep and goats, cattle and camels). Because of frequent movements of these pastoralists in pursuit of water and pasture, land was commonly owned by all but yet each and every location was designated for the exclusive use of a clan, subclan, down to the smallest unit of an extended family. There were minimal contacts between the pastoralists and the ruling colonial bodies partly because the former were usually on the move but also due to their belief that colonialism was a significant part of a major scheme to convert them to Christianity. Because of this belief, the nomads kept their distance from the British and Italian rulers and continued their customary tenure arrangements.

There was no formal land registration even among those who held and farmed drylands in the Northwest and Awdal regions. Cultivation started as individuals cleared and cultivated small holdings on first-come-first-served basis. Recognition of ownership along customary lines followed. Farming in the dryland areas was always taken as a supplement and not as a substitute for the ownership of livestock, which was regarded to be the most prestigious wealth one could hold. Farm border problems became common after years as traditional border marks, such as trees or trails, faded away, but these conflicts were rarely enough to cause clan confrontations, as was usually the case in livestock and pasture land conflicts. During the colonial era, therefore, land ownership was not an important issue, especially since farmers were despised by livestock owners.

Outside the cities and towns, which were and are exclusively state-controlled, land ownership was determined by powerful clans. There are complex clan systems in Somalia, each of which owns a defined territory. It is within the clan system that one seeks the right to use land. There is, however, overlapping territory between neighboring clans. In both areas of cultivation (dryland in the north and between the Juba and Shabelle Rivers in the south) the mode of production is based on well-coordinated integration of farming and livestock rearing. A dual economy is practiced where a family both farms and herds, owning sheep, goats and cattle along with the farm. Camel owners are, by and large, exclusively pastoralists since they inhabit the drylands of the country.

Control of water, the most scarce resource in the country, is a critical element in land tenure. Man-made ponds (*har*), which can hold rain water for a long time, began as group property with members of an entire village responsible for their digging and fencing for their own exclusive use. Pond-digging later became a separate business, and individual families made their own ponds beside their farms with either their own labor alone or with additional hired labor. They might then sometimes sell water to pastoralists in the mid-winter. There are also spring wells (*ael*), which are dug and managed by clans and usually only clan members have the right to use them.

Different governments, colonial and independent, have tried to substitute state authority for the strong clan authority. Both British and Italian administrators attempted to penetrate the clan system and to modify it to suit their needs and reduce its influence on the tenure system and in other matters. Since clan affiliations and clan loyalty dominate every aspect of the Somali society, social reforms have to be based on modifications in the clan relations.

2. Freehold and Leasehold

The present land tenure system in Somalia is based on Law No. 73, of October 1975. It declares that all land is owned by the state and that individual persons and families can register only one piece of land. Such leases, according to this law, are for 50 years and are renewable, while state farms, cooperatives, independent agencies, and local governments can hold leases for an indefinite period. The law puts a limit on private holdings of 30 hectares of irrigated or 60 hectares of non-irrigated land. Private banana plantations may be of up to 100 hectares. Land in excess of this limit was to be nationalized two years after the implementation of this law.

A private leaseholder has the right to cultivate the land, rear livestock, build on it, receive extension services, get credit from state banks equivalent to the value of the land and transfer profits to foreign banks if the state bank gives permission. However, a lease holder must develop the land within two years and pay taxes; otherwise the land will be confiscated by the state. The law also forbids the leaseholders to sell the land, rent it or subdivide it, or to break any condition of the lease. The lease may be passed to close kinsmen provided that the registry is notified and these conditions are accepted by new owners.

C. State Land

According to the Land Law of 1975, all land belongs to the State, which has the ultimate authority to repossess, redistribute or allocate any land. The State also has its own farms. State farming schemes started in the early 1970s, when following socialist ideology, the government presumed that farm productivity would increase with large farm cooperatives. State farms were then started to encourage citizens to form their own farm cooperatives. Law No. 40 of October 1973 provided for the promotion and encouragement of cooperatives and was responsible for the establishment of hundreds of cooperatives among cultivators and pastoralists.

D. Urban Land Tenure

According to Law 41 of 13 September 1973, all land in the Democratic Republic of Somalia, regardless of who uses it, is public property. The law stipulates that in urban areas land use by Somali nationals is permanent, provided that all responsibilities (property taxes, construction, etc.) are met. Foreign nationals can use a piece of urban land for a period from 50 years to 99 years, and the permit is renewable for a period not to exceed the previous use period. An exception to this is that any land expected to have special natural resources is controlled by special laws. Land in urban areas can be bought and sold at a market price per square meter.

Land in urban areas can be given out permanently or temporarily. Permanent use of urban land is to be authorized by the Office of Administration, Ministry of Public Works, or its representatives in the regions and districts, while permission for temporary use of land can be issued by local government authorities. Temporary users of urban land may not build durable houses on the land.

E. Distribution of Types by Region or Ecological Zone

Somalia occupies a land area of 637,540 square kilometers. It largely consists of plateau surfaces of plains. In the northwest regions, rugged mountain ranges parallel the Gulf of Aden. It is largely dry and hot country throughout the year, except at some higher elevations. Rainfall is sparse and seems to be getting scanter year after year as deforestation progresses. Of the total area, only 13 percent is arable, and only 8 percent is under cultivation. Cultivation is confined to areas of moderate rainfall in the northwest, the Awdal regions, and the interriverine region of the south.

The Somali constitution as drafted in 1960 states that all the land, both agricultural and pastoral, belongs to the State. Practically, however, the right to cultivation and pasturage remains with members of different clans. In 1977 the average holding was 34 acres but with considerable variations. About 60 percent of landholders averaged only five acres and the remaining 40 percent averaged 50 acres. The present agricultural sector includes both dry land holdings and irrigated plantations. All of the irrigated farms, which include 138 banana plantations averaging about 790 acres each, are located between the Juba and Shabelle Rivers in the south.

In the south, from 1908 onward, irrigable land along the Shabelle River was appropriated for concessionary agricultural development to help pay the costs of Italian colonial administration. Large areas of the best riverine land were acquired for large-scale private production of bananas and sugar. Only in rare cases were the elders, or local land-using groups, given some compensation for their land. In this interriverine fertile area there were 147 Somali-owned and 200 Italian-held export-oriented banana plantations by 1965. They averaged 308 hectares, of which only 51 hectares were planted.

II. LAND ADMINISTRATION SYSTEM

A. Current Administrative System

Initially, it was the responsibility of the Ministry of Agriculture to administer the process of transforming the subsistence sector, but that responsibility is increasingly being shifted to a bureau in the ruling party. The Ministry still has the authority to issue leases to cooperatives, state farms, private agencies, local governments and private farmers.

There is a long bureaucratic process of land registration which starts with an individual filing an application to register land with the District Agricultural Coordinator (DAC). The DAC, along with the head of the District police, reviews the application and the land. They determine the kind of land it is and its present and potential use and know from the local elders whether

anyone else is currently using or has a legal claim on it. Signed copies of the application are sent to the Regional Agricultural Coordinator (RAC). The RAC checks the application with other regional authorities to make sure that there are no conflicting plans for the use of the land, registers the application, and sends the documents to the Ministry of Agriculture in Mogadishu. There the process is repeated to check for other claims on that particular land. If there are no claims or objections, the application is approved by the Minister of Agriculture and copies sent back to the applicant, who must develop the land within two years. These files are kept by the Ministry, but it is difficult to know how much of the arable land in each district is registered since there are no maps. Major problems in the system of land registration exist that are not accounted for by any of the land laws. For example, land registration follows the same process whether it is a new and undeveloped piece of land for a new user or a traditionally held farm for a long-time owner.

According to Agricultural Land Law 73 of 1975, the Secretary of Agriculture is responsible for distribution, supervision and management of all agricultural land. Urban land, on the other hand, is under the jurisdiction of the Secretary of State for Public Works.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The long-term leases provided for by Law No. 73 provide tenure security and therefore encourage long-term investment in farming. They also tend to prevent land fragmentation by declaring minimum ownership size. But the law ignores completely the long-standing customary systems of land ownership and the indigenous institutions that still govern access to land and pasture. The law ignores the practices and needs of pastoralists--despite the fact that they constitute over 60 percent of the Somali society. Another striking feature of the law is that it favors cooperatives, state farms, parastatals and corporate agricultural enterprises over private individual farmers in terms of the size of holdings permitted, the length of lease granted and access to credit and machinery.

Nor has sufficient attention been given to dealing with the problems of land registration. The process of land registration is unnecessarily cumbersome and often application materials are lost in the process. Credit from state banks is usually available only for cooperatives and not to the individual farmers.

Other critical tenure issues are posed by the new irrigation projects, such as that in the Juba Valley, and by resettlement projects. Both types of programs are disigned to introduce new tenure patterns of more intensive land use, patterns that differ from those already in place.

B. Land Tenure and Agricultural Production

Although the government of Somalia has recently shifted its emphasis from cooperatives to individually held farms as the preferred unit of agricultural

production, there has been no research that shows that one or the other form of production as it exits in Somalia is more efficient.

C. Implications for Project Design

Throughout this century there have been written laws of the country designed to govern land ownership, access to water and pasturage and other social activities. At many points, the laws contradict custom. On a practical level, however, the traditional social institutions continue to dictate access to natural resources. Compliance to state laws may be gaining some popularity in the urban land tenure system but in the rural agriculture clan affiliations and cultural norms dominate most social activities. It is, therefore, extremely crucial to consider these traditional social relations during project design. The loyalty and compliance of these groups (clans) to any government activities can only be gained if they are invited to be a significant part of the scheme. Without their active participation most development projects are doomed to fail.

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LAND TENURE PROFILE: SOUTH AFRICA

Summary: The South African government has over the past few decades pursued a policy of separate development. The ultimate aim of this policy is to create a "homeland" or "national state" for each ethnic group in South Africa. The state governments would administer their own affairs and national affairs would be dealt with by a confederation of the states. Various factors have prevented the development of this system and recent events have shown that the government has realized that this strategy is unworkable.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Land in South Africa is subdivided into distinct areas which are allocated to different race groups and tribes. This policy of "separate development," where each ethnic group retains its own culture and develops along its own lines, was first given legislative backing in the Natives Land Act of 1913. This act designated certain land for occupation by blacks. No one from any of the other race groups could legally acquire land inside these "scheduled areas." The Native Trust and Land Act of 1936 allocated additional land, known as "released areas," for acquisition by blacks. This act also created a corporate body called the South African Native Trust (now the S.A. Development Trust) in which all scheduled and released land was vested. This was passed off as a move to protect blacks from land speculators, but gave rise to a situation in which blacks could only hold land under Trust tenure.

In 1955 a commission was appointed to investigate the socio-economic development of these so-called "black areas." They recommended that blacks be given freehold title to the land they held in scheduled and released areas. The Nationalist Government accepted the principle of this recommendation and decided to pursue a "homelands policy," where each black tribal group in South Africa was to be granted its own homeland with its own semi-independent government. The South African government argued that this was the only way that the various ethnic groups could retain their own cultural identities. Political commentators suggest that this move was also aimed at safeguarding white rule in the rest of South Africa while satisfying the political aspirations of blacks.

In 1976 Transkei became the first homeland to gain "independence." Since then Bophuthatswana, Venda and Ciskei have all attained the same status. The South African government regards these homelands as independent countries, but they have been unable to convince the rest of the world of this independence. More recently these homelands have been referred to as "independent national states," which are distinguished from the self-governing (not independent) "national states" of KwaZulu, Gazankulu, Kangwane, Lebowa, Kwandebele and QwaQwa. The ethnic group, land area and population of each of these states are shown in Table 1. Many of these states are made up of small isolated areas totally unattached to the rest of the state. Kwazulu, for instance, consisted of 43 separate pieces in 1982. Although the South African government aims to consolidate these states into viable units, many remain fragmented and uneconomic. Altogether, the homelands represent 13 percent of the total land in South Africa--allocated for 89 percent of the population.

Virtually all of the agricultural land outside the national states is held in freehold tenure by persons of the other three race groups--coloured (mixed origin), white and Indian. Although there is an increase in freehold tenure in the national states, customary and other tenures remain dominant. Future changes in the tenure system will inevitably depend upon political reforms within the country. The number of blacks living outside the national state, particularly in urban and peri-urban areas, the general opposition to the separate development principle and the economic dependence of these states on the rest of the country will almost certainly lead to the breakdown of the homelands system.

Table 1

State	Ethnic Group	Land Area (Ha)[1]	Population[2]
Transkei	Xhosa	4,501,000	1,783,204
Bophuthatswana	Sotho-Tswana	4,043,000	1,154,900[3]
Ciskei	Xhosa	770,000	538,369
Venda	Venda	668,000	272,452
KwaZulu	Zulu	3,239,000	2,151,367
Gazankulu	Shangaan-Tsonga	741,000	271,936
KaNgwane	Swazi	391,000	120,094
Lebowa	North Sotho	2,518,000	1,108,459
Kwandebele	Ndebele	73,000	-[4]
QwaQwa	South Sotho	62,000	25,334
Other	Mixed	97,045,900	14,620,230
Total		**114,051,900**	**21,794,328**

1. After 1975 consolidation proposals.
2. 1970 figures unless stated.
3. 1976.
4. Unobtainable.

B. Private Tenure

1. Customary Tenure

The number of tribes in South Africa, the disruptive effects of white colonization and the actions of the Zulu king, Shaka, early in the nineteenth century, make it difficult to characterize tribal or customary tenure in a general manner without introducing blatant inaccuracies. In an effort to sidestep this problem, this section on customary tenure has been written by referring primarily to the customs of the Zulu people who are members of the Nguni group and constitute the largest "tribe" in South Africa.

Land is typically acquired through the occupation of empty territory by a group of families belonging to one clan. This land is claimed by right of first settlement. The group then accepts families of other clans who establish small cluster units of their own. The head of the first settling group assumes leadership over all the cluster units in his territory. He also controls the allocation of additional land to the cluster units as their population and demand for more land increase. This arrangement continues until the original cluster unit begins to contain too many family lines with separate landholdings. When this occurs the older client families begin to claim a status equivalent to that of the first settling group. They in turn grant land to incoming families, thus setting up new cluster units. This process continues through generations with clusters occupying less and less land. The advantage of this "splitting-off" process is that it provides the flexibility to cope with increasing population densities, provided vacant land is available. It also facilitates the fair allocation of available land.

Land is never regarded as property that can be acquired by an individual to the exclusion of all others. It is controlled by a complex network of over-rights which decrease in strength and legitimacy from lineal relatives outwards to the perimeter of the tribal community. These over-rights are vested in the following people:

1. Individual household head;
2. The extended family cluster or descent group under its senior kinsman;
3. The local landholding cluster under the senior kinsman of the founding descent group;
4. The chief together with his supporting officials.

It is incorrect to speak of customary tenure as being "communal" as both residential and arable lands are essentially allocated and used on an individual basis by a family or descent group. Grazing rights in formally designated public pastures are, however, communal since anyone in the community has access to them and they are not spatially divisible.

Unprecedented population increases and severe land shortages are drastically altering the "customary" tenure systems practiced in various parts of South Africa. Consequently, they cannot be regarded as static, but as continually changing systems adapting to new needs and demands.

2. Freehold, Leasehold and Quitrent

Most of the land held by members of the coloured, white and Indian race groups is owned in freehold. Small pockets of freehold tenure are also held by blacks, notably in the Glen Grey district of the Ciskei. Some national states do offer freehold to individuals, but it is often a 'qualified freehold' where restrictions are placed on the marketability or use of the land parcel.

The South African government recently introduced a 99-year leasehold scheme for blacks in urban and peri-urban areas which is currently being implemented in various parts of the country. Leasehold tenure is not common in rural areas.

Quitrent tenure is available in parts of the Transkei. Plotholders pay an annual rent and may only sell the land with official permission. Subdivision is strictly controlled and plots may be forfeited if a holder is guilty of certain crimes, fails to pay his quitrent or uses the land in a non-beneficial manner. Mortgages are not allowed and land may not be pledged. It can, however, be inherited by certain relatives of the holder.

C. State Land

The majority of state land is owned by the South African Railways and Harbour Administration and the Department of Posts and Telecommunications. The sea-shore and the sea within the territorial water are also state-owned. Vacant state land is usually sold to individuals at market value and the state does not play a major role in agricultural production.

D. Urban Land Tenure

The government has over the past two years declared its intention to replace influx control with a "black urbanization strategy." This strategy is closely tied to tenure initiatives in urban and peri-urban areas.

The granting of 99-year leasehold rights to urban blacks was the first move towards recognizing the property rights of blacks outside the national states. New legislation was tabled in the 1985 parliamentary session proposing that leases revert back to the beginning of the 99-year lease period whenever they are transferred. This effectively gives permanent property rights to the country's 10 million urban blacks. Many of the people included in this scheme have made it clear that they will not be satisfied with a "second-rate" form of freehold and are entitled to the full freehold tenure enjoyed by other races in South Africa. This matter is currently being investigated by a Cabinet committee.

Urban squatting is an issue on which the South African government has been extremely inflexible and insensitive. Squatter camps, such as Crossroads near Cape Town, continue to be cleared by government officials. On the positive side, there does seem to be an increasing awareness that resettlement is not a viable proposition. The growth of site-and-service schemes is further evidence of efforts to accommodate the burgeoning urban black population.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

All title and formal interests in land are administered in terms of the Deeds Registries Act of 1937. The country is divided into eight administrative regions, each served by its own deeds registry office. These offices are headed by a Registrar of Deeds appointed by the Minister of Justice. Deeds are drawn up by qualified conveyancers and contain a written description of the rights and restrictions associated with the parcel. Every deed must have a property diagram attached to it or a reference to one already registered. A diagram is based on a field survey performed by a registered land surveyor. It contains data relating to the size and shape of the parcel as well as information which enables the parcel to be uniquely identified. Whenever the deed describes the spatial aspects of land rights it refers directly to the diagram which is attached to it, and which forms an integral part of the deed.

Once the Registrar of Deeds has examined a deed, certain information is extracted from it and placed in the property register. This information includes the name of the new owner and a reference to the deed which is stored in the Deeds Registry. The register provides an up-to-date record of the true title situation of all parcels and it is not necessary to search back through old deeds to establish a chain of title.

The Surveys and Mapping Branch of the Department of Community Development is responsible for maintaining the accuracy and reliability of the cadastral surveying system. This is done through the Surveyor-Generals' offices situated in the four provincial capitals. Although most of the cadastral surveying work is performed by private land surveyors, all records pertaining to cadastral surveys must be submitted to the Surveyor-General's office for examination and storage. The high quality and completeness of the title records make it unnecessary to provide either state guarantees of titles or title insurance.

The non-independent national states make use of a system which is similar to the system described above, but administered by different government departments. The South African Development Trust (SADT) acts as trustee of all state land available to the national states. They also handle the purchase and settlement of additional land for these states. The administration of the duties of the SADT is performed by the Department of Cooperation and Development. Land owned by the Trust is registered in a Deeds Registry in the same way as land in the rest of South Africa. The rights vested in the SADT are transferred via a proclamation to the government of a national state when it becomes independent. Some of the independent states have established their own Surveyor General's office and Deeds Registry. Much of the land held under customary tenure has not been formally surveyed and registered, but there appears to be an increasing demand for these services.

B. Pressures for Change in Legislation and Administration

The overriding pressures for change are undoubtably those aimed at ending the system of apartheid under which land is "racially segregated." Many of the legislative and administrative initiatives over the last two decades have formed part of the separate development movement.

Pressure for change is mainly restricted to urban areas and, consequently, it is in these areas that most changes are occurring. Permanent land rights are being granted to urban blacks (see section on urban land tenure), a direct contradiction of the earlier policy of strict separate development. However, the South African government continues to resettle groups of blacks living in "uneconomic" or "badly situated" locations. The government has also indicated that it will move away from influx control in urban areas and provide for greater participation by blacks in metropolitan government.

Despite these few concessions to blacks in urban areas, the government remains adamant with regard to rural land. Distribution of land is more skewed in South Africa than it was in Kenya and Southern Rhodesia before their independence. Homelands represent 13 percent of the total land in South Africa--and some of the most marginal, inhospitable land at that; this land is to be "home" for 80 percent of the population. The remaining 87 percent of land is allocated for white, coloured, and Asian populations, who comprise 11 percent of the population.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

In many developing countries, the traditional or customary land tenure system is regarded as a major constraint to agricultural development. The same criticism is made of the tribal areas in the national states of South Africa where traditional African tenure systems persist. To simply blame the land tenure system would be extremely naive as there are a number of other, perhaps equally important, factors frustrating agricultural development. Overstocking caused by land shortages, inadequate rural infrastructure and the migrant labor system are a few other factors that must be considered. In many rural areas farming has become so risky and unrewarding that it is safer for the men to become migrant laborers and support their families through remittances. This only aggravates the rural situation as it creates a shortage of male workers on the farms, making it difficult to carry out the traditional male farming tasks.

One of the most challenging tenure issues to be faced in South Africa is the problem of accommodating the breakdown in tribal traditions and the changing land tenure perceptions of these people. This breakdown is due to exposure to western-oriented systems, increasing urbanization and the large volume of information flowing out of urban areas, growing participation in a cash economy, rural overpopulation and severe land shortages, plus a host of other factors. Security of tenure and the provision of incentives to increase agricultural production need further investigation, particularly in these areas where traditional values are constantly being challenged.

B. Implications for Project Design

Many tenure and land reform projects either impose a modern individualized tenure or reinforce the customary tenure system that has existed over the past few centuries. In the South African context, where first and third world conditions are juxtaposed, it is essential to take into account those people who neither fit into the modern westernized mold nor the traditional tribal mold. To do this it should be recognized that land tenure is dynamic and that tenure perceptions are not homogeneous nor static within large communities. Project design should take account of this, perhaps by viewing land tenure as a continuum stretching from traditional or customary tenure to some form of modern, individualized tenure.

The land administration system in South Africa was not designed to deal with land held under customary tenure and in most cases the expense of placing land on the register would be prohibitively expensive. Evolving systems should allow for simpler and less expensive transactions and should be flexible enough to meet the changing demands of the diverse South African population.

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LAND TENURE PROFILE: SUDAN

Summary: Land policy is in a state of considerable flux in Sudan. Moves toward Islamicization of land law and the fall of the Nimeiry government have undermined previous policies without establishing clear new directions. Critical national land policy issues concern (1) whether there will be an openness to establishment of new rights of ownership, foreclosed under previous policies; and (2) the relative roles to be played by Islamic law and customary rules in developing new arrangements for ownership or use rights. Given the high level of uncertainty at the present time, it is important that land tenure arrangements for project participants be clearly specified in project agreements.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Over the past fifteen years there has been no effective land policy with respect to the vast areas of land under customary tenure. Legislation in 1970 foreclosed recognition of more than use rights over such land, and private ownership was restricted to limited areas where ownership had earlier been registered. Outside project areas, rights continue to be governed by customary rules. In project areas government has utilized a leasehold system with mixed results. Over the past two years, pressures to institute Islamic law have resulted in enactment of legislation which undermines existing assumptions without providing a credible alternative. Such legislative change with little impact on the reality of land use has been characteristic of Sudanese land policy over the last two decades. While land policy is in a state of flux, this has not so far affected actual patterns of access to and use of land.

B. Private Tenure

1. Customary Tenure

Customary tenure controls access to most agricultural land in the country. In the areas of western and eastern Sudan where shifting cultivation predominates, the village is the typical landholding community. Within the boundaries of village lands, each member of the village acquires tenure rights

for the duration of cultivation by clearing land that is unoccupied. A villager has the right to collect fruits and tap gum arabic trees which spring up on the plot which he abandoned due to exhaustion of the soil; a short absence does not deprive him of the right to tap these trees. In areas where there is stability of cultivation, landholdings may be inherited according to Islamic law or customary law, depending upon the depth of penetration of Islamic legal values. If a villager leaves the village, the land he occupies is alloted to someone else. In parts of sparsely-populated Kordofan and Darfur regions, land in excess of the village needs may be alloted by the sheikh (chief) to strangers. Because land is relatively abundant, the size of each plot is a function of kifayat yet (i.e., not more than your hand can work).

Lands under customary tenure are also found in the whole of Southern Region, and large areas occupied by nomadic and semi-nomadic peoples in the Eastern, Darfur, Kordofan, and Central Regions. The Nilotic peoples of the Southern Region, the Beja in the Red Sea Hills, the Kababish of Kordofan, and the Baggara of Southern Darfur have almost unrestricted enjoyment of a large territory known in Arabic as dar. For nomadic and other pastoralist groups, pasture is managed as commons, with recognized boundaries not only between tribes, but also between sections and sub-sections.

2. Freehold and Leasehold

Private individual ownership of land (melk) is a fundamental concept of Islamic law, and has long been practiced in urban areas and other more thoroughly Islamicized areas of northern and central Sudan. In earlier centuries, sultanates granted land by written charter, and irrigated land along the Nile was governed by Islamic law. After the suppression of the Mahdist rebellion at the turn of the century, the British began to register both urban and agricultural land along the Nile in an operation which provided the prototype for land registration efforts in British colonies elsewhere in Africa. Registration was systematic, with a field operation to adjudicate the title to each piece of land in a "settlement" area (referring to settling of titles). The agricultural land registered was a miniscule part of Sudan's land area, but agriculturally extremely important: the irrigated land along the Nile between Old Halfa and Kosti, and some rainfed agricultural areas in the Gezira and in the Nuba Hills. The total area is about six million feddans (one feddan is equal to 1.038 acres) out of a total of a little less than 40 million feddans judged suitable for cultivation.

This registered land was excluded from the Unregistered Land Act, 1970, which made the State the registered owner of all unregistered land. The Civil Transactions Act of 1984 established that the basic property regime for this land is Islamic law, which had previously affected only inheritence of this land.

Leasehold is the tenure on which government makes available land in development projects. This is the case both in the irrigated schemes and in the mechanized farming schemes in rainfed agricultural areas. The historical pattern in Sudan has been for government to acquire ownership of land in schemes, and the Unregistered Land Act of 1970 greatly facilitated this process (see below). Rents are nominal, and the most important function of the lease is to set out the complex relationship between the farmer and the

scheme. The period of leaseholds ranges from one year under Gezira Scheme tenancies (though they are almost invariably renewed) to 25 to 40 years in rainfed mechanized farming schemes such as those around Gedaref and Habila. This last sector is clearly the most important tenure sector in terms of commercial production.

C. State Land

The Anglo-Egyptian administration enacted a Land Settlement Ordinance in 1905, with a stipulation that "waste, forest, and unoccupied land shall be deemed to be the property of the government until the contrary is proved." This was superseded by the 1925 Land Settlement and Registration Ordinance, which provided to the same effect. These provided a rule in limited areas where there was to be a systematic settlement of titles and their registration. But for the vast majority of the land in the country, there was no systematic effort to identify which lands belonged to government. In practice, the state consistently refrained from interference with rights of occupiers, whether group or individual, in unregistered land.

The 1970 Unregistered Land Act, enacted shortly after Nimeiry came to power, declared that all land of any kind whatsoever, occupied or unoccupied, belonged to the State and was deemed to be registered in the name of the State. Ownership could no longer be acquired by long use. The Act was a reaction to extensive land-grabbing in the central Sudan, and the original intention appears to have been to establish direct state administration of all unregistered land. In fact, land outside major development projects has continued to be administered by traditional authorities. Land rights have been considered use rights, with disputes over such use rights being decided in customary or Islamic law courts in the various parts of the country. The primary importance of the 1970 legislation was to provide a clearer legal basis for use of leaseholds from the state as the tenure for farmers in development projects, and to facilitate acquisition of land for such projects.

The 1984 Civil Transactions Act repeals the Unregistered Land Act, while reaffirming government ownership of unregistered land. It introduces a variety of Islamic law concepts, including the fundamental notion that the act of clearing and cultivation of previously unused or abandoned land confers rights of usufruct.

D. Urban Land Tenure

Land in most major urban areas in Sudan has been registered in freehold, the result of sales of public land to private buyers as the cities have expanded. There is an active land market. The 1984 Civil Transactions Act did not alter the status of urban freehold, but repealed a scheme of urban rent restriction dating back to the fifties. That scheme was of limited effectiveness, but with its repeal landlords are introducing major rent increases, especially for poor and the lower-middle-class housing.

E. Distribution of Types by Region or Ecological Zone

Registered freehold land is located largely along the Nile in the northern and central Sudan and in urban areas. Leases of government land in the irrigated schemes are largely in the same regions of Sudan, while leases

on the rainfed mechanized schemes are clustered in the eastern and western Sudan. Other areas are managed under customary tenure.

II. LAND ADMINISTRATION

A. Current Administration System

The Minister of Agriculture, Food, and Natural Resources has overall authority over the system of state agricultural land leaseholds. The system is administered by the public agricultural boards or corporations. For instance, the Mechanized Agriculture Public Corporation administers and allocates leases, subleases, and also approves dealings with leaseholds of lands under mechanized agriculture. The same is true of the Gezira Scheme where the Gezira Board not only allocates leases, but also determines what is to be produced, and how to produce and market it.

Prior to 1971, unregistered land was administered by traditional authorities of the Native Administration. The administration of that land has altered a number of times due to continued attempts to create a vital system of local government to replace the native authorities. Most recently competences with respect to land shifted during the delegation of powers to the regional level in the early 1980s, but in 1985 these powers appear to have been reclaimed by the central government. The likely pattern appears to be a continuance of that established since independence: local governments which sporadically attempt to assume control of land administration but lack the resources to do so, with traditional authorities continuing to fill the vacuum.

As for privately owned land, whether rural or urban, the keeping of records of titles and registration of transactions is the responsibility of the Registrar of Lands. The Office of the Registrar is part of the Judiciary, and there are local Land Registries in riverain provinces and towns with significant registered land. The Minister of Construction and Public Works has overall authority over urban land, town planning and zoning. The municipalities allocate urban lands and collect rates, levies, and registration fees on behalf of the Ministry.

B. Pressures for Change in Legislation and Administration

Over the last five years the predominant pressure for change has been toward Islamicization of land law. This was partly achieved by the 1984 Civil Transactions Act. A great deal will, however, depend upon the follow-up to the Act, and the follow-up is a matter of considerable uncertainty. In the confused political circumstances following the overthrow of the Nimeiry government, new political coalitions are forming, they may be expected to eventually put forward land policies as part of their proposals, but they have not yet done so.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The central issue is whether, in the wake of the repeal of the Unregistered Land Act, there will be an openness to establishment of new

rights of private ownership, and willingness to utilize land registration or other mechanisms to recognize such rights. The initial result has been more continuous, relating ownership by government of all unregistered land. In the project context, this issue presents itself in terms of whether government will continue to use only leasehold tenure in the project context, or be willing to allow more durable, less conditional tenure. Outside the project context, recent tendencies to push Islamic law at the expense of customary law have raised the important question of the relative role which these two sources of law will play in the development of private rights in land in the post-Nimeiry period. The issue is politically significant in the Southern Sudan, where the current rebellion is in part a reaction to attempts to impose Islamic law.

B. Land Tenure and Agricultural Production

There is a total lack of studies in Sudan which seriously attempt to relate land tenure to agricultural production. The ethnographic studies which make some reference to customary land tenure are badly out of date, and it is in any case far beyond the scope of this profile to attempt any discussion of the particular production impacts of the many diverse customary systems. Clearly current arrangements for grazing land by pastoralist groups leave something to be desired, but the current drought makes the point that any attempt to limit movement could be fatal in such a variable, arid environment. Massive development of groundwater resources is a precondition to tenure reform.

In the privately-owned registered land areas, progressive subdivision of holdings under Islamic rules of inheritence is widely said to be having negative impacts on production, but there are no studies to document this.

On land leased out by the state, the problems differ as between the rainfed and irrigated sectors. In the rainfed sector the critical issue is government's inability or unwillingness to enforce conservation and good husbandry requirements of leases to tractor-farmers, and its inability to restrict the unauthorized expansion of tractor cultivation beyond mechanized farming schemes. Both factors are contributing to severe soil degradation, and are also depriving pastoralists of land, engendering growing conflicts over land between tractor-farmers and pastoralists. On the older irrigated schemes, a long history of over-control of farmer production decisions by scheme management appears to be at least partly responsible for declining yields of cotton, the export crop whose foreign exchange earnings provided the justification for the major irrigated schemes.

C. Implications for Project Design

It is increasingly apparent that land tenure policies pursued since the early seventies have produced unsatisfactory results. It is less clear that the needed reformulation of land tenure policy will be forthcoming. In these circumstances project planners will need to give particular attention to tenure issues. This will be especially true where major private investments in land are expected, and where significant increases in the value of land are anticipated as a result of project activities. The first requires secure tenure, while the second raises dangers of beneficiary displacement by more powerful interests if intended beneficiaries do not have secure tenure.

Tenure arrangements for project participants should to the extent possible be explicity prescribed in project agreements with government, pending establishment of a more stable land policy and land law environment for project activities.

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LAND TENURE PROFILE: SWAZILAND

Summary: The traditional land tenure system of Swaziland retains considerable vitality, in part because the traditional polity as a whole has been changing only gradually. A bitter historical experience with concessions held by white South Africans has created an antipathy toward individual tenure. While the traditional land tenure system has been critiqued by some observers, it seems likely that change in the near future will be gradual. Development projects and programs will need for some time to be planned taking into account the opportunities and constraints posed by that system.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Individual tenure land created under concessions by the Swazi king in the latter part of the last century, owned almost entirely by non-Swazis, is being repurchased by the Swazi nation. Much has been returned to the status of Swazi Nation Land, administered under customary tenure; other areas are being retained for state development activities, such as parastatal operations and experimental farms. The traditional land tenure system, though sometimes criticized on developmental grounds, also has its defenders. It is seen by many Swazis as an indispensable element in the traditional polity, and continues as the dominant tenure form for smallholder agriculture.

B. Private Tenure

1. Customary Tenure

The nation consists of a single ethnic group, with a common customary land tenure system. The system as it exists today was established in the early nineteenth century, following the establishment of the Dlamini clan in what is now Swaziland after migration from coastal lowlands in southern Mozambique. The Dlamini clan established hegemony over a gradually increasing area of land through what has been called the process of "the ever-dividing homestead," establishing cadet branches of the family in new areas, and absorbing other groups or creating alliances with them. By the advent of Europeans in the area, a Dlamini royal line was established, and all land was viewed as being held by the king.

The land is administered by a chiefly hierarchy. Once a chief allocates land for a residence and farmland to a household head, that land becomes his property for life and heritable by his heirs. He will distribute it among his wives. When he dies, inheritance is patrilineal. The eldest son of each "house" (each wife's children) in a polygamous household, or the eldest son of a man who has only one wife, will receive the major portion of the estate left by his father. A surviving widow may remain in undisturbed possession of the house she occupied and any land given to her by her husband, though it is the property of the heir. Where in a polygamous household there is land which has not been allocated by the deceased to his wives, it will be inherited by his "main heir," the eldest son of his senior wife. Women do not hold land in their own rights, but by right of wife or widow. The senior wife is usually the first wife. Land is generally only lost in cases of banishment. Land is said not to be sold, but is apparently loaned frequently, and some recent studies note apparent sales.

Some authors suggest that all pasture in Swaziland is open to all herders, but practice has gradually recognized local community pastures. Pasture control and administration is the least-studied aspect of customary land tenure.

2. Freehold and Leasehold

After the advent of the Boers in Southern Africa, areas of tribal territory were ceded to the Lydenberg Republic in 1845 and 1855, and in the 1860s vast and often overlapping areas of Swaziland were given on concession to Europeans by the king. The concessions were sought for pasture and for mineral exploitation. After victory in the Boer War, the British in 1903 assumed direct administration of Swaziland as a protectorate, and in the following decade effected a tripartite partition of Swaziland into land held by Swazis under traditional tenure, known first as Reserves, later as Swazi Nation Land; individual European holdings of freehold and leasehold; and Crown Land.

Developments since then have increased Swazi Nation Land. Much Crown Land was later converted to Swazi Nation Land. In addition, an area now approaching twenty percent of the country has been purchased from freeholders by a Lifa Fund, raised by the king through levies and more recently substantially contributed to by the British government as a part of the arrangements surrounding independence (the Land Purchase Programme). This land has been converted to Swazi Nation Land, but its control is closely in the hands of the king and not subject to subordinate chiefs as in most areas of Swazi Nation Land. Much of it has been resettled by Swazis; other areas have been retained for parastatal operations, experimental farms, and other development-related initiatives by government. Over 60 percent of the country is now Swazi Nation Land, while under 40 percent is individual tenure, roughly a reversal of the proportions in the original partition. The individual tenure land is mostly freehold, but about 15 percent consists of concessions held in perpetuity or on leases of more than ninety-nine years' duration. These are convertable to freehold. Very little of the individual tenure land is owned by Swazis; it is mostly owned by South Africans, and more by companies than individuals. An undetermined but probably small number of Swazis hold individual tenure land on leases from its owners.

In 1946, the Swazi Land Settlement Scheme distributed Crown Land and some purchased freehold to Swazi farmers in leasehold. The Scheme was not a success and was abandoned after 1954. In practice, these areas are now subject to the normal rules of traditional tenure applied on Swazi Nation Land. Leasehold continues to be used, however, as the tenure for participants in government's agricultural production schemes.

In general, there is a fairly strong association of commercial agriculture with individual tenure land and subsistence food production with Swazi Nation Land. The more productive individual tenure land is in timber, sugar cane and citrus fruits. On the other hand, a third of the individual tenure land is owned by absentee holders, often as seasonal grazing. Some is quite unintensively used, while other areas are said to be overgrazed to an extent which is creating serious erosion.

C. State (Crown) Land

In Swaziland, because it is a kingdom, the term Crown Land has continued in use after independence. Because in the case of Swaziland the tribe is synonomous with the state and the king as head of state is regarded as holding all Swazi Nation Land in trust for the Nation, such land could be characterized as state land. Given the non-bureaucratic, traditional mode of its administration, however, it is better characerized as land under customary tenure. There is, of course, a limited amount of land devoted to public purposes which is described as crown land, only about two percent of the total land.

D. Urban Land Tenure

In urban areas most land is in individual tenure, either freehold or leasehold, and registered under a deeds registry system.

E. Distribution of Types by Region or Ecological Zone

Unlike most countries with dual tenure systems inherited from the colonial period, the blocs of land under different tenures are relatively small and inter-mixed. Individual tenure holdings are scattered throughout the country.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Until two years ago, land policy was the resposibility of the Ministry of Agriculture and Cooperatives. While that Ministry continues to have a very direct interest in the impact of land tenure on agricultural production, a new Ministry of Natural Resources, Land Utilization and Energy has now been created and has charge of land administration and land use planning. Actual allocation of Swazi Nation Land to individuals, however, continues to be carried out by the chiefly hierarchy, which is headed by the king and not integrated with the Ministerial system of government. The Deeds Registry for the individual tenure land is located in the Attorney-General's Chambers.

Table 1
The 1982 Tenurial Land Groupings in Swaziland

Land Category	Size (Ha)	Percent Total Land Area of Swaziland
Individual Tenure Holding (ITH)	685,502	39.46
Lifa Land (LL)	109,562	6.31
Swazi Land Settlement (SLS)	126,304	7.27
Swazi Area (SA)	653,215	37.60
Crown Land (CL)	49,142	2.83
Land Purchase Program (LPP)	113,429	6.53
Total	**1,737,218**	**100.00**

B. Pressures for Change in Legislation and Administration

Pressure for reform of traditional tenure appears to have come largely from external sources, such as donors. The government has resolutely supported the traditional system of tenure, which is seen as the antidote to the ownership of land by non-Swazis with which individual tenure has been intimately associated in Swazi history. The most fundamental pressure toward tenure change in Swaziland continues to be for the repurchase of such land for the Swazi Nation.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The most critical tenure issue is simply whether Swaziland will continue as a largely traditional polity with a traditional land tenure system, or whether there will be an accelerating shift of power to new elites, which would likely involve important changes in the land tenure system. A second issue has three facets: (1) how actively will acquisition of individual tenure land for the Swazi Nation will be pursued in coming years; (2) will it, as population pressure on land grows, affect the more productive individual tenure operations which have to date been bypassed; and (3) on what terms will that land be made available to Swazi farmers.

B. Land Tenure and Agricultural Production

Various critics of the traditional land tenure system have argued that the system discourages agricultural development in a number of ways.

1. It is said to create insecurity of tenure as local traditional authorities react against the development of non-traditional centers of influence in rural society based in commercialization of agriculture.

2. Farmers' independence of management of their holdings is said to be limited by community uses, such as communal grazing after harvest.

3. Fragmentation of holdings is identified as inefficient and an obstacle to introduction of mechanization though it clearly also has certain advantages in risk-spreading strategies.

4. Farmers are unable to offer land security to obtain loans for investment in agriculture.

5. "Tragedy of the Commons" critiques are made of traditional pasture arrangements.

6. There is a marked discrepancy between the major role which women play in agriculture and their inability to own land in their own right.

7. Significant amounts of land are said to be idle in the hands of rural residents who derive their livelihood from remittances from modern sector employment, often in the mines.

These critiques have been repeated regularly but most have not been very well substantiated. Insofar as they do exist, their extent and seriousness remains to be established. Nor is it clear what would replace traditional tenure. The antipathy toward freehold based on Swaziland's concession experience is still strong.

C. Implications for Project Design

Most projects to benefit smallholders already on the land will need to be carefully framed to accommodate the traditional land tenure system. Any adjustment on the tenure side will need to be through negotiation and consultation with traditional leaders in the project area. Where projects are to be established on land where farmers are to be settled--as for example where freehold land has been acquired for the project and Swazi cultivators are to be settled on it--it may be possible to utilize some form of leasehold tenure.

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LAND TENURE PROFILE: TANZANIA

Summary: The government of Tanzania is committed to a program of African socialism and since independence has implemented rural development projects for (1) ujamaa villages, where farmers will farm both individually and communally, and (2) compulsory villagization, in which centralized settlements will allow the provision of medical, educational, and agricultural services for rural people. In neither project were land tenure issues considered. Agricultural production has fallen badly, and a recent government policy paper emphasizes, among other things, the need to provide security of tenure for farmers. Implementation of some of these changes is beginning.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Tanzania is fortunate in that it does not have the problems of high population density and land shortage that a number of other African countries do, and at the close of the colonial era land tenure arrangements remained much as they had been in earlier years. Under the leadership of Julius Nyerere the government of Tanzania emphasized the virtues of an egalitarian society characterized by mutual aid and cooperation. Between 1967 and 1973 the focus was on the formation of ujamaa villages, settlements in which agricultural production was to be communal. A number of ujamaa villages were established with varying degrees of success, and in 1973 the government began to soften its emphasis on collective production while supporting a program of compulsory villagization, which would allow the provision of various educational, medical, and agricultural services for rural people.

Neither of these efforts concerned itself with issues of land tenure, and yet the programs disrupted pre-existing tenure arrangements. Indeed, such questions were treated as beside the point, and no law or regulation specified what the new tenure relationships should be. The most salient characteristic of land tenure in Tanzania in the past 15 years has been its insecurity, and the level of agricultural production has fallen. This has recently led to reconsideration of national agricultural policy, with a 1983 Agricultural Policy Paper recommending that the government set lease terms for villages and individual farmers, and implementation of some of these changes is beginning.

B. Private Tenure

1. Customary Tenure

Customary tenure practices in pre-colonial Tanzania varied widely, the product of a complex interaction between land, man, and crops whose purpose was to minimize the risk of famine. As a rule, clearing and cultivating land established rights to it, rights that were then held collectively by descendants of the original land-clearer. Although certain activities might be done communally, the farming unit was often the individual household. Among most groups inheritance was patrilineal, and land passed from a father to his sons. (The Zaramo, Luguru, Mwera, and Makonde in the southeast of the country are exceptions and are matrilineal.) Land was relatively plentiful in most areas of the country, and when holdings had become sub-divided beyond an economical size or when productivity had begun to fall, new lands could be cleared and brought under cultivation.

In a few areas of the country, notably Buhaya and Bugufi west of Lake Victoria, land tenure relations were more hierarchical. Here powerful chiefs allocated large estates of land to officers who in turn allowed tenants to work the land in exchange for services and tribute (i.e., a portion of the crop). This system of landholding and use, referred to as nyarubanja, survived in the colonial period despite the fact that the military caste it had served no longer existed.

Under German and British colonial rule, customary land tenure systems survived with only slight alteration. Unlike in Kenya, large tracts of land were not alienated for European settlement, and as long as the supply of land was adequate, customary practices continued to be followed much as they had been earlier. Although both colonial administrations declared unoccupied land to be the property of the crown, customary practices were little affected. There were, however, innovations in tenure systems introduced in a few areas where permanent crops were planted. Among the Chagga around Mount Kilimanjaro, for example, the introduction of coffee meant that land with coffee bushes on it remained under permanent cultivation. And because of the commercial value of the crop rights to coffee land became increasingly individualized. In addition, in some areas new tenancy arrangements were introduced; these new contracts more closely resembled sharecropping. As with nyarubanja tenancy, part of the crop went to the landholder, but the position of the sharecropper-tenant was less secure than that of the nyarubanja tenant and he could be thrown off the land with little notice. These new tenant arrangements were prevalent in areas around Lake Victoria where tenants had been used in the past and where there were now migrant newcomers who wished to farm.

2. Freehold and Leasehold

Under the German administration of Tanganyika, a number of German and other European settlers established freehold title to relatively large tracts of land, most often along the coast. The British recognized these freehold rights when they acquired the League of Nations mandate for Tanganyika and substituted British property law. All freehold was abolished in 1963 with the

passage of the Freehold Titles (Conversion and Government Leases) Act. On the grounds that all land must be owned by the people as a whole, all freehold title was converted into 99-year government leaseholds. This act brought one million acres of land into the public sector.

C. State Land

Ownership of all land in Tanzania is vested in the state, which has the power to issue rights of occupancy. Government leaseholds were converted into rights of occupancy under the 1969 Government Leaseholds (Conversion of Rights of Occupancy) Act.

D. Urban Land Tenure

During the colonial period, Europeans and Asians might acquire freehold title to land in urban areas while Africans were restricted to rights of occupancy. Since independence, freehold rights have been converted to government leaseholds which have been again revised into rights of occupancy regardless of the race or national origin of the landholder.

E. Distribution of Types by Region or Ecological Zone

See Section B.1.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Formulation of agricultural and land use policies is the responsibility of the Ministry of Agriculture. At the local level village councils work with extension officers and party officials. In a number of new villages, village managers, civil servants with technical expertise, have been appointed to work with village councils in implementing the goals of villagization.

B. Pressures for Change in Legislation and Administration

In 1967 President Nyerere laid out the goals of African socialism in the Arusha Declaration: rural and hence national development was to be achieved through the cooperative efforts of small-scale farmers. Mutual aid and reciprocity, which had guided communal interests in the pre-colonial period, were now to be both the means and the end in national development. To accomplish this, Nyerere proposed the formation of ujamaa villages, settlements where work and returns would be shared by the community members. In the early stages, ujamaa villagers were to have both individual private plots and communal fields. In areas where settlements remained scattered, residents were to be grouped into newly established villages. Land tenure issues were ignored in this new policy.

In the period up to 1973 a number of ujamaa villages were formed; some were new settlements, others declared themselves ujamaa villages. A number of large-scale farms were nationalized and the land turned over to ujamaa villages or into state farms during this period as well. By 1973 over two million Tanzanians were reported to live in such villages.

Ujamaa failed to have the hoped-for effects on agricultural production, however, and most studies have since shown that the communal fields were less productive than those individually farmed and that it was more often those farmers who were somewhat better-off who participated in ujamaa. For most farmers what, if any, were the advantages of ujamaa was not apparent. Ujamaa emphasized traditional farming techniques and avoided heavy investment in farming machinery, and for most farmers it meant splitting their labor between their own fields and the communal ones. Most logically chose to spend more time in producing food crops for themselves and their households.

In 1973 Nyerere announced a program of compulsory villagization, choosing to backpedal in cooperative production while emphasizing the advantages of centralized settlements in which services, amenities, and production assistance could be provided for rural people. The program was to some extent helped by the drought at the time, and people were often willing to resettle in new areas. But agricultural production remained low, in part due to the problems of farming new areas but also due to more long-term difficulties with marketing, bureaucracy, conflicting labor requirements, local organization, and land tenure questions.

Nor has the situation improved in recent years, and 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 the 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.

III. TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The critical tenure issue in national policy is the need to provide security of tenure for individual farmers. The government remains committed to villagization, a program that will allow the provision of educational, medical, and agricultural services to rural people. But at the same time there is a vast amount of evidence showing that privately farmed fields are more productive than the communal ones. The need, therefore, is for the government to provide security of tenure for the individual farmer within the context of villagization.

B. Land Tenure and Agricultural Production

Agricultural production in Tanzania is at a very low level, and insecurity of land tenure is one of the factors in this low level of production. Production levels have remained higher on individually farmed fields than on communal fields. Other factors, however, have also played a part in this. They include: (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 heterogeneous; (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; and (6) conflicts between labor requirements on individual holdings and the labor requirements of cooperative production at the peak of the traditional production cycle.

C. Implications for Project Design

The most important implication for project design to be gained from past experience is that the willing participation of the small-scale farmer must be obtained. Throughout most of the twentieth century Tanzanian farmers have been told what, where, and how to produce and have generally chosen to cooperate only selectively--a not surprising fact given that most programs provided little return to them. To be successful, a program must obtain their participation while at the same time keeping under consideration the genuine commitment of the Tanzanian government to an egalitarian socialist society. Of critical concern is the degree to which the government agrees to implement some of the suggestions of the recent Agricultural Policy Paper in providing leases to villages and individual farmers.

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LAND TENURE PROFILE: TOGO

Summary: Uneven patterns of population density have led to fragmentation of holdings in the heavily populated regions of the coastal highlands. Resettlement projects, however, have so far proven unsuccessful as previously settled populations have refused to accept the newcomers. The government of Togo has enacted legislation which gives the state vast authority to deal with land matters but has to date declined to implement these measures. As a result, land tenure issues remain unsolved but will take on increasing importance as new agro-industrial and irrigation projects are initiated.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

The population of Togo is unevenly distributed throughout the country, with high densities found in the coastal highlands (75 people per km^2) and in the Kabiye Massif in the Kara District (154/km^2), while elsewhere population densities are low. In the densely populated areas, fragmentation of holdings has become a critical problem, and resettlement has so far proven unsuccessful as host groups have refused to accept newcomers.

Customary land tenure practices continue in effect in Togo, and newcomers, if accepted into an area, are generally granted only sharecropping rights. It is in this fashion that demographic problems have been handled so far. With the passage of land ordinances in 1974 and 1978, the government has established its right to enact far-reaching change with regard to land tenure but to date has taken few concrete steps.

B. Private Tenure

1. Customary Tenure

Although there are very important subtleties in the interpretation of land tenure rules from one area to another, and even from village to village within the same region, there is also a basic outline that is similar for the country as a whole. Land is held by patrilineal groups. The largest grouping is the clan, which is composed of all those individuals who recognize a common ancestor and follow similar religious and social customs. These clans are

composed of patrilineages, in which each member is able to demonstrate how he or she is related to every other member. Each of these lineages is in turn composed of lineage segments that as a rule constitute the residential quarters of Togo villages. Although each of these groups is said to have "ownership" rights to land, it is at the level of the local lineage segment that access and distribution of land are determined. The eldest male in the lineage has power over land-related matters, and all such business must come before him. Most villages also have some land that is not allocated by any of the lineage segments; use of this land is handled by the village chief.

The above model, of course, glosses over the tremendous variation that is found in the many ethnic groups in Togo. These groups are by convention divided into three large clusters. In the south the Ewe dominate. Slash-and-burn cultivation has been customary, and all vacant land is claimed as part of a lineage segment's farming system (i.e., as fallow). It is among this group that commercial cropping is most common. The central region is represented by the Kabiye cluster. The Kabiye are considered among the best farmers on the continent and in the more densely populated areas of good soils there are terraces held in near-permanent cultivation. On the terraced slopes, fields are inherited as a unit rather than subdivided.

The third major ethnic cluster is the Paragourma of the northern savanna region. This is the only group where the use of the ox-drawn plow is common, the others relying principally on the hoe. In all the traditional systems there is no mechanism for transferring or alienating possession of land on a permanent basis. This means that one has rights only to land in a natal region, and inhabitants will not accept the movement of farmers from other ethnic groups into their area on a permanent basis.

2. Freehold and Leasehold

Freehold and modern leasehold (as opposed to sharecropping) have existed along the coastal region since early in the twentieth century. The Germans declared Togo a Musterkolonie (model colony), which was to provide a pattern for economic expansion elsewhere. Plantations were established throughout the southern portion of the country and were registered according to German legal practices (referred to in Togo as Romano-Germanic law). The northern populations resisted any incursion and very few colonial enterprises were established beyond one hundred miles inland. The Germans held the colony until 1914, and by that time there were 13,000 hectares of German-owned plantations and an even larger area of African-owned estates.

Another source of individual private tenure appeared in the latter part of the nineteenth century when commercial families whose ancestors had been repatriated slaves (many, interestingly enough, from Brazil and hence the designation "Brazilians" in many Togo histories) settled on the coast, especially around the port at Aneho. They purchased and sold land along the coastal plain from the outset and they, rather than the Germans, are the originators of Togo's small land market.

In spite of a comparatively long-standing market in land, over ninety percent of the farms are held according to traditional land tenure practices. This is just as true for commercial-crop production as it is of the

subsistence sector. Recent studies have indicated that in areas of real and perceived land shortages the population is not turning to market mechanisms to regulate access and distribution. Rather, the land market has become dominated by speculation and those who are purchasing do not make capital improvements.

C. State Land

The Ordonnance No. 12 of 6 February 1974 defines all unused and abandoned land as state land. It has been estimated that if the state were to actually enforce this regulation there would be over 600,000 hectares available for projects and other governmental purposes. As it is, the whole issue has remained poorly defined and even agro-industrial projects lack clear tenure rights.

The overall situation is clouded by the fact that for most of the country good land management requires that the land be fallowed for several years. It becomes extremely difficult at the policy level to make a hard-and-fast rule determining when land is in proper fallow sequence, when it is being held merely for speculation, or when it has been abandoned.

D. Urban Land Tenure

Since the days of the trading entrepots on the coast, urban land in the maritime zone has been held in individual tenure. With the founding of the capital at Lome in 1897 this form of urban tenure received legal backing. It is in the peri-urban areas that the greatest amount of change is taking place in formal rules of land tenure. Rights to house plots start as an accommodation to traditional rules and over time emerge as inheritable, saleable property.

E. Distribution of Types by Region or Ecological Zone

See Section B.1. above.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

It is only since 1974 that the government of Togo has concerned itself with land tenure issues and attempted to define national policy and to establish government offices with authority over land issues. The ordonnance of 6 February 1974 divides land in Togo into three categories: (1) lands held by individuals or groups; (2) land in the public or private domain of the State; and (3) national land (domaine foncier national). This third category is an innovation, and is composed of all land not under cultivation (but excluding fallow land adjacent to existing cultivations). The State has the power to allocate to individuals or groups land in the domaine foncier national.

A complementary ordinance of 17 May 1978 outlines the administrative structure to be established to handle land issues and rural development.

National and regional committees, under the supervision of the Commission nationale de constation et d'évaluation des droits fonciers, were set up to deal with land in the first category, that held by individuals and groups, making it clear that the government intended to concern itself with all aspects of land and, specifically, with the problems of fragmentation of holdings. The law also provides for the establishment of agricultural planning zones (zones d'aménagement agricole planifié, or ZAAP) with authority to initiate and manage local planning projects. The potential power of these bodies over land is vast, although to date they have done little.

B. Pressures for Change in Legislation and Administration

Pressures are less for legislative change at this point than for implementation and activation of those structures provided for by the 1974 and 1978 ordinances. The government of Togo has not followed up these initiatives, perhaps preferring to avoid at least for the time some of the disruption and controversy that may occur. In the meantime, land fragmentation is continuing, and speculation in land, in the rural as well as peri-urban areas, is an increasing problem. In addition, agro-industrial projects require a secure tenure base, but to date policy has not been drawn up.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

Togo governmental officials recognize that agricultural development is critical to the country. Several issues are seen as of paramount importance in areas related to land tenure. One of the most difficult is that associated with demographic imbalance. A citizen of Togo from an overcrowded Kabiye community cannot move to another region in search of land on anything other than a sharecropping basis. Citizenship clearly does not bring rights to land throughout the country.

Policy makers have raised as a major concern the migration (of the most dynamic segment of the population) from the rural communities and from the farming economy. How can agriculture be made rewarding enough to appeal to the most progressive youth when there is already a shortage of land in the regions with the greatest out-migration? This is related to another issue--the low level of adoption of new techniques.

B. Land Tenure and Agricultural Production

In the past few years the government of Togo has increasingly emphasized the need for rural development and for food self-sufficiency. With the support of the IMF, it has announced that prices to be paid to food producers, as well as to livestock holders, will rise. The government has also emphasized that there will be increased privatization of parastatal bodies in rural development.

These first measures aimed at increasing agricultural production have little immediate effect on land tenure, but other projects will have important

implications for tenure issues. A successful market gardening project has been set up in the maritime region to grow fruits and vegetables for sale in nearby urban areas. Planners are hopeful that similar projects may be established elsewhere in the country, but they will almost certainly require irrigation and new infrastructure to be successful. Irrigation projects have been proposed for the Mono, Oti, and Zio Rivers area, and in all of these cases land will be brought into intensive use, new farming techniques applied, and, perhaps, newcomers settled in the area. Land tenure issues are obviously of critical importance if agricultural production is to be raised in these projects.

C. Implications for Project Design

There are several factors that will directly impinge on project design in Togo. The first is the need to give security of tenure to participants who come from outside the local area. Government has to date shown a reluctance to enter too directly into this matter. Projects will have, therefore, to work with local institutions if some solution is to be found to this widespread problem.

In addition, because of the close tie between notions of land tenure and religion, history and social solidarity, project design will require a thorough socio-cultural understanding of the region before attempting implementation. Togo agriculturalists have a well-deserved reputation for being good farmers. They face constraints in expanding production beyond current levels but have historically rejected any innovations that threatened traditional tenure rights.

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LAND TENURE PROFILE: UGANDA

Summary: The past decade has been a troubled one for Uganda, and land tenure problems have not been of primary concern. Under the 1975 Land Reform Decree, passed under Idi Amin's regime, all freehold titles were abolished, but it remains to be seen if the present administration will attempt to enforce this position or whether it will choose to ignore it. Uganda's economy is in a shambles, and Obote's government is directing its efforts at raising agricultural production through increased prices to producers. With a revived economy, however, the problems of land fragmentation and a trend toward individualization of land rights will undoubtedly reappear.

NOTE: This profile was written prior to the July 1985 coup which overthrew President Milton Obote.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Land tenure patterns in Uganda during the colonial period were unique, a combination of customary tenure practices and individual freehold of registered land, almost all of which--in contrast to Kenya--remained in the hands of Africans. Since independence, legislation has brought increasing amounts of land into State domain, culminating in the 1975 Land Reform Decree which abolished freehold and vested all land in the State. It is difficult to know what the effects of this law have been, as few in Uganda have concerned themselves with land tenure practices in the past decade. Nor is it clear if the present government of Uganda will attempt to enforce this law or if it will ignore it altogether.

B. Private Tenure

1. Customary Tenure

Uganda is composed of a number of precolonial kingdoms, including Buganda, Bunyoro, and Toro, as well as areas such as Lango, Teso, and Acholi where pre-colonial society was less hierarchical. Buganda, brought under British rule in the late nineteenth century, was the beneficiary of a separate agreement with the British, and a unique system of land holding was implemented at the beginning of this century that was not applied elsewhere in the country.

This system, intended to restore order within the country and to make the Protectorate more nearly self-supporting, was established by the Uganda Agreement of 1900 and more fully laid out with subsequent legislation. Under this agreement, land in Buganda was divided between the Kabaka (the ruler of Buganda) and other notables, on the one hand, and the Uganda Administration on the other. Some 9,000 square miles of vacant land were set aside as Crown land (later known as Public land), while 8,000 square miles were to be divided among the Kabaka, his chiefs, and other landholders. (The unit of measurement was to be the square mile, hence the term mailo system used to describe the tenure system.) Chiefs were to draw up lists of landholders within their jurisdictions and land was to be divided among them so as to reflect pre-existing land distribution patterns. These lands, known as private mailo, were to be inheritable and could be sold or given away by the individual title holder. Lands were also allocated to chiefs in their official capacity, and this land, known as official mailo, could not be sold or divided among the chief's heirs, but rather passed to his successor in office. This new system of land tenure, which appeared simple on paper, was rather more complex to implement and required surveying and registration work that took over thirty years to carry out--by which time, of course, many of the original allottees had died or otherwise passed on their lands, and so the process became yet more complicated.

For those who did not hold land, there were alternative arrangements that brought access to land. One such arrangement, known as kiwanja tenancy, permitted a farmer long-term use of mailo land, whether official or private, in exchange for an annual rent. Kiwanja tenancies were as a rule inheritable, and tenants could be forced off the land only in unusual circumstances or if the mailo land were sold to a new owner who wished to occupy the land and use it himself. Although the legislation that originally laid out the provisions for kiwanja tenancy did not permit the tenant to sublet or subdivide his plot, this in fact became increasingly frequent as population increased and land became more valuable. The second tenancy arrangement, bupangisa tenancy, was a short-term arrangement and included a range of contracts, the most common of which permitted a tenant to cultivate a crop for a single season. This type of arrangement was most often entered into by mailo-owning Baganda with outsider Africans who migrated to Buganda on a seasonal basis. Annual, cash crops such as cotton were appropriate for this sort of an arrangement, and sharecropping is the English term commonly used to describe it.

The mailo system is in many ways unique in Africa--some 8,000 square miles of land were registered and titles granted to Africans rather than Europeans and the system remained in force for over seventy years. The original system as laid out by law took little account of local land tenure practices, but rather was motivated by the need to restore order. That land had previously been held by kinship groups held little force, and titles were issued to individuals. It was also assumed that title holders would value land as capital in the same that Europeans did--an assumption that had little basis in reality. At first, owners often sold off part of their land to pay for consumer goods or school fees. Land did not remain indivisible, and after World War II, as population increased, mailo estates began to break down into smaller and smaller units through inheritance and sales. Because kiwanja tenant fees were set by law at too low a rate and yet land prices continued to rise, land often became an item for speculation more than for investment, a

situation exacerbated by the fact that a kiwanja tenant could only be evicted if the new owner wished to occupy the property himself. By the late 1960s the position between landlord and tenant was one of stalemate--the return on the land to the landlord was low, and although he could always sell the land, the new owner could not evict the tenant at will. Moreover, land could only be mortgaged at a low rate because, if forfeited, the mortgagee could not occupy the land. But the picture was not entirely gloomy either. Many Baganda invested in commercial farming of mailo land and experimented with new techniques. And, at least until recently, tenancy was a successful means of granting access to land to those who otherwise would have been landless.

Elsewhere in Uganda individual freehold and land registration were not universally instituted as they were in Buganda. In Toro and Ankole, for example, official estates were granted to certain officials and chiefs and a few private estates were granted, but these represented only a small portion of the total land area. No official or private estates were recognized in Bunyoro.

In most parts of Uganda in the colonial period land remained under customary tenure, with variations in patterns largely produced by varying population density and commercial agricultural potential of the land. Land was usually held by lineages, although often it was individual households that were the units of cultivation. Land was inheritable, and in areas of high population density the result often was (and is) fragmentation of holdings and their subdivision into small plots. In some areas where population density was high and where land could be used for valuable crops such as cotton and coffee, land sales were not infrequent--Bugisu was such an area, where an individual could sell land but his family had to approve the sale. Further, should the new owner decide to dispose of the land, he too had to receive approval from the original family. Most areas of Uganda also recognized leasing arrangements like the kiwanja and bupangisa contracts in Buganda. In general, where population densities were low and society egalitarian, chiefs of lineage exercised authority over land. Where the land was more densely populated and the society more hierarchical, however, power was vested in administrative chiefs, who, although they often did not exercise authority over land, were usually more powerful than lineage chiefs by virtue of their ability to command large amounts of labor. In most areas in the twentieth century the administrative chiefs further strengthened their positions with the backing of the British administration.

2. Freehold and Leasehold

The mailo system distinguished between freehold and leasehold and recognized "superior" and "inferior" rights to land in the same way that the English legal concepts do. Freehold grants of land were also possible from Public land. Here it was the State which issued the title, and the only constraint on freehold grants of Public land was that the land had to be developed or otherwise brought into use.

Under the 1975 Land Reform Decree, all freehold titles, whether of mailo or Public land, were abolished. (See Section C below.)

C. State Land

The Uganda Agreement of 1900 vested all waste and vacant land in the Crown. Out of these holdings, which amounted to almost half the total area of Buganda alone, the Crown could grant freehold title to individuals and groups. It had been hoped originally to use this authority to establish large, European-owned plantations, but since it was generally the less fertile land which was not under cultivation, there was little Crown land suitable for such use. Instead, Crown land was granted freehold to missions, groups and individuals who had been mistakenly excluded from *mailo* land, and to foreigners. The only proviso was that the land had to be developed or revert to the Crown. Africans were allowed to occupy Crown land on a sort of *ad hoc* leasehold basis in the rural areas and no fees were collected from them.

Under the Public Lands Ordinance of 1962 Crown land was redesignated Public land. Its area was enlarged in 1966 and 1967 when President Obote of Uganda abolished official *mailo* estates in Buganda and in Toro and Ankole. The 1975 Land Reform Decree, enacted under Idi Amin, vested all land in the State, whether originally held under *mailo* or customary rules--although in the past decade conditions have been sufficiently unsettled as to make it unclear if this law has any bearing on actual practice. What was once freehold has now been converted to leasehold, with 99-year leases granted to those who formerly held freehold title. The lessee on conversion was given the option of submitting a five-year development plan for his land to the Land Commission; if approved, he can evict his tenants. The improvements to the land were to be owned by the lessee, while the State retains all rights to the land, including mineral rights.

D. Urban Land Tenure

In Kampala, site of both the pre-colonial capital of the *Kabaka* of Buganda and the twentieth-century capital of the country of Uganda, there was both *mailo* land and Public land. In Mengo, the original site of the Buganda capital and today a sector of Kampala, there was private *mailo* land. As in the rural areas, titles were individual, registered, and inheritable. Land could be leased to tenants through *kiwanja* arrangements. In the rest of Kampala and in urban areas in other parts of the country, land was Public land and during the colonial era was granted freehold to foreigners (Europeans and Asians) and leasehold to Africans. Fees from African urban leasehold provided income for the Uganda Protectorate. The distinction between races as regards leasehold and freehold was abolished shortly before independence.

Freehold urban land held by Asian families was "Africanized" in 1972 when Idi Amin expelled some 70,000 Asians from Uganda. Whatever the legal niceties may have been, their property was parcelled out to Amin supporters. Asians can once again claim these lands under the Expropriated Properties Act of 1982 if they are prepared to re-occupy them, and a few families have returned to Uganda. (The offer is not especially attractive , however, for the holdings, most of which were heavily mortgaged at the time the Asians were expelled, are still encumbered, and those who wish to reclaim their property must still pay off the mortgage and the interest owed.)

As in other parts of the country, freehold rights in urban areas, whether mailo land or Public land, were abolished under the 1975 Land Reform Decree. What, if any, effect the law has had on actual tenure practices is unknown.

E. Distribution of Types by Region or Ecological Zone

See Section B.1. above.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

The Uganda Land Commission has authority over all land in Uganda and has the power to classify and divide Uganda into "zoning schemes." At the local level, the functions of the Uganda Land Commission are handled by the District Land Committee, eighteen of which exist for the country.

B. Pressures for Change in Legislation and Administration

By the time that Milton Obote was overthrown in 1971 there were clear pressures for change in the system of land administration in Buganda as well as elsewhere. Demographic pressures, increased commercial value of land, and a trend toward individualization of rights and fragmentation of holdings, all pointed to the need to bring the legal provisions with regard to land tenure in line with existing practices. Since then, however, it is difficult to know either if the 1975 Land Reform Decree has had any impact or, given the unsettled conditions in the country for most of the past decade, what if any changes have occurred in actual land tenure practices. When, in time, the Uganda economy is stronger, pressures for change in land tenure practices may well reassert themselves, as will earlier problems. It is unlikely at the present, however, that pressures for such change are being strongly voiced.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

Perhaps the most critical land tenure question confronting the new regime of President Obote, who returned to power in 1981, is whether or not to implement fully the 1975 Land Reform Decree which abolished mailo land and all other freehold titles. In abolishing mailo land, the 1975 Land Reform Decree diluted the power of a group of landholders who were often at odds with Obote in the past. On the other hand, it may also have been a step that helped to ruin Uganda's economy.

Obote has shown himself willing to reverse some of the land appropriations of the Amin regime. The Expropriated Properties Act is one such indication, as is the recent agreement reached with Mitchell Cotts Ltd., whose tea plantation was nationalized in 1972. Under the agreement, the government is to retain a majority interest in the plantation while Mitchell Cotts receives a 25 percent share.

B. Land Tenure and Agricultural Production

Agricultural production fell drastically in the 1970s, and by 1980 exports of crops such as cotton and coffee had fallen to one-quarter to one-half their levels at the beginning of the decade. Food production had similarly declined. But land tenure problems had little to do with this drop in production. Nor is Obote hoping to raise production to its former levels through changes in land tenure practices. Rather, he has raised prices paid to producers--six times between 1980 and late 1984. Production levels have improved somewhat, although drought and unsettled political conditions remain problems.

C. Implications for Project Design

There are two important implications for project design as regards land tenure. The first is the need to understand what changes have taken place in de facto land tenure practices in the past decade, to know who remains on the land and under what terms they hold it. This information cannot be gathered for one area and then be assumed to prevail throughout the country. There was no one system of land tenure before 1970 nor have the events of the past ten years affected all areas of the country in the same way.

The second important implication for project design is the need to give consideration to the potential effects of the 1975 Land Reform Decree and to the extent to which Obote and his government appear willing to apply it. A project such as that one recently announced to raise food production and farmers' income in eastern and northern Uganda will need to consider how secure the tenure of the farmers is--as well as to survey how secure the farmers themselves believe it is.

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LAND TENURE PROFILE: ZAIRE

Summary: The government of Zaire appears to favor individualization of land tenure but is opposed by traditional authorities representing local corporate groups holding land under customary tenure. Customary collective and individual rights continue to be unprotected by written law. Only holders of registered titles to land concessions are legally secure. The policy of obligatory cultivation is also a major land use issue in Zaire, causing problems with soil fertility and efficient allocation of labor and land at a time when the need for production and marketing of food crops is great.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Perhaps 97 percent of Zairian land continues in practice to be administered under customary tenure by chiefs of land, who manage the land of local corporate groups, and who may be heads of families, or of clans, of villages or chiefdoms. Chiefs of land are usually either separate from political chiefs or are low-ranking in the political hierarchy. In either case chiefs of land traditionally represent the interests in land of their local groups against the interests of neighbors and the central political authority.

Chiefs of land have been undermined by some policies and strengthened by others pre- and post-independence: (1) In the colonial era, for example, villages were forcibly regrouped, causing some villagers to live long distances from their traditional lands; (2) The domains of some chiefs of land were expropriated by colonial authorities, forcing the social group to dispute with other groups for land; (3) Colonial agricultural monitors who dictated cultivation of cash and food crops and allotted plots to farmers limited traditional authority as well as individual freedoms. Since independence, colonial era policies of forced cultivation and surveillance have been continued; and (4) In 1971, Mobutu denounced the "feudal" and exploitative nature of customary tenure in Kivu region. He declared that in Kivu chiefs of land could no longer allocate land, and he attempted to introduce a system of individual ownership of land. Local insecurity was increased by these measures, opposition mounted and the reform was soon abandoned. The importance of the chiefs of land was reaffirmed.

In Bandundu region in 1985, Salacuse notes the existence of a Programme Fermier which promotes individual tenure. A small farmer can apply for a few hectares through this program and the chief of land must grant a 'concession' to the farmer--although the concession is not officially registered in accordance with the 1980 land law. The chief of land, officially, has no role when persons apply for large land concessions under provisions of the land law, although the chief of land may in fact still be consulted.[1] Though legislation in 1973 and 1980 makes all land state domanial land, the struggle between state and customary authorities continues.

B. Private Tenure

1. Customary Tenure

Over two hundred and fifty different ethnic groups are said to live in Zaire. Customary tenure rules vary from one culture to another, and are adapted to ecological, demographic and socio-economic variables. Throughout Zaire, individuals customarily gain access to land through membership in some local corporate group. The rights of the group to the land are inalienable, and individual members of groups also have inalienable rights of access to some land. The local landholding group may be a matrilineal group--such as the clans and families of the Kongo; a patrilineal group--as among the Mongo or Luba; a village--as with the Kuba; a chiefdom--as with the Zande Vungara. The local corporate groups cannot sell land, yet parcels of land may be ceded at times to neighboring groups, and land may be rented to strangers.

Within the larger corporate group with collective title to the land there may exist smaller groups such as families with direct control over use and inheritance of family land. Within families individuals may have rights to specific plots of land under cultivation or in fallow after having been cleared by the individual. Individuals also often own economic trees.

The customary right of the individual to his or her harvest is generally protected, although payments to chiefs of land may be required. Security of tenure over particular plots of land varies. Rights to fallow land reinforce security where such rights exist. Women are often considered to have access to land only through their relationship with a man--husband, father, brother, etc., although women may own their harvest. Strangers who do not become members of the local landholding group generally have short-term, insecure use of land or may be denied access to land altogether. Religious ideology plays a role in maintaining preeminent rights of local corporate groups.

Various forms of shifting cultivation are common on lands held under customary tenure. Population density is low and tenure systems are flexible over most of Zaire. Where population density is greater or where for other reasons arable land is scarce, tenure rules and boundaries are stricter, and disputes more likely. Scarce land near markets acquires commercial value, and

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1. Salacuse, Jeswald W. The National Land Law System of Zaire. Report to the University of Wisconsin Land Tenure Center and USAID/Kinshasa, May 1985, pp. 36-39.

forms of customary rents or one-time payments appear when landholders allow strangers to use scarce land. Land is particularly scarce in areas of Kivu and Bas-Zaire regions and in areas near urban markets. Where land is scarce and valuable, the landholding group with direct control over land tends to be small and tightly knit.

Customary land tenure was first restricted in the colonial era by King Leopold's dual land law system. When he established the Congo Free State he decreed that "vacant lands must be considered as belonging to the state" (Decree of July 1, 1885, Article 2), and he decreed that "lands occupied by the native population, under the authority of their chiefs, shall continue to be governed by local customs and usages" (Decree of September 17, 1886, Article 2). Over 27,000,000 hectares were expropriated, despite claims made on the land by "the native population," on the grounds that the land was vacant. This land formed the state domain which could then be ceded and conceded to Europeans.

Europeans who administered great land concessions were allowed to depend on forced labor of local inhabitants. When the Congo Free State became the Belgian Congo, the size of some of these concessions was reduced; some new grants and concessions were made, but the state instituted the administrative procedure of the "enquête de vacance," or vacancy enquiry, to provide some protection of customary rights before land was expropriated.

In the Belgian Congo era several policies affecting customary tenure were instituted. Villages were forcibly regrouped to make administration of villagers easier, and to facilitate marketing of crops; villages were sited on roads. Europeans used a system of obligatory cultivation to ensure production of food for cities and cash crops for export. Every farmer had to plant a certain quantity of "official" crops. Because agricultural agents had forced farmers to settle in large villages, to shorten fallow periods in order to increase production, and to waste precious labor on unwanted crops or poor land, the Belgians (and no doubt the farmer) saw a drop in soil fertility and production. The Belgians developed the paysannat as a way to ensure fallow periods were respected, good crop rotations maintained, agricultural production maintained and increased, surpluses marketed--and all of this under the direction of supervising agents. Paysannats were large, involving hundreds of farmers. Each farmer was given a block of land which was sub-divided into twenty plots. Each year the farmer shifted to a new plot that had been fallow and rotated a crop or left fallow the previous year's plot. In twenty years he or she would be back at the first plot. Some paysannats allocated individual plots to farmers, often on land to which they had no customary title. Other paysannats attempted to respect customary tenure and allow chiefs of land to distribute land to group members. Parallel marketing cooperatives were created to market paysannat crops. After independence many paysannats fell apart, but some, such as the Luberizi paysannat in Kivu region, have persisted in some form.

The category of "native" lands under customary tenure was abolished in 1973. All land was declared state domanial land. Article 387 of the 1980 law affecting land says: "The rights of enjoyment lawfully acquired on (lands under customary tenure) will be settled by an ordinance of the President of the Republic." No such ordinance has been enacted, so customary lands are in a legal limbo.

2. Freehold and Leasehold

As Section B.1. above points out, freehold and leasehold first appeared in Zaire in the Congo Free State era. Supposedly vacant lands were expropriated and made state domanial land. From this state domain grants and concessions were made to various European interests. A dual land law was created in which African lands outside state domain continued under customary tenure and grants and concessions were administered under written law, their titles registered according to provisions of the Torrens Act, which had been adopted as a model for the Congo. Titles to surveyed units of land were registered in a land book by a Registrar of real property. All transfers of title had to be recorded in the land book. The rights of title holders were either those of owners in the European sense (propriété) or concessions granting a "right of enjoyment" on land for 30 to 99 years. Africans were generally excluded from access to land registered under the Torrens Act. Lands under customary tenure were not subject to the Torrens Act.

After independence, Africans could no longer be excluded from acquiring title to land in areas under the Torrens Act. The government enacted the 1966 Bakajika law to force holders of colonial titles to renew registration and prove that land was being put to good use. The state could repossess undeveloped land. In 1971, the government attacked the right of propriété or ownership in the European sense, which had been granted some holders of titles to land. The Bakajika law was repealed and the state declared itself owner of the national land. The 1971 law cancelled post-independence titles to land which had not been developed and the state retook possession. The state retained ownership of all land but could grant concessions in land to individuals. In 1973 a new law, modified in 1980, abolished the category of "native" lands under customary tenure. All land was declared state domanial land. All land is theoretically leased from the state. Ordinary leases are for a maximum term of 25 years, renewable under conditions specified in each case. Leases are likely to be long-term for rural lands and for three-year periods, renewable twice for two-year periods, in urban areas. Leases may also be perpetual, subject to fulfillment of various conditions. Titles to leases must officially be registered under a system based on the Torrens Act.

C. State Land

State lands are divided into public domain, which are lands not on the market and are used by public organizations, and private domain. The Department of Land Affairs oversees the private domain; leases are accorded: (1) by contract approved by law for blocks of rural land equal to or greater than two thousand hectares and for urban blocks of land equal to or larger than one hundred hectares; (2) by contract validated by Presidential ordinance for rural blocks of land less than two thousand hectares and larger than one thousand hectares and for urban blocks of land less than one hundred and larger than fifty hectares; (3) by contract validated by "arrêté" of the Commissaire d'Etat concerned with land use, for blocks of rural land less than one thousand and greater than two hundred hectares and for blocks of urban land larger than ten hectares but less than fifty; and (4) by contract signed by the governor of the region for blocks of rural lands equal to or less than two hundred hectares and for urban blocks of land equal to or less than ten hectares.

D. Urban Land Tenure

Urban land is state land and must ostensibly be leased from the state. Leases are for three-year periods, renewable twice for two-year periods. The temporary right of occupation represented by the livret de logeur was changed in 1980 for citizens to a perpetual lease. The livret de logeur was a document invented by the colonial regime: Africans were not allowed to hold titles registered under the Torrens Act to urban buildings and apartments. African landlords and renters were only granted a temporary right of occupation in restricted urban areas. The livret de logeur represented this temporary right of occupation.

In some urban areas forms of customary tenure involving chiefs of land may unofficially continue to operate. More information about customary urban tenure is needed.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

According to Article 182 of the 1980 land law, "Lands are managed either by the public administrations, or by public organizations created for this purpose, or by mixed societies of real property development and promotion."

The Department of Land Affairs oversees state policy with respect to land and is under the direction of the Commissaire d'Etat. The Commissaire d'Etat appoints a conservateur des titres, or registrar of real property titles, for each land district, which corresponds to an administrative district. The Department of Land Affairs is divided into: (1) a service of real property titles that handles land registration; (2) a survey service; (3) a state lands service, which manages state lands and grants concessions; and (4) a land dispute service, which handles land disputes. The regional branches of these services are headed by the regional conservateur who reports to the Conservateur en Chef and the Commissaire d'Etat.

B. Pressures for Change in Legislation and Administration

The 1966 Bakajika law allowed Zaire to repossess colonial cessions and concessions which had been abandoned or left undeveloped by the European concessionaires. In 1971 government declared that the state owned all the land of Zaire, annulled ownership rights in the European sense, and permitted itself to repossess post-independence concessions which were not being developed. In 1973 and 1980 the category of "native" lands under customary tenure was abolished, all land was declared state domanial land, and the conditions under which individuals and organizations could obtain concessions from the state were clarified.

The customary rights to land were to be the subject of a Presidential ordinance which has not yet been enacted. The government in its legislation and policies has seemingly pushed for individualized leasing of land, but pressure from customary authorities and others has apparently held up the Presidential ordinance which might explicitly limit customary collective rights.

In 1971 Mobutu denounced the customary tenure in densely populated Kivu region as "feudal" and exploitative. Land reform was attempted which stripped local chiefs of their power to allocate land. Agreements between individuals under a form of freehold were substituted for customary tenure. This attempt at tenure reform apparently increased general insecurity, met with widespread opposition and was soon abandoned.

In 1985 Salacuse discovered in Bandundu a Programme Fermier to which small farmers could apply for a "concession." Local officials compel chiefs of land to turn over a few hectares. These small farmers then consider themselves concessionaires, though their titles are insecure as the land is not officially registered. These small farmers and the local officials hope to see these farms legally registered in the future. The wishes of the local landholding groups are unknown.

Obligatory cultivation of food crops in quantities and on plots designated by government officials was begun in the colonial era and continues still to be official Zairian policy. No doubt there is strong if ineffective opposition to this policy which forces women, especially, to allocate labor and cultivate lands in a wasteful and oppressive manner.

III. LAND TENURE ISSUES IN AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

The General Property Law of 1973, amended in 1980, abolished the category of "native" lands under customary tenure. All land was made state domanial land. The only legally secure titles to land are officially registered titles to concessions of state land, which make up a small percentage of the total land in Zaire. The law states that customary rights will be regulated by a Presidential ordinance, but the ordinance has never been enacted. The customary collective and individual rights are in a legal limbo. Chiefs of land are nowhere given an official role in the process which allows individuals to acquire land concessions. Abuses of the rights of local landholding groups must necessarily occur in such a confused situation.

A conflict appears to exist in Zaire between the government, which pushes individualized tenure in the form of concessions, and local groups which hold land under customary tenure. The conflict may be stimulating insecurity in rural areas. Customary tenure is designed to promote social cohesion within local groups, so individualized tenure may be perceived by local leaders as a political threat, as well as a threat to group landholding rights.

The policy of obligatory cultivation is a tenure problem. Officials force farmers to plant in fields which are easy to visit rather than of highest fertility; farmers are prevented from making the best use of their land, their labor, and choice of crops. The Belgians found that obligatory cultivation reduced fallow periods and fertility of soil.

In lands under customary tenure where population is dense and land scarce, disputes may arise between original holders of land and the present users. The existing land laws offer no procedures for resolving such disputes.

B. Land Tenure and Agricultural Production

In the colonial era agricultural policy was aimed at creating a supply of cash crops for export and surplus food crops to supply the increasing urban population and workers in mines and on plantations. In order to aid commercialization of production villages were regrouped along roads, roads were built and maintained, and intermediary merchants encouraged. The Belgians tried to counteract the negative effect on soil productivity created by the settlement of large numbers of people in villages and by the policy of obligatory cultivation of food and cash crop acreage by forming paysannats. Paysannats tried to organize the land use of whole farm communities under the supervision of agricultural agents. Blocks of land were allocated to each farmer. The blocks were divided into segments, and farmers rotated crops and fallow periods from one segment to the next under government supervision. Some paysannats allowed chiefs of land to distribute blocks of land to group members, as a way to maintain customary tenure. Other paysannats gave farmers individual title to blocks of land to which the farmers had no customary rights. Cooperatives were created as parallel marketing organizations for the produce of paysannats.

After independence the government attempted first to free up land which was held as concessions but was not being developed. The government continued to enforce obligatory cultivation of crops but does not seem to have been able to maintain the paysannats. Some paysannats, such as the Luberizi in Kivu region, have survived nonetheless in some form. Little or no recent research is available on the status of paysannats.

Agricultural production has fallen since independence, as have the prices farmers receive for goods. Rural diets are protein-deficient, a problem that existed in the colonial era. Other persistent problems are food shortages, which occur at predictable times during the year in rural areas, and malnutrition, which is a major factor in disease and death. The prices of manufactured goods and services such as education suffer rapid inflation, so the farmers' terms of trade continually worsen. Food commands exorbitant prices in urban areas, and thus obligatory cultivation focuses now on food crops needed for the urban market. The network of roads and of intermediary merchants has so deteriorated that commercialization is difficult.

Tenure issues which contribute to poor agricultural production are: (1) policy of obligatory cultivation which leads to irrational land use and waste of a farmer's most precious asset--his or her labor (see Section A above); (2) insecurity of tenure caused by the national land laws which largely ignore customary rights, provide no role for chiefs of land, and provide secure title for only a small percentage of landholders; and (3) possible existence of land speculation as individuals acquire concessions which they do not develop. More research into these issues is needed.

C. Implications for Project Design

Agricultural production has fallen, infrastructure and commercial networks have deteriorated, the farmers' terms of trade worsen as prices of manufactured goods and services suffer high inflation. Malnutrition is prevalent. Projects which deal with these problems should be aware of tenure issues which are factors.

Women, who grow much of the food supply as well as feed and care for children are additionally burdened by agricultural agents who force farmers to plant food crops, allocate land, labor and seeds in a manner which does not make the best use of land and resources and therefore lowers production.

The national land laws have relegated customary land rights to a limbo area, and thus increase insecurity of tenure, undermine chiefs of land and rights of landholding groups. The present laws provide security of title only to the small percentage of landholders who have registered titles to concessions. To the extent the projects attempt to reinforce security of tenure and resolve land disputes within the framework of customary laws and institutions, projects will be working in a legal grey area.

Under customary law, the people in charge of land policy--the chiefs of land--are usually low on the political hierarchy. They are heads and members of small groups, and may act as representatives of the interests of the groups to higher political authority. Land policy conceived by the colonial regime and by the Zairian administration has generally been coercive and top-down, weakening the authority of local chiefs of land. If new land policy is to acquire legitimacy and strengthen village structures, the policy needs to be developed with the participation of the interested small groups and their leaders.

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LAND TENURE PROFILE: ZAMBIA

Summary: Zambia's tenure system is characterized by a dualism between western and traditional tenure forms which has its origins in the colonial period. State Land, held by Zambians (individuals, schemes, parastatals) on 99-year leases at nominal rents, was once Crown Land held by white settlers. There are no serious security-of-tenure or distribution problems as regards this land. However, the State does not permit the value of this land to be recognized in transactions; consideration is paid only for the value of improvements. Absence of any cost imposed for use of this valuable resource appears to contribute to the unintensive use of extensive areas of land. The larger part of the country, unaffected by colonial land acquisitions, continues under indigenous tenure systems. It appears that innovators experience some insecurity of tenure. This may be expected to grow in regions where population pressure and competition for land are on the increase, and as the authority of traditional land administrators is undermined. Government makes scattered 14-year leases of land and has recently announced plans for district registries of certificates of occupancy of land under traditional tenure, but there is in general a policy vacuum concerning evolution of tenure patterns in these areas. In February 1986, government announced its intention to convene a national commission of inquiry on land tenure matters.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

Zambia's tenure system is characterized by a marked dichotomy between a traditional tenure sector known as Trust and Reserve Land and a sector in which land is held only on lease from the State, the State Land. The origins of this dichotomy lie in the colonial period. State Land is that land taken by the colonial power as Crown Land, for distribution to white settlers, which became State Land at independence. Trust and Reserve Land is the land not taken, which remains under traditional land tenure systems. Reserve Land is land allocated during the colonial period to a specific ethnic group or groups, including those forced off of Crown Land, while Trust Land was

earmarked for future (and vague) national needs, though much of it like Reserve Land is farmed by smallholders under traditional land tenure systems. Since 1975 the Zambian state has asserted a state title in Trust and Reserve as well as State Lands but has done little to alter the tenure situation of traditional holders.

In the State Land sector the State exercises direct control over land allocation. This sector had its origin in colonial land confiscations. Prior to independence, this land was held by white settlers on lease from the Crown or granted in freehold. In 1975 the State converted freehold and pre-existing leases to uniform 99-year leases.

Table A below indicates the distribution of land among basic tenure categories:

Table A*
AREAS UNDER VARIOUS TENURE TYPES

	Hectares
State Land	
Alienated in Freehold**	1,015,791
Alienated in Leasehold**	1,284,788
State Land under Tribal Occupation	509,396
Unalienated State Land	125,102
Inundated by Water	216,250
Forest Reserves	546,570
Protected Forest Areas	382,750
	4,080,547
Reserves	
(Including 689,691 ha. Protected Forest Areas)	27,314,000
Trust Land	
(Including 4,250,889 ha. Protected Forest Areas and 29,153 ha. Forest Reserves)	38,977,530
National Parks, etc.	5,826,300
TOTAL	76,198,377

* International Rural Development Division, Swedish University of Agriculture, Forestry and Veterinary Medicine, Zambia Sector Study, Preliminary Report, paragraph 3.1.1 (Uppsala, mimeo, April 1976).

** The land in these first two categories is now under 99-year leaseholds.

B. Private Tenure

1. Customary Tenure

Zambia's pre-colonial land use was characterized by slash and burn cultivation in a situation of relative land plenty. In spite of significant variety in tenure as between ethnic groups, this pattern of land use tended to give most traditional tenure systems some common characteristics. The act of clearing the land usually conferred secure tenure for the duration of the cultivation, but rights to the land lapsed when it returned to bush fallow. Usually there was only a modest degree of social control of access to land. Holdings were not allocated by chiefs in any systematic fashion. Rather, a farmer anxious to clear new land would select an apparently available area to farm and only consult the chief to ensure that no rights were maintained by others in the land and that no one had already spoken for it. The cultivation of the Zambezi floodplain by the Lozi was a major exception. This limited, exceptionally fertile land gave rise to a more complex, hierarchical system of land tenure. Some traditional tenure systems involved patrilineal, others matrilineal inheritance systems; a few, like the Lozi, involve bilateral inheritance. These inheritance patterns were initially developed for roles and personal property, and in most cases became applicable to land only during the colonial period.

In over 80 percent of Zambia's land area, the Trust and Reserve Land, these traditional tenure systems continue to operate and evolve. The surge into urban areas (over 40 percent of Zambia's population is now urban) has prevented a buildup of population pressure on land in most areas. Colonial land policy left tenure in areas not expropriated for white settlers largely untouched, except for the influx into those areas of the former inhabitants of the areas which were expropriated. It is in the areas of Trust and Reserve Land in southern and eastern Zambia near expropriated areas that pressure on land has been most intense and is now beginning to generate demands for tenure change.

Since 1975, when the Zambian state asserted a state title in these Trust and Reserve Lands, its only change in their administration has been to introduce fourteen-year leases for aspiring commercial farmers, with the chief's consent. Recently, a proposal for a registry of certificates of occupancy for farmers holding under traditional tenure has been approved by government (see II. B).

2. Freehold and Leasehold

There is no freehold in Zambia. In 1975 the Land (Conversion of Title) Act converted all freehold titles to long-term leaseholds from the state at nominal rents (about $.10/hectare as of 1981), with terms of 99 years from July 1, 1975. All the former Crown Land, now the State Land, is thus held on lease from the state. Such land may not be sold for value, but may with consent of the state be transferred with buildings or other improvements for a price based on the value of improvements.

Table B on the following page shows the distribution of such leaseholds.

C. State Land

The State Land sector has its origin in colonial land confiscations. The areas expropriated, the Crown Lands, were only a little more than five percent of Zambia's land area. They are nonetheless of exceptional importance to Zambian agriculture. The bulk of this land lies along the "line of rail" from the Copperbelt south to Lusaka and beyond, a line laid through a tsetse-free area of exceptional agricultural potential.

Table B*
LEASES OF STATE LAND BY TYPE OF LESSEE

Type of Lessee	No of Leases	Total Area Leased, by Type (ha.)	Area Leased, by Type, as % of Total Leased Area	Average Size of Leasehold (ha.)
Private	1,674	1,232,987	60.5	737
Governmental	502	541,902	26.5	1,079
Settlement Schemes	61	62,241	31.0	1,020
Cooperatives	10	6,580	-	658
Religious/ Educational	69	45,677	2.3	662
Vacant	74	44,387	2.3	608
Non-agricultural	228	107,500	5.4	471
All types	2,618	2,041,274	100.0	780

* John W. Bruce and Peter P. Dorner, Agricultural Land Tenure in Zambia: Perspectives, Problems and Opportunities, Land Tenure Center Research Paper No. 76 (Madison, 1982), p. 11.

In the wake of independence, many white farmers left Zambia for Rhodesia and South Africa. Government had to move rapidly to reallocate farms and keep land in commercial production. State Lands were leased to Zambian farmers, corporations, parastatals, settlement schemes, and other entities. About one-third of productive State Land is believed to now be managed directly by the state. As noted earlier, all such land allocated to private individuals, corporations, parastatals and projects, including previous freeholds, is now held on 99-year leaseholds from the state.

D. Urban Land Tenure

All urban land, including former urban freehold, is now State Land by virtue of the 1975 Act. It is leased and transfered on the same basis as leaseholds of State Land which is agricultural. Recently proposals have been made for changes in the law of succession with respect to urban land (see II. B).

E. Distribution of Types by Region or Ecological Zone

The map on the following page indicates the distribution of State Land and Trust and Reserve Land.

II. LAND ADMINISTRATION SYSTEM

A. Current Administrative System

The Minister of Lands and Natural Resources has overall authority over the system of State Land leaseholds. Holdings of State Land listed in the schedule of the Agricultural Land Act, 1960, are administered by an Agricultural Land Board appointed by the Minister. The Board makes new leases of scheduled land and must also approve any dealings with leaseholds of such land, such as assignments, subleases and mortgages. The Commissioner of Lands reviews the Board's decisions and executes them on behalf of the President. There are in addition leases of State Land not scheduled in the 1960 Act, all urban land and some areas of agricultural land as well. Here the Agricultural Land Board has no role. Leases and dealings in leaseholds are administered by the Commissioner of Lands, acting under a delegation of Presidential authority.

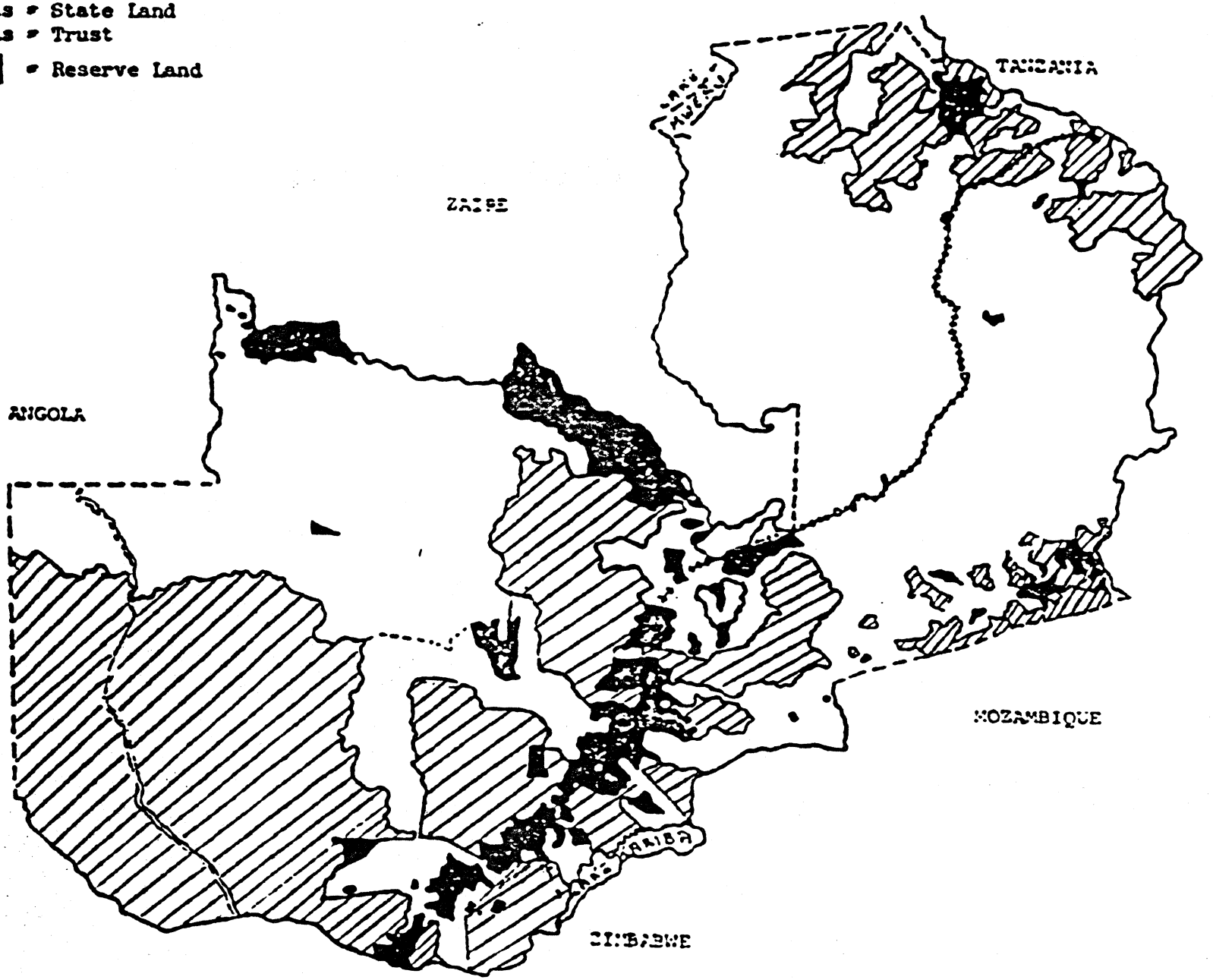
Leases of State Land and dealings in such leases must be registered under the Lands and Deeds Registry Act or they are null and void. Almost all State Land is registered, but keeping the registers up to date is difficult. Registration requires a survey which complies with the rigorous standards of the Land Survey Act. This is costly, and the Ministry of Lands lacks adequate survey staff. Land survey has become the major bottleneck in issuance of new leases and leasehold transactions. Recent practice permits provisional registration of a lease of not longer than fourteen years if the application is accompanied by a sketch plan. When a survey is finally obtained, a 100-year lease is granted. The legal basis for such leases is unclear.

While a complex and fairly sophisticated system for administration of State Land is in place, no such system exists with respect to Trust and Reserve Lands. Presidential authority over these lands has been delegated to the Commissioner of Lands. As noted earlier, fourteen-year leases are granted. This is done in response to a request from a particular applicant, usually an aspiring commercial farmer, for a particular piece of land and results in many scattered leaseholds rather than any systematic conversion of tenure in the area. Consent of the chief and the District Council must be obtained before a lease is approved by the Commissioner. No figures are available on the volume of such leasing, but the Commissioner of Lands's Office was in 1981 receiving half a dozen applications for such leases each week, and a conservative estimate is that there are at least a thousand such leases subsisting.

The Commissioner's office has no institutional linkage with traditional land administrators, who still control the use of the vast majority of Reserve and Trust Land. Complaints about their performance of their duties are processed administratively by the Ministry of Interior.

MAP OF REPUBLIC OF ZAMBIA LAND TENURE

Black areas = State Land
White areas = Trust
▨ = Reserve Land



B. Pressures for Change in Legislation and Administration

Three official reports in recent years have invited changes in land policy. Two of these are before Cabinet and have not yet received official responses. The first is a 1982 proposal for reform of the law of succession by the Law Development Commission. The proposed changes would affect only urban land, and only cases in which there is no will. Its main impact would be to make widows heirs for the first time and to assure that children inherit from their fathers (apparently overriding application of any matrilineal rules of inheritance): the widow would take 25% of the estate, the children 50%, and other relatives 25%. Land under customary land tenure is specifically excluded from the operation of the proposal.

The second is a 1981 proposal for revision of the Land (Conversion of Titles) Act, 1975, again by the Law Development Commission. It confines itself to valuable but very modest recommendations as to how to facilitate operations under the Act. It accepts without demurrer the land-without-value concept and indeed makes suggestions for its more rigorous application. It is clear that greater change was demanded by some who made submissions to the Commission.

The third proposal, and the only one for which there is now a white paper setting out the government's response, is the 1982 report of the Commission of Inquiry into land matters in Southern Province, the setting of the most acute competition for land in Zambia. A number of recommendations were accepted by government. Several areas of State Land previously under leasehold as commercial farms were determined to be seriously underutulized. These leases are to be terminated and the land allocated to a resettlement scheme for farmers from the Reserves. Certain Game Management Areas and Forest Reserves are also to be de-gazetted, to permit resettlement. Some areas of Trust and Reserve Lands will be compulsorily acquired by government for public purposes and devoted to resettlement. Settlers are to receive land in leasehold tenure. As for farmers holding land under traditional tenure, they are now to be given the opportunity to obtain a written certificate of occupancy. Consent to the farmer's application for such a certificate is to be given by the chief in consultation with the village headman. Each District Council is to maintain a customary land tenure registry in which these certificates of occupancy are to be registered, but the District Council's consent to the certificate will not be required. The report does not define the rights attaching to the certificate (apparently these continue to be defined by local customary law) nor does it suggest how the registry will be kept and holdings identified. Finally, the paper considers and rejects the idea of imposing either economic rents or significant taxes on State Land holding, for the somewhat surprising reason that the nominal ground rent now charged cannot be collected. The white paper was released only in February 1986, and implementation of the approved recommendations has not yet begun.

At the release of this Commission of Inquiry report, government announced its intention to appoint a national commission of inquiry on land tenure.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

As regards State Land, the current system of long-term leaseholds appears to provide reasonably secure tenure. It has also apparently been fairly successful as regards one of its prime objectives: equitable distribution of State Land. The competition for access to State Land through bureaucratic processes favors those who understand such processes and have connections in government, but on the other hand, government officials and others advantageously positioned do not appear to have accumulated extensive holdings. The major policy issue facing government over the next several years is whether traditional cultivators will be given access to State Land in areas where Reserve and Trust Land under serious population pressure border less intensively used and less degraded State Land. The alternative is to retain such State Land for commercial production and projects. A further issue, the impact of the "land without value" policy on production, is discussed later.

There are also several issues of an administrative nature. The substantive law of leaseholds needs revision--it is the law as it existed in England in 1911. Because surveying represents the administrative bottleneck in most transactions in land, a relaxation of strict land survey standards has been called for in a number of reports. More specifically, adoption of the British system of general boundaries has been recommended. Land use planning for State Land has yet to be seriously initiated. It is difficult to see how this or other measures for more effective land administration can be undertaken until the staff of the Office of the Commissioner of Lands is expanded and decentralized, with representatives in provincial offices. Any such expansion would imply a major training program.

As regards the Trust and Reserve Lands, there is a policy vacuum. There is evidence that commercial production under traditional tenure, at least in some areas, is complicated significantly by the farmer's need to appease chiefs, who allocate land and who often view with distrust the emergence of a new class of "big men" outside the traditional hierarchy. Concern has also been voiced concerning matrilineal inheritance systems, which pass the farm to the farmer's nephews rather than his children, and the impact of such systems on the development of the family farm. To a lesser extent, the issue of land security for loans has been raised.

Little has been done in a systematic way to provide a substitute for traditional land tenure systems. The sporadic granting to aspiring commercial farmers of fourteen-year leaseholds, the legal status of which is not clear, is not an adequate response to the tenure problems in the more densely populated areas. The situation in those areas where there is substantial pressure on and competition for land calls for more comprehensive solutions. There are two fundamental options: (1) a more systematic tenure conversion to State-administered individual leaseholds, focused in areas of the greatest need; or (2) a rationalization of traditional tenure systems which leaves local communities with responsibility for land administration. The Reserve and Trust Land (Adjudication of Titles) Act, 1962 would have provided a legal framework for a systematic tenure conversion, but was repealed after independence.

B. Land Tenure and Agricultural Production

The major production issue as regards State Land concerns the policy of "land without value." State Land is leased, and leases transferred, for a consideration based on the value of improvements and not of the land itself. Land's value is seen as a product of inherent quality differences and proximity to facilities created by the State, a value which ought not to accrue to landholders. One of the major resource inputs, land, thus has little cost to the individual. It has been suggested that (1) this permits inefficient, land-extensive use strategies on a uniquely valuable land resource; and (2) it is not equitable for such a resource to be rationed to a privileged few at virtually no cost. The issue could be addressed through a system of differential rents, but there has been no indication that Government is seriously considering such a change.

As regards land under customary tenures, there has been a clear failure in the years since independence to significantly increase production for the market on these lands. There are a number of tenure factors which may have contributed to this: (1) tensions between emergent commercial farmers and the traditional land administration hierarchy; (2) matrilineal inheritance; and (3) inability of emergent farmers to provide land security for loans. The limited security given by the 14-year leases introduced since independence does not appear sufficient to encourage investment and commercial production. There is a dearth of studies, however, which gauge the extent of the impact of these factors on production. Nor have there been studies which establish the relative importance of tenure factors and non-tenure factors, such as untimely delivery of inputs by the extension system; lack of infrastructure; questionable viability of input packages for small farmers; and the out-migration of labor force and the increasing number of female-headed households in the traditional sector. One cannot be confident that an effort to address tenure issues in this sector in isolation would produce major increases in production. There are as yet insufficient details concerning the certificate of occupancy system recently announced to permit any predictions concerning its impact.

C. Implications for Project Design

Projects directed at leaseholders on State Land would benefit from basic reforms to impose a greater cost on landholding and thereby encourage intensification of production. On the whole, however, the existing tenure regime provides adequate security of tenure, and tenure-related problems on projects in this area should not be serious.

In the Trust and Reserve areas, under traditional tenure, projects will need to be carefully framed to avoid negative interactions with existing land tenure systems. Some potential sources of difficulty have been noted above, but because there is considerable variety among traditional tenure systems the nature and seriousness of the impacts cannot be generalized. They are potentially greater for project initiatives involving significant long-term farmer investments of capital and labor, such as fencing, wells and irrigation, terracing, or tree-planting. For any project involving such initiatives, land tenure should constitute an important element in project feasibility studies.

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LAND TENURE PROFILE: ZIMBABWE

Summary: Distribution of land in Zimbabwe throughout most of the twentieth century has been seriously skewed, with half of the land owned by a small number of European farmers and half, often less productive land, occupied by the African majority of the population. The government, as well as international donor agencies, see resettlement as the means to bring a measure of equality in land distribution and to counter at least part of the landlessness and fragmentation of holdings in the former Reserve areas. In the past few years, vast amounts of underutilized land in the European farming areas have been acquired and resettlement projects begun. Recently, however, the projects have come to a halt as it has become increasingly apparent that the success of resettlement projects depends to a great extent on the establishment of adequate support services and administrative structures. Moreover, there is as yet no policy which addresses the very crucial issue of tenure in the resettlement projects, and settlers have so far only received permits to occupy and cultivate the land, permits which can be easily revoked.

I. LAND TENURE SYSTEMS

A. Dynamics and Direction of Change in Agricultural Land Tenure

For most of the twentieth century land in Zimbabwe has been divided between a small minority of white settlers with large holdings of some of the best agricultural land and a large majority of African producers whose holdings are fragmented, inadequate, and steadily deteriorating. The European holdings have played an important role in the country's economy, providing a significant portion of the agricultural production for exports and for consumption within the country. The African holdings, on the other hand, have furnished little more than survival for the occupants.

There is obviously a critical need to redress this imbalance in land distribution, and the Mugabe government is committed to doing this through a program of resettlement that will eventually involve over eight million hectares of land and over 150,000 families. Such a program involves far-reaching change in land use, and land tenure is a critical concern. At the present time, however, the resettlement program has come to a temporary

halt as it has become increasingly apparent that redistribution alone, without the provision of adequate services and sufficient technical personnel, will not establish a viable African farming sector. As yet no policy has been drawn up with regard to land tenure in the resettlement areas.

B. Private Tenure

1. Customary Tenure

Two ethnic groups comprise the African population of Zimbabwe, the Ndebele and the Shona, with the former more often occupying land in the western half of the country and the latter in the eastern areas. Among the Shona, the pattern of agriculture was one of shifting cultivation, a system that was a product of relatively sparse population and an abundance of land. Land was held by a ward (dunhu) and individual family heads were allocated lands by the ward headman as members of the ward. Lands could not be sold to outsiders, but upon the death of the holder passed to his heirs. Newcomers who wished to settle within the ward's boundaries sought the permission of the ward headman, and in return for his consent would place themselves under his authority. Most agricultural operations were carried out communally, with the head of an individual family offering beer to fellow villagers in exchange for their assistance. Because the pattern of cultivation required rotation of fields, villages moved to new sites every six or eight years.

The Ndebele, like the Shona, were basically agriculturalists who also raised cattle. In the nineteenth century they had settled in the "high veld" area of Matabeleland, roughly in the central western area of Zimbabwe, and established a hierarchical society under the authority of a king. Despite the difference in political organization, Ndebele land tenure was similar to that of the Shona. The king was trustee for the land of the entire nation and assigned arable and grazing lands to the various villages. Allocation of land was then made by local chiefs and headmen, who assigned lands to individual family units. Like the Shona, Ndebele villages moved approximately every ten years when the arable land had become exhausted or when new grazing lands were needed for the cattle. In the new village huts would be built in the same relative position as in the old and lands would be distributed in the same fashion. The Ndebele system of mixed farming depended on an abundance of land as did that of the Shona.

Beginning in the late nineteenth century as European settlers moved into what was then Southern Rhodesia, they began to lay out large farms for themselves in a fashion that ignored pre-existing African claims to land. The fertile, tsetse-free high veld areas that the Ndebele had occupied attracted large numbers of settlers, although they did not limit themselves to this one area of the country. At first, because the European farms were largely paper creations, many Africans remained on the land. Later, as the farms came into production and Europeans hoped to limit African competition while assuring the use of their labor, reserve areas were set aside for Africans. Customary tenure practices were to continue in force in the reserve areas, and ward headmen and chiefs retained their authority over land.

The reserves, over 40 million acres in area or roughly half of Southern Rhodesia by 1969, were spread throughout the country. When they were

originally laid out, officials suggested that ideally each African family be allocated 170 acres, a figure that was continuously revised downward as population in the reserves increased. By 1975 even the most minimal figures for suggested holdings were far out of line: with over 675,000 farmers in the reserve areas, holdings averaged less than 60 acres. There were two and a half times the number of farmers crowded into the reserves than had originally been planned for.

The effect of such overcrowding on customary tenure and agricultural practices was enormous. Villages no longer could move into new areas as they once had, and instead land was brought back into cultivation--if indeed it had been allowed to lie fallow--before the soil had regenerated. Grazing areas were destroyed as the number of stock rose, and the soil deteriorated. Fragmentation of holdings was also a problem in the most crowded areas, contributing further to the downward spiral.

2. Freehold and Leasehold

European settlers held freehold titles to the larger estates they carved out for themselves. At first it was also legally possible for Africans to buy farm land and to hold freehold title--although few (fourteen, to be exact) were actually able to do so. Under the 1930 Land Apportionment Act Africans lost the legal right to purchase freehold title in the same areas as the Europeans, and instead 7.5 million acres were set aside as Native Purchase Areas (NPAs), areas in which Africans might purchase freehold title to land. The trade, of course, was segregation for a realistic opportunity to purchase land, and one of the hopes of the colonial government was that Africans who managed to purchase freehold title in these areas would provide an example to those in the reserve areas by their use of agricultural innovations and their participation in a "more modern" system of land tenure. NPAs might also serve as a buffer between the reserves and the rest of the country. But those who purchased land in the NPAs were not only farmers who had become successful in the reserve areas. Rather, it was often urban workers who wished to purchase land as security for their old age.

The distinction between European and African areas of freehold was abolished by the 1977 Land Tenure Amendment Act. The only two areas of the country where this new act was not applied were in the residential areas of cities, where quarters for African and European remained separate, and in the Tribal Trust Lands (TTLs, as the Reserves were called), which remained under customary tenure systems.

C. State Land

Land not designated as Tribal Trust Land nor allocated for European settlement was Unassigned Land or Crown Land in the colonial period. Under the 1969 Land Tenure Act, which evenly divided land between Europeans and Africans, with some 45,000,000 acres allocated for each, 6.6 million acres of undistributed land were designated National Area and thus the property of the state. The National Area is comprised of the Hunting and Game Reserves, Lake Kariba, the Wankie and Victoria Falls National Parks, and Gona-Re-Zhou, on the southeastern border with Mozambique.

D. Urban Land Tenure

Under the 1930 Land Apportionment Act both Europeans and Africans could obtain freehold title to land in urban areas--albeit in separate sectors of the town. The 1969 Land Tenure Act, which allowed Africans to buy freehold title to lands that had once been designated for Europeans only, did not apply to urban areas, and housing in cities remained segregated until 1980. This distinction no longer applies.

Table 1
Division of Land in Zimbabwe by Race, 1969

European Area	Acreage	African Area	Acreage
Forest Area	1,863,918	Forest Area	424,840
Parks and Wildlife	4,383,447	Parks and Wildlife	630,526
General Land	38,564,496	Tribal Trust Land	39,979,963
		Purchase Area	3,670,770
Specially Designated Land	18,910	Specially Designated Land	291,660
TOTAL	**44,830,771**	**TOTAL**	**44,997,759**
	National Land:		6,597,310
	Total Zimbabwe:		96,425,840

Source: The Land Tenure Act, 1969.

E. Distribution of Types by Region or Ecological Zone

See the attached map.

II. LAND ADMINISTRATION SYSTEM

A. Current Administration System

Until recently, the Ministry of Lands, Resettlement, and Rural Development had authority over land transactions and, most importantly, overall direction of the resettlement projects. These projects, which involved the participation of eight different ministries, were coordinated by the Sub-Committee for Resettlement of the Agricultural and Rural Development Authority. Now, however, the ministry has merged its operations with that of the Ministry of Agriculture, indicating that the government now intends to emphasize the necessity for the provision of technical and administrative services along with resettlement on the land.

Since independence, administration of Communal Lands (the former TTLs) has been transferred away from the chiefs and traditional leaders into the hands of elected District Councils, though customary law is the basis for

allocation, occupation, and use of the land. In the resettlement areas on the land acquired from the European areas by the government, permits are issued by the government resettlement authority to settlers. These permits allow settlers to occupy land for building a hut, shed (i.e., to reside), to plough, and to pasture a specified number of stock.

B. Pressures for Change in Legislation and Administration

Robert Mugabe has announced his commitment to seeking a more equitable distribution of land in Zimbabwe, and the issue is a critical one for his administration. Many of Zimbabwe's citizens have either no land or holdings so small as to be uneconomic and the resettlement programs that the government is proceeding with have, for very obvious reasons, wide popular support. On the other hand, the European farms have played a central role in the country's economy for many years, and wholesale appropriation could have disastrous economic effects for the entire country. To implement this program, the government of Zimbabwe has acquired underutilized lands in the European areas; purchases are on the basis of "willing-buyer/willing-seller." Funds for the development of infrastructure have been provided by international donor agencies.

The government of Zimbabwe has yet to draw up a policy with regard to land, and issues of tenure in the resettlement projects have yet to be resolved. Nor is it clear how the government will move to establish cooperatives in the future, as it has announced, or how tenure issues will be handled here either.

III. LAND TENURE ISSUES IN CURRENT AGRICULTURAL DEVELOPMENT

A. Critical Tenure Issues in National Policy

Land and land tenure are the most critical issues that face the government of Zimbabwe, and the European farms and the resettlement schemes pose a number of questions. By March 1982, the government had acquired 750,000 hectares of land and since then has acquired more. Most of this land has been purchased from European farmers, on whose farms it had been either underutilized or unused altogether. The prices the European farmers received were reasonable (Z$10-30 per hectare), comparable with prevailing land prices in 1976, and thus a substantial sum of money has been and will continue to be spent on these resettlement programs. Landless families and those with too little land to survive are being given priority and many have already been settled onto the land and are bringing it under cultivation. As yet, however, they hold no titles or leases, but merely permits to reside on the land. These permits can be revoked by the government, and thus are very insecure. Nevertheless, the new settlers are expected to invest their time and energy and to bring the land into production. Moreover, in settling these new people onto the land, in some areas the government has had to evict squatters and to explain that occupation of the land does not bring rights to it. By July 1985 the government had planned to have settled 162,000 families, a goal that was not reached.

Table 2
Projected Changes in Land Allocation: 1980 to 1990 Following Resettlement

	Land Distribution			
	1980		1990	
Land Classification	(1000 ha)	%	(1000 ha)	%
Communal	16,355	41.9	16,355	41.9
Resettlement	783*	1.1	8,435	21.6
Small Scale	1,477	3.8	8,212	21.0
Large Scale	14,386	37.7		
Urban	193	0.5	193	0.5
National	5,877	15.0	5,877	15.0
TOTAL	39,072	100.0	39,072	100.00

* As of March 1982.

Source: Department of Land Management, University of Zimbabwe, 1982.

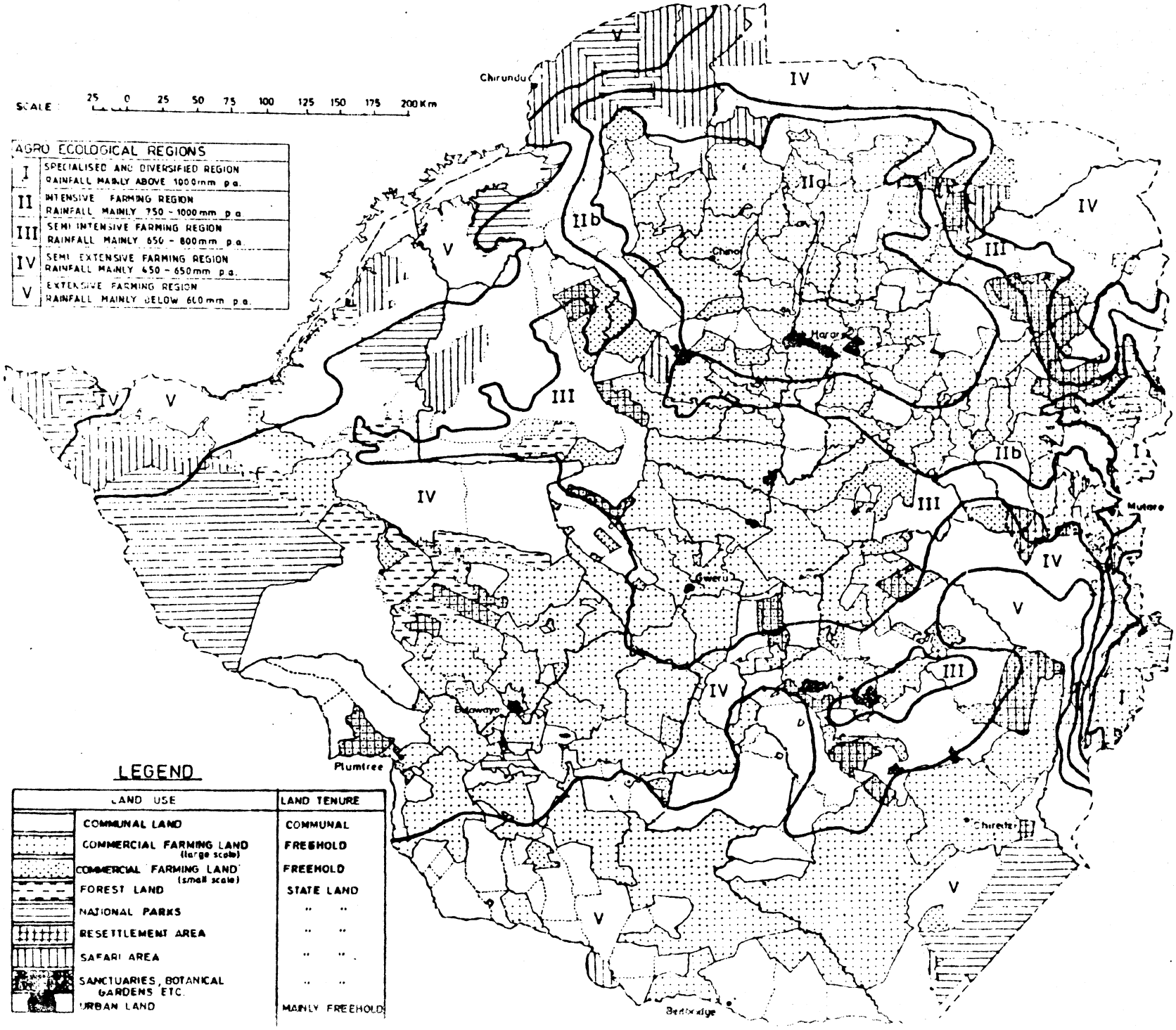
Two further issues posed by the resettlement schemes are the need for supporting administrative and technical services and the extent to which the proposed schemes will actually alleviate problems of land distribution. Some researchers have hypothesized that not only will resettlement make little headway against problems of landlessness and fragmentation, with a relatively small number of beneficiaries for the 66-ha. farms, but that the overall effect of the program may well be negative, resulting in fewer employment opportunities for would-be African agriclutural workers and thus further increasing land pressure in the former Reserve areas.

B. Land Tenure and Agricultural Production

The European farms are very productive and have long been very important in Zimbabwe's economy. One estimate, made in 1981, was that 6,300 commercial farms produced on the average 3.4 times the value of gross output, 3.8 times the value per hectare, 6.9 times the value per person, and 378 times the value per holding as the average of the 700,000 communal area farms. Between 75 and 80 percent of the gross agricultural output in Zimbabwe came from white areas, and about 90 percent of this was marketed. Moreover, commercial agriculture accounted for one-third of all formal wage employment in the country and in 1980 was the largest single employer.

Resettlement, then, is to some extent a matter of trade-offs, for if there is substantial land given over to resettlement, there will be changes in the structure of agriculture. It is to be hoped that any drop in production will be short-term only, and that jobs lost in the agriculture sector will be created elsewhere. Production has fallen in the past few years, but this may be due as much to three years of drought as to changes in land-holding. Data collection or an analysis of this decline in production has yet to be carried out.

ZIMBABWE


SCALE 25 0 25 50 75 100 125 150 175 200 Km
AGRO ECOLOGICAL REGIONS
I SPECIALISED AND DIVERSIFIED REGION RAINFALL MAINLY ABOVE 1000mm p.a.
II INTENSIVE FARMING REGION RAINFALL MAINLY 750 - 1000mm p.a.
III SEMI INTENSIVE FARMING REGION RAINFALL MAINLY 650 - 800mm p.a.
IV SEMI EXTENSIVE FARMING REGION RAINFALL MAINLY 450 - 650mm p.a.
V EXTENSIVE FARMING REGION RAINFALL MAINLY BELOW 600mm p.a.
Chirundu
Chiredzi
Plumtree
Beitbridge
Mutare
Gweru
Harare
LEGEND
LAND USE
COMMUNAL LAND
COMMERCIAL FARMING LAND (large scale)
COMMERCIAL FARMING LAND (small scale)
FOREST LAND
NATIONAL PARKS
RESETTLEMENT AREA
SAFARI AREA
SANCTUARIES, BOTANICAL GARDENS ETC.
URBAN LAND
LAND TENURE
COMMUNAL
FREEHOLD
FREEHOLD
STATE LAND
" "
" "
" "
" "
MAINLY FREEHOLD

C. Implications for Project Design

Projects that foreign donors are likely to be asked to participate in will almost surely involve resettlement. Tenure issues have yet to be resolved for these projects and yet obviously have bearing on what sort of production the government hopes to encourage. The average holding size is large, averaging over almost 70 hectares, and if the land is to be at least partially used for commercial production--of tobacco, for example--there will need to be investment in equipment, extension services, credit, etc. Security of tenure in some form is an important consideration, not only for the land holder himself, but also for outside institutions who may supply some of the necessary capital and services.

IV. SUGGESTED READING

Harbeson, John W. "Land Policy and Politics in Zimbabwe." Current History (March 1982), pp. 121-8, 138.

Kinsey, B.H. "Forever Gained: Resettlement and Land Policy in the Context of National Development in Zimbabwe." Africa 52 (1982): 92-113.

Munslow, Barry. "Prospects for the Socialist Transition of Agriculture in Zimbabwe." World Development 13 (1985): 41-58.

Palmer, Robin. Land and Racial Domination in Rhodesia. Berkeley: University of California Press, 1977.

Riddell, Roger C. The Land Problem in Rhodesia; Alternatives for the Future. London: Mambo Press, 1978.

Using the Land Tenure Maps

In the following maps, we have abstracted information from both the profiles and various personal observations in order to present the reader with a quick and simplified visual reference outlining the agricultural land tenure in sub-Saharan Africa. (Agricultural land as used here means cultivated land.)

The striking dichotomy between de jure and de facto tenures provided the impetus for creating two maps. We hope this will reinforce the lesson of many profiles that projects relying on national land law may find it has only a tenuous relation to field realities. We wish to emphasize to the reader that de jure tenure as defined by these maps literally reflects tenure rules found in the laws of the various countries, regardless of their effectiveness or relation to field realities. De facto tenure as used here refers to the tenure system which actually is the primary determinant of access to land and the terms on which it is held.

Certain subtleties in the profiles have necessarily been lost in the maps, and there have been some close judgement calls on classification. For example, most of the land in Swaziland is held by the king for the Swazi people, who form one ethnic group. Since tenure is handled in a traditional manner and neither run by a state bureaucracy nor subject to a nationalizing enactment, we have labeled it as indigenous tenure, both de jure and de facto. Contrast this with Lesotho where there is legislation specifying state ownership of all land, and which attempts to integrate customary allocation and management institutions into the govenmental structure. We have chosen to label this land de jure state land but de facto indigenous land, since most land continues to be administered in the customary manner. Relying on the map alone can lead to misinterpretation; please consult the profiles.

Examples:

Senegal: De jure: Blue background with a red box.

The blue background color tells us that all land is technically state owned, while the red box tells us that freehold tenure is legally recognized but comprises less than 20% of agricultural land. (If one reads the profile, one realizes that this freehold land was in existence before current land laws came into effect, and that no additional freehold is allowed under law.)

De facto: Green background with blue and red boxes.

The green background tells us that the predominant tenure on the ground is still indigenous while the blue and red boxes indicate that state-controlled or freehold agricultural land exist, but each comprises less than 20% of all agricultural land.

Cameroon: De jure: Blue background with a red box and a green triangle.

The vast majority of Cameroon's land is state-owned, but there is also legal recognition of limited amounts of freehold

and customary tenures. The red box tells us that less than 20% of agricultural land is recognized as freehold, while the green triangle shows that over 20% of agricultural land is legally recognized as under indigenous tenure.

De facto: Green background with red and blue boxes.

This tells us that tenure is actually predominantly indigenous. Freehold and state-run agricultural lands exist, but each comprises less than 20% of such land.

Special Note: The de jure freehold in **Mauritania** is Islamic "freehold," which closely resembles Western freehold. For an explanation, please see the profile.