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ABSTRACT

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

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

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

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

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

SUMMARY

- i. This report builds on the continuing effort of the World Bank to identify significant variables in project design. It aims at providing project designers (in the Bank, the Food and Agriculture Organization (FAO), administrators in developing countries, and consulting firms) with the justification and framework for examining traditional land tenure systems and taking them into account in agricultural project design.
- ii. For the purpose of this paper, traditional land tenure systems are defined as "the rules accepted by a group of the ways in which land is held, used, transferred, and transmitted." These rules may have the "force of law", that is, they may be enforced by the courts of a country even though they may be unwritten and not incorporated, or specifically set out, in any statutes.
- iii. The need for this paper lies in that:
 - (a) despite numerous cases where formal legislation ignores, or even attempts to eliminate, traditional systems, such systems do persist in practice;
 - (b) project design and implementation depend on actual patterns of behavior which are often not reflected in formal legislation;
 - (c) recommendations for legislative amendment or enactment often ignore traditional land use rights of some sections of the population, particularly women and children;
 - (d) the introduction of new technologies and new crops affect traditional systems and therefore project designers should gauge their feasibility and potential impact during project implementation before finalizing project design;
 - (e) Bank staff increasingly encounter traditional systems in the course of their work (whether as "problems" or as "social facts") but do not have a forum to exchange views on their mutual experiences.

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

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

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

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

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

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

PART I DETERMINING THE ACTUAL LAND TENURE AND LAND USE

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

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

- x. (b) Possession of the land. When land is being used (whether seasonally or not, or even illegally) there must be a determination of how the person using the land came into possession of the land and who gave the user possession. Although in many instances enquiries would suggest that the land is "owned" by a group of persons -- a tribe, or lineage (a group of persons claiming descent from a common ancestor) -- in practice it is only a small body of persons who have the right to allocate land.
- xi. (c) Right of allocation. The right of allocation extends both to the type of lands and to the type of crop grown. Where lands are more fertile, the observance of traditional rules is more strictly enforced. Where, for instance, coffee or palm is cultivated, there is gradual conversion of tenurial rules: from lineage to family ownership. Lands on which subsistence crops are cultivated are more regularly governed by traditional rules. Further, cultivation of subsistence crops is linked with both local priorities and the traditional division of labor.
- xii. (d) Security of tenure. What is the effect of an allotment? Once an allotment is made, the right to a plot is not lost, and is usually heritable and, quite often, transferable (except, generally, in the case of transhumants). There is, therefore, security of tenure except in the case of traditional allotments to wives, sons, and where there are tenants or sharecroppers.
- xiii. (e) Rigidities in land use. Allotments are related to specific uses. It is difficult to convert land allotted for subsistence crops, or used for grazing, to the cultivation of cash crops or for growing trees. Therefore, it is necessary to examine how the land is presently used. This would mean several enquiries:
 - (i) what types of crops are grown on the land -- are they subsistence or cash crops?
 - (ii) is there a traditional division of labor, and does this extend to the type of crops grown?
 - (iii) is the land used concurrently (for instance, does one group or person cultivate crops on the land, while another has rights to trees) and, therefore, can there be disputes regarding the use of the land which might affect project design?

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

- (ii) Is the target population multi-ethnic or homogeneous? If it is multi-ethnic, what are the relationships between the different ethnic groups? How would their relationships affect project design (for example, must the project provide different extension techniques aimed at different groups or separate organizational arrangements)?
- (iii) What are the laws of inheritance? Do these laws promote land fragmentation? If they do, would this mean that in the long run project inputs would cease to be used because they are no longer economic? Is there a difference between traditional arrangements with regard to land division and formal legislation?
- (iv) Land carrying capacity. There should also be an assessment whether there would be enough land for continued use by the population given likely population and climatic trends, the level of technology currently used, the technology which the project proposes to introduce, and the time within which change might take place. Also, would project incentives lead, perhaps unintentionally, to overcropping and mining of soil fertility or accumulation of larger herds and consequent overgrazing?

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

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

Identification

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

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

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

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

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

- (c) Project goals. Only the bare outlines of proposed project goals are formulated at this stage. More detailed design would need adequate base data, an assessment of local priorities, and the potential for local participation in project implementation.
- (d) Institutions.
 - (i) What organizational format would best attain project goals? Any decision relating to land tenure and land use for project purposes must be linked with an appropriate organizational format. This means that the Identification team should assess whether the project would be implemented by a government department (or autonomous body) alone, or that project implementation would take place through the combined efforts of government, or autonomous body, linked with traditional groups. In every case, the relative strengths of each institution must be assessed in the light of their capacity to attain project goals. For instance, the Identification team may decide that individual tenure is to be implemented; in that event, the team should also determine institutional capacity to implement the project particularly in the light of previous history. Again, if group tenure is to be continued, the team should assess whether this would result in strengthening the leadership (and, for instance, allow the leaders to convert communal lands to their own benefit) to the detriment of the project. There should also be an assessment of the tasks to be delegated to each level in the project organization (who, for instance, should decide about herd size and who about access to grazing lands?).
 - (ii) Training and technical assistance. Determination of the need for training and technical assistance is linked with an assessment of the project organization and the formulation of project goals. If, for example, the project aims at increasing subsistence cultivation through the introduction of better inputs and it is found that women cultivate subsistence crops, the Identification team should plan how to introduce these inputs, who can introduce them, what resistance might be encountered,

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

Preparation

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

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

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

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

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

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

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

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

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

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

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

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

(c) Alternatives when the conflict cannot be resolved.

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

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