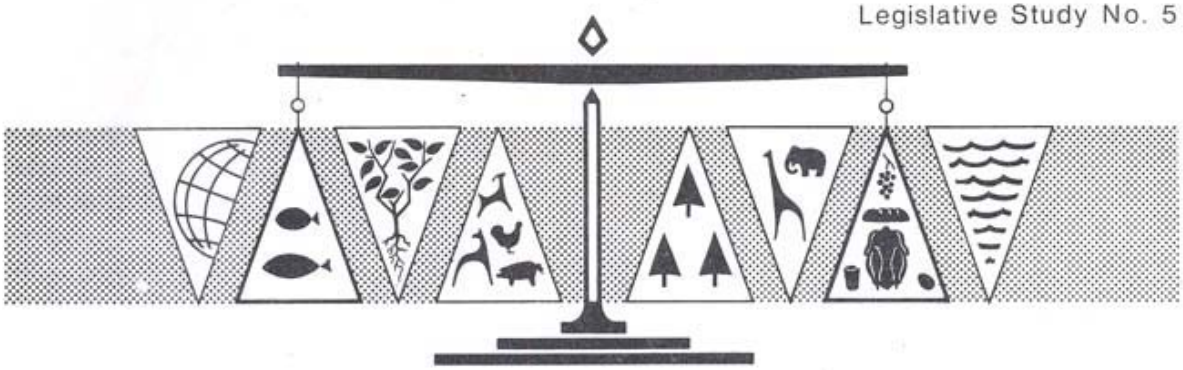
Legislative Study No. 5



AGRARIAN LAW AND JUDICIAL SYSTEMS

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

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AGRARIAN LAW AND JUDICIAL SYSTEMS

by

J. MASREVERY

Chief, Agrarian and
Water Legislation Section

Legislation Branch, Legal Office

FOOD AND AGRICULTURE ORGANIZATION OP THE UNITED NATIONS
Rome, 1975

CONTENTS

FOREWORD

In recent decades, new factors have made obsolete the traditional legal framework of the agricultural sector. Hence the enormous effort to provide agricultural activities with an appropriate body of rules, backed by a conceptual frame of reference. The latter, together with the body of rules itself, has become a specific branch of law: Agrarian Law.

However, just as new conditions have made existing law inadequate, so this novel branch of law tends to exceed the capacity of the traditional machinery. Substantive agrarian law continues to demand an adjective law consonant with its peculiarities and conducive to the specific ends it pursues. The need for an agrarian procedural law has met with some response at the international level, especially in Latin America, where the development of agrarian law has received a broad measure of support.

Thus, to mention only the FAO meetings and leaving aside many other meetings that have concerned themselves with this subject, immediately prior to the Eleventh FAO Regional Conference for Latin America, a Technical Committee on Agrarian Reform had made it clear that one of the main obstacles to achieving the objectives of agrarian reform was the absence of special court and jurisdictional systems for applying agrarian law. In the light of the report of that committee, the Conference adopted Resolution 12/70 recommending that the countries of the Region should adjust their regulations and adopt legal and jurisdictional measures which would ensure that all problems relating to agrarian law are covered by a single system.

The same Conference recommended to the Director-General of FAO that a report on agrarian law should be submitted to the following Regional Conference which might serve as a basis for the activities implicit in this resolution. A paper was prepared in which a special paragraph was devoted to "Los Medios Procesales y la Justicia Agraria". With this in mind the 12th FAO Regional Conference for Latin America (Resolution 20/72) considering "that there is great interest on the part of the countries of the region... in the creation of agrarian legal procedures" and recalling the recommendations of the preceding Conference, passed a resolution recommending (to the Member Nations and to the Director-General of FAO) "that a regional project on agrarian law be constituted to render technical assistance to governmental bodies and institutions ... in the creation and setting up of legal procedures and agrarian justice".

On the basis of this resolution, the FAO Regional Office for Latin America set up a panel of experts and advisers on agrarian law. At its first meeting, the panel proposed, in connection with agrarian law research, that one of the subjects to be considered on a priority basis should be that of administrative and judicial agrarian procedures.

Similarly, the Report of the Joint FAO/ECLA/ILO Seminar on the implementation of land reform in Asia and the Far East (Manila, Philippines, July 1969) has the following to say; "Since judicial organizations and procedures whereby land rights are determined under the Land Reform Law are an integral part of the implementation machinery, the establishment of special types of tribunals of more speedy procedures should be introduced to ensure that such cases would be settled more speedily at much less cost to the weaker sections who are to be benefited by the reforms".

The Legislation Branch has not remained unresponsive to this preoccupation for the agrarian process and has accordingly prepared this study. The plan is as follows. The first part deals with agrarian law in its many aspects and attempts to determine to what extent it may be considered as an autonomous branch of law; the second part reviews the measures adopted in the various countries in order to secure the administration of justice in agricultural activities in general and in land reform in particular.

The study lays no claim to propounding doctrine but rather sets out to draw attention to, and stimulate reflexion on, certain concepts and the doctrinal stance taken by certain authors on this subject, in order to make for a better understanding of what agrarian law and agrarian justice are.

The present edition is a revision and an amplification of an earlier one (published in Spanish in 1974) in the light of developments in legislation in a number of countries.

The thanks of the Legislation Branch go to Professor Magno Tulio Sandoval, whose valuable suggestions have contributed to improving the content and presentation of this study.

Dante A. Caponera
Deputy Director/Chief, Legislation
Branch Legal Office

AGRARIAN LAW AND JUDICIAL SYSTEMS

INTRODUCTION

One of the earliest expressions of positive law in human society known to history is undeniably agrarian in character.

Thus the Bible contains numerous injunctions regarding the assigning of land, the nature of rights exercised over land so assigned, succession law in respect to rural property and the protection of small farming property in opposition to the building up of large landed estates. Mosaic land law though having its roots in religious and economic concepts, nevertheless has a profound social significance.

Among the most ancient texts of written law extant to-day, the Code of Hammurabi 1/, deals in particular with the legal relations between man and land. The Laws of Solon 2/ and Pisistratus 3/ contain the fundamentals of true agrarian reform, while an important part of the laws of the Twelve Tables 4/ deals with agricultural and agrarian matters. Rome, moreover, promulgated no less than seven agrarian laws between the fifth and first centuries B.C. 5/.

Thus, agrarian law, far from being a novel legal discipline, may justly be considered as a forerunner and mainstay of all other branches of private law.

Even in the case of nomad or sedentary peoples, the relations between groups of individuals - clans, tribes, nations, and so on - and later between individuals and other individuals, were in the first instance founded in rights to the use of land, bountiful provider of all essential and accessory needs and last abode and guardian of the dead. An important, not to say essential, part of African law and of the traditional law of Asian countries 6/, of pre-Columbian America, of Roman and Islamic law is concerned with these relationships.

1/ Hammurabi. Sixth King of the Babylonian dynasty, 1730-1686 B.C. The Codex of Hammurabi is a fully fledged digest of orders providing a synthesis, as it were, of the traditions of the Babylonian Empire. It deals in particular with the ownership of land, open exclusively to the class of "free men" or patricians; the other classes are the "subordinates" - degraded free men or freed slaves who might have rights of ownership over movable goods or goods of usufruct or use.

2/ One of the Seven Sages of Greece, 640-558 B.C. Called for the division of land into allotments and stimulated small-scale ownership by way of controlling the cornerning of land and the constitution of large estates. Also recommended improved cropping and other farming methods in order to open the way for agriculture to a market economy.

3/ Pisistratus was hailed in Athens as "the champion of the smallholders".

4/ First written laws of the Romans, 450 B.C.

5/ Lex Cassia (488 B.C.), Lex Licina (370 B.C.), Lex Flaminia (232 B.C.), Lex Sempronia (135 B.C.), Lex Servilia (63 B.C.), Lex Flavia (60 B.C.), Lex Julia (59 B.C.).

6/ Manu-Smiriti (Tradition of Manu) or Manavadharmaéatra (Treatise of manavian laws or laws of Manu). Code compiled round about the beginning of the Christian era, containing precepts dictated by Manu, in Hindu tradition progenitor of the human race.

For many a century of modern history, land constituted the only tangible element of wealth and the only serious constituent a person's assets - an economic function that later took on an added function - the socio-political one, in that it represented the cohesive factor and support of all sovereignty and made possible the exercise of the political rights that went with its possession. Thus the relationship between ownerhip of land and political power led to the identifying of property with freedom, in turn providing the basis for the "laissez faire" philosophy of the liberal school.

In the earliest phase it was the rules governing the relations between man and land that supplied the foundation and inner structure of the legal systems of the time. As such they had a profound influence on the evolution of civil law. In a second phase, i.e. over a period stretching up to the late XIXth century for the countries of Western Europe, and even to a later date in the case of countries under colonial administration, the land tenure systems and agrarian relationships were thought of in exclusively civil law terms.

The reigning doctrine of the period took the form of the theory of natural law -"law imposed by the nature of things" - in the Aristotelian conception taken over by the Dutch jurist Grotius (1583-1645); renewed and developed by the English philosopher Locke (1632-1704) and by the Physiocrats. This school of thought found expression in highly individualistic principles that dominated rural life and agricultural activities up to the outbreak of the Great War 1914-18.

Thus, too, the legal relationship subsisting between the various elements that made up rural life, based as these were on highly personal bonds and relationships, tended to place man - through the rights and obligations assigned to him - in the dominant position.

Subsequently, the work of codification of the XVIIIth and XlXth centuries, itself strongly imbued with the spirit of the industrial revolution, was sure to lead, sooner or later, to the questioning of this state of things. Rights in rem over physical possessions - now predominate over all others. In such a system, then, land ownership, in the most materialistic sense of the term, became virtually the sole foundation of private law.

Conservative and patrimonialistic civil codes, with scarcely a thought given for social needs, were soon to be seen - and bitterly criticized, by many a doctrinaire politician - as a tool in the hands of the capitalists.

Private law straight jacketed by codification, quite early on revealed its incapacity to provide an effective and harmonious solution for the conflicts, such as that between the individualist philosophy and social needs, which were becoming more acute during this period with the ineluctable evolution of society at large. Meanwhile, the political trends of the period following the First World War with, as one of its major demands, a return to the concept of social justice, have gradually (albeit with a certain time lag with respect to industry) taken hold in the rural sector. For the workers in industry had benefited from the inherent concentration of that sector and, through trade union action, were the first to assert their dignity as participants in the production process. Farmers, on the other hand, geographically isolated as they usually were, and too often withdrawn into themselves through their very tradition of individualism, were able only much later to awake to the significance of their role and to the rights that went with it.

And so it was that the public authorities were faced into taking action, and in increasingly greater depth, both in the community's interest and in the name of social justice, in areas until then considered as belonging exclusively to the field of private law.

In its turn, then, the rural sector opened up to the influence of reforming doctrines proclaiming the inseparability of land ownership and its human implications. A number of factors combined to hasten on this process, chief among them

(a) the economic factor, implying the need to plan and guide production in order to enhance productivity;

(b) the social and moral factor, namely the redistribution of incomes, the consideration of the producer as an individual, and the justification of ownership by one's labour; together with the emancipation of the individual and the disappearance of feudal structures.

The evolution described was reflected in intense legislative activity. The earlier liberalism was now replaced by a more pronounced interventionist trend, particularly in Third World countries. There more than in other countries the compenetration of private and public law left its mark on the reforming legislation. One effect of all this was that the freedom of the individual was now to be sought less in the possession of property than through the intervention of the State to ensure that property did not become privilege.

A new juridical edifice thus came into being. It has many original features, particularly in its implications for the agricultural sector.

Whatever the relative value attaching to such expressions as rural law, agricultural law, law on agricultural activities, agrarian social law and the rest (these are all matters on which even the experts continue to disagree), there can be no denying that the term Agrarian Law - enjoying the preference of, and employed by, most schools of thought - has come to stay. That this is so is confirmed by the systematic study and research devoted to the subject over the last thirty years. And while learned opinion is not as yet unanimous as to its nature, purpose and content (witness the variety of definitions proposed), agrarian law has as its purpose the constitution of a distinct corpus of doctrine and prescriptions which, as will be shown in what follows, confers on it its specific character.

There has also been a parallel trend for the authorities responsible for enforcing the law specific to agricultural activities to develop their own procedures and to become specialized to such a degree that they now constitute a single jurisdictional entity with exclusive responsibility for the administration of agrarian justice - in the widest sense of that term.

PART I

AGRARIAN LAW

I. DEFINITIONS

It is no easy task to define a multiform branch of legal study, and one in full process of change at that. Scholars who have given thought to this problem have proposed a range of definitions which usually reveal the specific features and treads of the economic, social and political context of the part of the world to which they belong. These definitions will now be listed, in chronological order.

A. ARCANGELI 1/: "By agrarian law is to be understood that body of rules, of private law or of public law applying to persons, things, acts and legal relations arising out of agriculture", or, again "those rules whose immediate and direct purpose is the regulation at law of agriculture."

R. MAGABURU 2/: "Rural law is that self-contained corpus of legal precepts which govern the relationships coming into being on any farm and which have been laid down with a view, principally, to protecing the interests that individuals and the community have in such

farms."

A. LEAL GARCIA 3/: "Agrarian law is the law of rural landed property and of the agricultural enterprise, i.e. that body of statutory rules that govern the ownership, use and usufruct of farm holdings and the development of the agricultural enterprise."

J.L. OSORIO 4/: "Agrarian Law is that body of rules governing persons, property and obligations in the rural sector."

C. CARRARA 5/: "... the body of rules of law governing agricultural activities as regards persons and foods accruing to persons and as regards the legal framework instituted for the pursuit of those activities."

M. DE JUGLART 6/: "... By rural law is commonly understood the body of rules applicable to things and persons having to do with the rural sector."

L. MENDIETA Y NUNEZ: 7/: "Agrarian law is that body of rules, laws, regulations and general provisions, theory and court rulings that relate to rural property and agricultural undertakings."

G. BOLLA 8/: "A set of principles within municipal law designed to promote the operation and organization of the component elements and the spiritual and material forces of production and to institutionalize the economy in. the higher interest and for ends proclaimed by the Constitution."

1/ "II diritto agrario e la sua autonomia". Rivista di Diritto Agrario. Florence, 1927, p. 197 S.

2/ "La teoría autonómica del derecho rural". Santa Fé, Argentina, 1933, p. 139.

3/ "El derecho agrario y sus modernas orientaciones". Revista Crítica de Derecho Inmobiliario, Madrid, 1935, p. 600.

4/ "Direito Rural". Río de Janeiro, 1937, p. 1.

5/ "Corso di Diritto Agrario". Rome, 1938.

6/ "Droit Rural". Paris, 1952.

7/ "Introducción al Estudio del Derecho Agrario". Mexico, 1946, p. 3.

8/ "Scritto di diritto agrario". Milan, 1963, p. 813.

V, GIMENEZ LANDINEZ 1/: "... a body of law laying down and regulating a person's rights in the matter of land ownership as well as the powers and obligations assigned by such law to the individual and to the State."

S. RITTERMAN 2/: "... body of prescriptions regulating production relationships in agriculture in a highly specialized manner principally with a view to their reconstruction in socialist terms."

A. BALLARIN-MARCIAL 3/: "That system of rules of both private and public law specifically governing the status of the farmer and his activities, land use and tenure, and farming units and agricultural production in accordance with certain general principles proper to this branch of law."

L.A. OAZOLLO 4/: "...a composite law governing rural property and the pursuit of agricultural activities qua activities geared to production."

R. SWIATKOWSKI 5/: "... body of legal rules governing social relations linked to the formation of the agricultural system and its reconstruction in socialist terms and to the economic forms that such reconstruction takes."

J.R. ACOSTA CAZAUBON 6/: "Agrarian Social Law is a body of rules and principles which govern the legal relationships of the agricultural sector and of land ownership and occupancy in such a way as to establish social justice in rural society."

R. DI NATALE 7/ "... a body of legal rules designed to secure the economic and human development of the rural sector through the reform of the system of land ownership and occupancy, the promotion of all agricultural activities and a rational approach to the conservation of natural resources."

R. VICENTE CASANOVA 8/: "... the body of rules and principles governing the ownership of land and guiding and securing its social function."

A.C. VIVANCO 9/: "... the system of legal principles governing the relationships subsisting between persons engaging in agricultural activities as these are referred to material phenomena in the rural sector, with the further purpose of conserving renewable natural resources, promoting agricultural production and securing the welfare of the community."

F. PEREIRA SODERO 10/: "... the body of principles and rules of public and private law designed to regulate relationships arising out of agricultural activities and based on the social function of land."

1/ "La reforma agraria integral". Ministry of Agriculture. Caracas, 1963. p.71.

2/ "Prawo rolne a system prawa" (Agrarian law and the judicial system). Studia Cywilistyczma, T.II, p.77, Warsaw, 1963.

3/ "Derecho Agrario". Editorial Revista de Derecho Privado, Madrid, 1965, p. 381.

4/ "Derecho Rural". Lima, 1966, p. 7.

5/ "Prawo rolne" (Agrarian Law), Warsaw, 1966, p. 11.

6/ "Manual de Derecho Agrario". Universidad Central de Venezuela, 1967, P. 60.

7/ "Construoción del Derecho Agrario Latinoamericano". Rev. de la Facultad de Derecho de la Universidad de Carabobo, Vensuela, Ko. 12 and 17, p. 10, 12, 1967.

8/ "Derecho Agrario". Universidad de Los Andes, Mérida, Venezuela, 1967, P. 16.

9/ "Teoría del Derecho Agrario". La Plata, Argentina, 1967, Vol. I, p. 192.

10/ "Direito Agrario e Reforma Agraria". Saõ Paulo, Brazil, 1968, p. 25.

R.R. CARRERA 1/: "... that juridical science which contains the principles and the norms that regulate conditions emerging in agricultural activities, such that the land may be efficiently worked, redounding to an expansion and improvement in output, together with a more just distribution of the wealth generated thereby, for the benefit of those who work the land and of the national community." (Paper read on 20 April 1970 at the Istituto di Diritto Agrario, Florence.)

A. STEZMACHOWSKI 2/: "... a scientific discipline whose purpose is the development and thoroughgoing research into the art of governing agriculture with legal tools."

Taken together, and irrespective of any ideological slant they may have, those definitions, whether restrictive or extensive, make some reference to the rules that apply to the carrying on of agricultural activities in their various phases. Accordingly, the definitions span a multiplicity of concepts, from the law governing land tenure to that governing product marketing, which find expression in land laws in the strict sense and in land reform legislation introduced to change the system and in rules governing the consolidation of land holdings, soil conservation and that of renewable natural resources, agricultural credit and insurance, marketing and the rest.

Lastly, agrarian law is expected to be an instrument of the development -social as well as economic - of the rural sector, and its evolution has gone forward in a decidedly humanizing sense, witness the chronology of the definitions reproduced above. 3/

II. REGIONAL PECULIARITIES IN AGRARIAN LAW

The range of definitions cited in the previous chapter show how agrarian law is far from being a rigorously uniform and homogeneous discipline. The very diversity of agricultural structures and of the activities making up the sector - themselves contingent upon geography 4/ - means that the, principles underlying the law and the dynamics of its working out in the respective contexts will inevitably take on aspects that vary from region to region. For if economic and social planning is what policy - developed in the light of a given set of conditions and objectives -is all about, then agrarian law will be the formal expression of that policy. Its lines of force, as it were, will necessarily be oriented by the magnetic field set up by that same policy.

Accordingly, agrarian law, both as legal science and as the reflection of specific interests that may vary historically and geographically, takes on different forms in different times and places. As an eminent Latin-American author has

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1/ Lecture, Istituto di Diritto Agrario, Florence, 20 April 1970.

2/ "Evolution de la notion de droit agraire dans la doctrine polonais. et d'autres pays socialistes." Rivista di Diritto Agrario, Florence, 1972.

3/ See also G.A. Aksenyonok, V.A. Kikot and L.P. Fromina in "Kritika sovremennikh burzhuaznikh agraruo - pravovikh teorii". Nanka publications, Moscow, 1972, and comments on this study by V.A. Martinov and G.L. Pactor in "Sovietskoie Gosudarstvoi Pravo", No. 10, 1973.

4/ These factors may be physical (land, soil, water, olinata), biological (flora, fauna), socio-political (customs, administrative structure, political trends), and technical and .economic (technical development, investment).

perspectively said 1/, there are "as many agrarian laws as there are countries". It is therefore no misnomer to speak of European, African or Latin-American etc.... agrarian law, given the peculiarities and contingent local realities reflected in the legal instruments designed to deal with them.

Clearly, the moral, social and economic postulates, being the very backbone of agrarian law, remain in all their universal validity, for they provide the bedrock of the law governing agricultural activities.

There follows a brief description region by region of the differences and specific characteristics peculiar to each where agrarian law is concerned.

1. Tropical Africa

The colonial systems tended to favour an individualistic approach to property, taking as their guide the French Code Napoléon or the Common Law of England, or the German Grundbuch, as the case may be, and with sometimes questionable results, among them an undoubted encouragement to speculation. The authorities succeeding to the former colonial powers in the newly independent States are resolutely facing up to the economic demands of development. In doing so they are in theory respecting customary law but only "to the extent that this does not hinder the march of progress 2/.

In practice, the provisions of agrarian laws and regulations in most of the countries concerned, while they do generally refer to traditions bound up with clan or tribal solidarity, occupation of land by lineal descent and the principles of collective or community ownership, they nevertheless embody resolutely reforming and innovative concepts. These represent an unmistakable abandonment of the sacrosanct aura in which traditional law has been held, and a restriction of its scope where land tenure is concerned 3/.

Despite the great diversity among the schools of thought at the present time, it is still possible to discern a common approach in the development of agrarian law in Africa. Thus, as a general rule, there is a trend toward the State taking over ownership rights in respect of agricultural land, and redistributing cultivation rights to individuals, requiring the latter to farm the land in accordance with the principles of modern husbandry and economics.

1/ Remo di Natale, op.cit.

2/ See, e.g., the address to the National Assembly of the Ivory Coast, in 1963, by the President of the Republic, Mr. F. Houphouet-Boigny, on the occasion of the debate on the bill on the Land and Land Tenure Code. The Act was not, in the event, promulgated. Instead, an administrative reform on the system of land adjudication to farmers was introduced.

3/ See, especially:

- A.N. Allot. Essays in African law. Butterworth. London, 1960.
- M. Bachelet. Systèmes fonciers et réformes agraires en Afrique Noire. Paris, 1963.
- D. Christodoulou. Réforme des régimes fonciers coutumiers africains, Conferencia Mundial sobre la Reforma Agraria, FAO, Rome, 1966.
- F.M. Mifsud. Derecho agrario consuetudinario en Africa. FAO, 1967.
- R. Verdier. Evolution et réformes foncières de l'Afrique Noire francophone. Journal of African Law. Vol. 15, No. 1, 1971.
- Th. G. Verhelst. Customary Land Tenure as a constraint on agricultural development: a reevaluation. Cultures et Développement - Université Catholique de Louvain, Belgium. Vol. II, No. 3-4, 1969-1970.
- Agrarian Reform in Africa, analytical background document prepared by the FAO Regional Office for Africa, 1971.

That the State should adopt this approach arises from the need to exploit assets ready to hand, i.e., land and manpower. This need has shown the African authorities the intrinsic potential of arable land and the inadequacy of cultural practices hitherto adopted.

This twofold consideration has lead the State to vest in itself the ownerhip of land that is badly farmed or underfarmed and to realize its potential by making better use of available facilities.

The approach described is tempered by respect for certain principles, which will now be succinctly described:

(a) the need to provide the State with the means for acquiring the land that is essential for carrying through its development policy. This might be described as the nationalization of land;

(b) the taking over for reasons of public interest, into the State private domain, or into the national land domain, of land held under customary title, where the procedures for confirmation of title have not been complied with;

(c) the dissociation of bare ownership from use rights. The formar will be recognized as vesting in the State, the latter assigned sometimes to individuals but usually to communities;

(d) the tendency to restrict or abolish individual ownership of land and to maintain the inalienability of land. . Ownership titles are converted into proof of use rights, which may be assigned to third parties subject to provisions that are imposed in order to restrict speculation or to prevent it altogether;

(e) control over fragmentation. This will be achieved through consolidation schemes and changes in customary succession rules;

(f) the obligation to farm, and farm efficiently, backed up by fiscal incentives and/or sanctions (among the latter figuring that of the lapsing of occupation rights);

(g) population resettlement and redistribution as part of development-linked land settlement plans;

(h) incentives for cooperatives and the introduction of markedly socialized joint (community) farming systems.

State intervention is extending, in depth, into all, areas of the farming sector; and agrarian legislation by definition derives more from public than from private law. On the other hand, the technical instability of customary law, due to its oral tradition and heterogeneous nature, explains why many countries have little choice but to codify their agrarian laws.

Taken together, these measures have resulted in the concept of ownership, whether public or private, regaining its social function. It is in this direction that African land law has shown such originality.

2. Latin America

In the early stages of its development modern agrarian law in Latin America has concentrated on the legal problems of integrated land reform - agrarian reform in the strict sense, backed up by measures designed chiefly to make agricultural credit more readily available to small farmers, organize technical assistance, facilitate access to markets, guarantee remunerative prices to the producer, promote social welfare and so on. Legislators obsessed by the latifundio/mini fundio phenomenon and anxious to abolish as quickly as possible an oppressive agricultural setup inherited from colonial times, have tended (sometimes to an excessive degree) to sacrifice economics - productivity, efficiency and consumer supply - to political and social ends.

The Porto Alegre declaration, approved at the Inter-American Agrarian Law Congress in October 1971 illustrates the change that has taken place. In the development phase, agrarian law in Latin-American countries was based on certain cardinal concepts, which differed somewhat among themselves according to the degree of politicization or radicalization that has characterized land reform measures. The predominance of the political over the economic was, however, to give way quite early to a state of equilibrium in which socio-political and economic objectives came to be reconciled.

The declaration amounts to an agrarian reform charter for the New World and at the same time a statement of the juridical principles underlying it all. The fundamental ideas running through it may be summarized as follows:

(a) agrarian reform is concerned principally with the juridical status of land ownership and farming activities;

(b) the principle of serving a socio-economic purpose - in addition to that of social justice - must be the foundation of all land tenure and land use systems -whether it be in their subjective or objective or, again, causal aspects, such aspects being enhanced in the concept of the enterprise, i.e., enterprise in the sense of a permanent, rational and ongoing, efficient and democratic organization of the factors of production. By which token:

(c) the life of the agricultural sector must be organized with the aid and support of the government in such a way as to benefit the tillers of the soil, whose work is directed to producing goods that are essential to the entire community. Accordingly,

(d) it is necessary to bring in an agricultural policy having an economic, social, scientific and technological basis, and assigning a major function to agricultural credit and insurance. The purpose here is to secure improved productivity and income distribution, by guaranteeing fair price to producers, providing marketing facilities and introducing tax incentives etc.;

(e) water use (for water is one of any nation's assets) must be regulated in such a way as to cater for the interests of both individuals and the community. The

purpose must be to achieve better, i.e., more efficient, use of this resource, particularly in agriculture 1/;

f) in order to stem urban immigration, especially in view of industry's present inability to absorb additional manpower, people must be encouraged to stay on the land. To this end they must be offered decent and equitable conditions as regards income, housing, education, vocational training, health and hygiene;

g) wage-earning farm workers, whether seasonal or engaged under other conditions, must be assured their right to work and to social security, allowance being made, of course, for local social and economic conditions. Farmers 'or peasants' associations, in particular, can help to ensure their representation and protection on democratic principles and in a manner consonant with the realities - socio logical and other - of the respective situations.

As a corollary to these considerations, mention should be made of the approach contemplated by the signatories of the Porto Alegre Statement as regards the implications across national frontiers of the legal activities and the structural change associated with agrarian reform designed to bring about the economic integration of the continent. The "approach" in question is illustrated in what follows.

1/ In other words the concept of water use must:

(a) take in both surface water and groundwater;

(b) make for technical bases and uncompromising legislation able to unify and centralize resource management for all uses;

(c) accord greater importance to community interests (community ownerhip of water) than to individual interests;

(d) secure a better, because more efficient, use of this resource for agricultural, including stockraising, purposes, whenever it is possible to assign to these activities, at watershed level, priorities over other uses (drinking water supply, electricity, etc.). Accordingly, it is essential to make a thorough study in each country of the water policy administration and legislation. This is only possible when the State it-self takes over the direct administration of the resource, whether ownership rights continue to be held by private persons (i.e. if it is not the intention to amend the Constitution or Codes currently in force), or water resources are declared as being more completely national assets (cf. Peru, El Salvador (Irrigation and Drainage Act, Section 3), or again, of water codes, land reform laws, or special laws governing particular uses, are introduced). In any event a definite Government department must be named and expeditious procedures introduced in order to establish water use priorities.

Agrarian reform is seen as a political decision. It is a fundamental, priority need in that it provides a method, a procedure and a tool of economic expansion for the Latin-American continent. At the same time it guarantees each State the right to decide how it will secure the efficient use of land. Accordingly, there must be a strengthening of the work of inter-American and international bodies in supporting and promoting studies and projects for improving agrarian law situations. Parallel to this, moreover, the Governments in the Region should form a united front - through multilateral agreements and conventions - in defending their production on the international markets. Since the ultimate objective is to bring a common market into being, these countries will have to agree, inter alia, on the overall coordination of their policies, and on priorities and on the potential contribution of each.

An eminent Bolivian specialist in agrarian reform 1/ is of the view that from a theoretical standpoint, there is a specifically Latin-American concept of agrarian law. According to this view "Agrarian law to-day is a doctrine or body of legal rules that have as their purpose the economic and human development of the rural sector. This purpose is to be achieved through a reform of the system of land ownership and other types of land tenure, the promotion of stock and animal husbandry and the conservation of natural resources".

3. Asia and the Far East 2/

Agrarian Law in this region takes its inspiration from socio-economic concepts that differ radically among themselves - from revolutionary reform to moderate reform. As a result, agrarian law is somewhat heterogeneous and difficult to encompass in a single, all-embracing view. .

Land law in the many countries of this region used to be based for the most part on assumptions of a feudal or quasi-feudal conception of land holding and human relations. It is this a state of affairs that the legislator has been at pains to modify, relying for his purpose on different methods and different procedures. These can be summed up under the following main heads:

(a) Abolitionist Procedures. These entail the suppression outright of feudal or quasi-feudal systems of land tenure and their replacement by private small holdings or collective or communal tenure. Sometimes - Japan is a case in point -the changeover has been brought about through purchase by the State of the great landed properties and their resale of the land in question to the farmers working it, enabling them, in the process, to come into the ownership of their land. In certain States of India, Kerala in particular, the procedure has been to expropriate without compensation, in order to usher in socialist ownership of land.

In China, the Communist legislators have established a system entailing, as circumstances required, confiscation or requisitionning of land for redistribution among the communes. This was in order to bring about an immediate improvement in

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1/ R. Di Natale, op.cit.

2/ -SEIN UN. Political Importance of Land Reform in Southeast Asia, Hartford University (Connecticut), USA, 1965.

-NGO BA THANH. Le concept de propriété en Orient et en Extrême Orient, Saigon, 1962.

-Joint FAO/ECAFE/ILO Seminar on the implementation of Land Reform in Asia and the Far East - Manila, Philippines, 1969 Report.

the standard of living of the peasants and, over the long-term, to release the productive forces of the rural areas and to develop agricultural production as an intermediate step toward industrialization. 1/

(a) Reform on the models adopted in Malaysia, Sri Lanka and Thailand and certain other countries, and based on the notion that the present system of Land tenure can be remedied by attenuating its worst features. This means improving the position of tenants and similarly precarious occupiers, while guaranteeing owners their basic rights.

(b) Selective abolition. This follows different patterns in Indonesia, Nepal, Philippines and Viet-Nam, and occupies a mid-way position between the two approaches described earlier. It takes the form of doing away with the more antisocial elements of the prevailing systems of land tenure. Land and all other natural resources are brought under the control of the State, the latter assuming the obligation of ensuring that they are used in the belt interest of the community. The ownership of land is looked on as having a social function and therefore as being subject to certain restrictions. At the same time measures are taken to facilitate access to credit, promote irrigation and flood control, improve housing conditions and expand social services.

4. Western Europe

In this part of the world agrarian law has for a long time now been in the process of codification. There is a trend toward uniformity, thanks to the rules introduced by the European Economic Community. Private property is upheld - in its capitalistic and patrimonialistic acceptation - yet the effort is made to remove some of the negative elements of laissez-faire economics. The exercise of ownership rights is hedged in with a number of restrictions, notably as regards the relations between landlord and tenant. The purpose here is to ensure the latter a climate of security and stability of tenure within which he can develop his initiative.

In addition, the legislator has introduced a series of provisions whereby the agricultural sector as a whole may have access to the social security enjoyed by other sectors, and to encourage early retirement. This lastmentioned expedient has a twofold objective, namely to lower the average age of the active farming population, and to take advantage of the situation thus created for land consolidation and similar purposes. To conclude this list, there is also the trend - observable in one way or the other in the legislation of all this countries concerned - for emphasis to be placed in some countries on the business (or chef d'entreprise) concept and, in others On the farm concept 2/. But the difference is more apparent than real, the first mentioned concept being in effect an extrapolation of the second.

1/ Law of 28 June 1950, Section 1 and CHEN CHI-YI La réforme agraire en Chine populaire, Paris, 1954.

2/ P. Baur. Der landwirtschaftliche Betrieb als juristische Einheit nach Deutschem Recht, in:Atti del Primo Congre eso Internazionale di Diritto Agrario. Florence, 1954.

D. Barbero. Fondo e azienda nell'impresa agricola, in: Atti del Primo Congresso Internazionale di Diritto Agrario. Florence, 1954.

A. Bailarín Marcial. La formación, conceptos y fines de un derecho agrario de la empresa,in: Atti del Primo Congresso Internazionale di Diritto Agrario. Florence, 1954.

M.F. Rabaglietti. Proprietá terriera, impresa azienda nel sistema del ordinamento.

The farm, therefore, has become both the centrepiece of each country's agrarian legislation and the specific constituant of a special branch of law. It is, in short, the common denominator of the legislative arrangements in all these countries.

In this particular context it is the Spanish school 1/ that sets the tone. Several representatives of this school have given definitions of agrarian law which - it is fair to say - take most completely into account the present trend taken by this branch of law in Western Europe. These same definitions hallow, as it were, the shift in the centre of gravity in productive activity from the owner of land to the entrepreneur. 2/

All that has been said here implies that the public authorities must be vested with wide powers of control over farm leases and in land use planning. It implies, too, the extension of social security to the agricultural sector, the provision of the inputs necessary for the farms to function, and so on. The problem is one of finding a formula whereby State intervention may be reconciled with the basic principles of liberal economics.

Lastly, mention must be made of the fact that the provisions of the Treaty of Rome tend to confirm the similarity between the national laws of the Member States and make for a new ideological and juridical unity associated with agri-culture in the region that is Western Europe. 3/

5. Eastern Europe

In almost all Eastern European countries, with the notable exception of Poland 4/ and U.S.S.R. 5/, agrarian law 6/, considered as an autonomous branch of study, is still at an early stage of development, despite the fact that in

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1/ See the definition of agrarian law by A. Bailarín Marcial, p. 6.

However, it will be in place to record the view of another eminent Spanish jurist (J.L. de los Mozos, in "Estudios de Derecho Agrario", Tecnos, Madrid, 1972) according to which "to see agrarian law as a law of the agricultural enterprise is more in the nature of an imaginary or rhetorical construct than a conceptual reality".

2/ S. Mansholt: Memorandum sur la réforme de l'agriculture dans la CEE, in "Communication relative a la politique agricole commune", 21 December 1968 (Doc. COM(68) 1000 No. 2).

3/ See General Report of the Vth International Agrarian Law Congress, Brussels, 4-9 August 1958.

4/ Law on the principles of land legislation. 13 December 1965. The U.S.S.R., whose Land Nationalization Decree of 26 October 1917 is the basis that country's subsequent agrarian legislation (codified in 1922) brought in (1968) a Law on the principles of land legislation, which in turn generated the land codas of the respective republias. The model statutes for the Kolkhoses approved by the Council of Ministers on 28 Noveaber 1969, and having force of law is another important basis of Soviet agrarian law.

5/ Land Reform Law, 6 September 1944. The object of this law was to do away with the large landed proprietors as a class and to redistribute their land among the peasense.

6/ "Agrariern law is ta be soon as a branch of learning whose purpose is the de-volofOitt of and soarching enquiry into the art of governing agriculture with the aid of legal tools: - thus Professor Andrzej of the Warsaw University.

the recent past these countries have undergone agrarian revolutions in the true sense of the term. This may be because in a severely planned economy, the main goals are attained through the fusion into a single system of all contributory elements, juridical and nonjuridical 1/. The chances of distinguishing and discerning the specific rules deriving from one or other branch of law are therefore limited.

It should be noted however, that the agrarian law system of these countries is founded on the concept of the land as an instrument of production, emptied of any mercantilistic implications and, with a few exceptions, not susceptible of appropriation by private hands, and consists of a fourfold structure which will now be described 2/:

(a) regulation of the exercise of ownership rights in their various forms: State ownership; ownership by cooperatives and similar bodies, together with the relevant legal instruments for conveyance, alienation, exchange, etc.;

(b) organization of agricultural production in all its aspects - from the smallholding to the state farm and the various intermediate types of association - together with the services appropriate to each;

(c) the creation of legal machinery for influencing agricultural production, i.e. powers to require that such and such a thing shall be done, or not done, at the technical level - cultivation methods, soil improvement, irrigation, protection of the plant cover, and the like;

(d) the creation as part of the general planned economy of legal institutions whose purpose is to provide a link between the economic life of the countryside and that of the towns, between agricultural producers and the consumers of their products.

It is pertinent to note that where private ownership is contemplated no reference is made to the social function of property 3/ - an omission that has given rise to considerable criticism.

The driving element of the entire system is State control. It is noteworthy that a trend is developing in the direction of State control and that a number of universities in Eastern European countries have introduced agrarian law into their law school syllabus. Furthermore, the regulations governing agricultural activities are coming to be seen as a specific entity on their own. A number of writers on the subject feel that this "entity" should be recognized as a distinct, autonomous discipline 4/.

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l/ G.A. Aksenyonok: "Foundations of Soviet Law", Moscow, 1962.

2/ I.V. Pavlov (Professor of agrarian and kolkhose law - Moscow University). The democratization, subsequent to its juridical regulation, of the activities of the farmers' collectives in the U.S.S.R. (Colloque international de droit rural, Paris, 1958), in "Documentation française", No. 2719, 26 November 1960.

3/ G.A. Aksenyonok. The law of State ownership in the U.S.S.R. and its characteristics.

4/ Prof. V.A. Kikot, of Moscow University, is in favour of agrarian law being treated as an autonomous branch of law since it is necessary to institute a unified system of legal rules governing all aspects of agricultural activities. Italian-Soviet Round Table Conference on Agrarian Law. Florence, 8 - 10 May, 1962.

6. Near East and North Africa

Agrarian law in the countries of this region continues to bear the forceful imprint of the Koran, though it has concentrated of late on reforming the system of land tenure following the revolutions that swept away feudal systems and colonial rule.

Agrarian law deals with not only the land itself (and water) but also farming methods and the relationship of one factor in the farming process to the rest. The basic concepts which the legislator has taken as his guide may be summarized as follows:

(a) vesting in the State of ownership of all land, with a view to redistribution;

(b) dismembrement of the great landed estates and handing over of the ownership of the land to the man that actually works it. This approach has the added advantage of reabsorbing those social classes that are considered hostile to reform undertaken by the State;

(c) institution of socialist relationships between farmers and the State;

(d) incentives for collective farming and the institution of a system of land reform cooperatives, with compulsory membership, especially in those areas that have benefited from major improvement schemes - drainage irrigation and the like.

III. AGRARIAN LAW AND PERSONAL RIGHTS

The characteristic feature of Agrarian Law, especially the kind that is based on land reform legislation (the Latin-American countries are the most notable case in point) is the recognition of certain fundamental rights -virtually a recital of the Universal Declaration of Human Rights - where the man that tills the soil is concerned.

Similar rights were recognized and defined by the twelfth session of the FAO 1/ Conference in the following terms: "The Conference recommends that governments of countries which have not yet done so should give thought to incorporating in their political and social structures and fundamental legal institutions a system of integrated land reform, which, while recognizing the right of the tiller of the soil to acquire or obtain ownership title to the land he works, acknowledges as equally fundamental the right both to adequate and timely credit at low rates of interest, to technical assistance, social welfare, and assured markets, so that the land may come to constitute not only the foundation of his economic stability, but also the chief means of the gradual

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1/ Resolution No. 15/63, approved 5 December 1963.

betterment of his position in the community as well as the guarantee of a decent, independent life for himself and his family". 1/

1. What these rights concern

The "object" and content of personal rights may be defined as follows:

(a) Right to land. The dominant feature and the one most widely recognized, as well as the watchword of all land reform, had been "the land to the tiller". The translation of this right into practice has taken various forms but it has consisted chiefly in making small owner-cultivators out of the one-time tenants-at-will, sharecroppers, and similarly placed persons;

(b) Right to the produce of land. In certain cases this right takes the place of the right to the ownership of the land or it presupposes structural reform. The nonowner cultivator is guaranteed the fullest measure of benefit from the product of his labour. Where basic structures are allowed to remain, the legislation tends to concentrate on imposing strict controls to protect all those who occupy land under precarious tenure from the abuses of which they art usually a victim in the matter of determining rentals, duration of lease, etc. 2/;

(c) Right to credit. A corollary to the right to land is the right to the means necessary for working it. Agrarian legislation in most countries contains provisions for facilitating the access of small and medium-size farmers to credit. This is achieved by such means as making the terms covering security more flexible, by reducing interest rates and by allowing longer repayment periods;

(d) Right to social security. Generally speaking, this right is not expressly mentioned in the enactments but there are many provisions to be found in them that trace their descent from social security principles. Thus, one may consider the need to transform and improve rural housing and to provide the farmers with the means of bringing this about or, again, the obligation incumbent on the State to help to improve living conditions of the peasants from the social, material and cultural standpoints. Those elements are cited in many agrarian reform laws;

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l/ These concepts had been embodied implicitely in several Mexican enactments such as the Plan de San Luis (Francisco L. Madero), 5 October 1910, the Plan de Ayala (Emiliano Zapata), 20 November 1911, the Plan de Guadalupe (Venustiano Carranza), 26 March 1913, The Agrarian Code, 23 September 1940. See also the. Punta del Este Declaration, 1960, and the recommendations of the Sixth PAO Regional Conference, Mexico, 1960. The same concepts have been hallowed in the revised Constitution of the Republic (Art. 115), approved 11 October 1972.

2/ On this subject see: E.S. Abensour and P. Moral-López "Principles of Land Tenure Legislation", PAO, Legislative Series No. 6, 1966.

(e) Right to security and stability of produce markets. This is a novel doctrine, defined clearly and in great detail in the relevant laws of those countries that have introduced agrarian institutional reform;

(f) Right to a fair return on produce, and to be able to purchase consumer requisites at a just price. A corollary of this is the obligation on the part of the State to provide facilities for canning etc., and for the storage, processing and marketing of agricultural produce, and to bring down costs of agricultural requisites: seed, fertilizer, pesticides and related inputs. In some laws, provision is made for the creation of special bodies to arbitrate in cases of dispute between farmers and the buyers of their produce - this by way of implementing the "just price" regulations.

(g) Right to access to the courts free of charge or other hindrances - in terms of more expedite procedures.

(h) Right to technical assistance. This is reflected in the responsibility assumed by the State to introduce advanced techniques in agriculture, to provide farmers and farmers' associations with aid geared to increasing production, to encourage the formation of cooperatives, to introduce measures conducive to a sound use of renewable natural resources, and so on.

2. Persons enjoying these rights

The beneficiaries of the rights described are usually identified in the land reform regulations. Basically they are persons who obtain their living from working the land, individuals or associations or community groups. Profit-making companies are excluded.

A. Individual farmers

The right to own land and associated entitlements (to credit, to technical assistance etc.) are granted basically to the following persons:

(a) owner-cultivators whose land meets certain requirements as regards size, mode of working and, as the hallowed phrase has it, "fulfil a social function". One is here concerned chiefly with small and medium-sized farmers; 1/

(b) share-croppers and operators under, tenancies-at-will and similar arrangements;

(c) cultivators operating under traditional systems of tenure and enjoying only use rights over the land in return for services - all reminiscent of feudal or colonial regimes;

1/ A "smallholding" is generally defined as that farming unit which absorbs the entire working potential of the owner and his family and provides them with a sufficient livelihood without it being necessary for him to seek nonfarm income. A smallholding is especially associated with subsistence farming. A medium-sized holding demands additional labour from outside, its contest is that of a market economy by reason of the fact that its function exceeds the needs of the farmer and brings him an income over and above those needs.

(d) farm labourers and day-workers;

(e) certain kinds of squatters, subject to specified conditions.

B. Family groups

Rights attributed to the individual farmer may be enjoyed (subject to certain conditions) by families or groups of families. There are special legislative provisions that officially sanction the inherited family property concept (itself usually geared to the "economically viable farming unit") and impose restrictions on the division, transfer and attachment of the property in question.

C. Cooperative societies

The cooperative societies in the present context are nonprofit-making corporate bodies enjoying special rights, foremost among these being the entitlement to special help from the state in the field of marketing and technical assistance.

D. Indigenous groups

In those countries where they are to be found the laws accord indigenous minorities special rights in respect of lands traditionally held by them and the requisits for their working.

IV. AGRARIAN LAW AND RIGHTS IN REM

In the forefront of the legislator's preoccupations stands private ownership of land, a phenomenon in which some have seen a major obstacle to development. To be sure, the "obstacle" lies not in private property as such and as a legal institution but rather in the form, the sense and the scope attributed to it - sometimes to the point of caricature in certain quarters. The problem is, if anything, one of the "ageing" of the classic conception whereby private property was long one of the pillars of civil law. The introduction of a new, dynamic element in the twin postulates that the common good must have precedence over private interests and that the social function performed by or identified with property is the cardinal feature of the modern approach to the law governing private property 1/.

In recovering, extrapolating and hallowing the social function and restoring to it its true value, agrarian law has added a new dimension and imprint to the classic conception of private property.

In its original acceptation private property bore the mark of that mysticism that traditionally impregnated the relationship between man and the land, for, as the Bantu proverb has it "man belongs to the land and the land to man. The land nourishes the living and enfolds the dead".

The Bible records God's words to Moses: "The land shall not be sold in perpetuity, for the land is mine; for you are strangers and sojourners with me". (Levitians XXV, 23-24).

The Koran likewise (VII, 125) emphasizes the divine derivation of the ownership of land. "The land is Allah's and he gives it as an inheritance to those he elects among his servants".

1/ The Universal Declaration of Human Rights approved by the United Nations General Assembly in 1948 makes no attempt to define the term "property" even though it recognizes formally the right to property. On the other hand, due to lack of agreement as to his content and scope of such a right, the right to own does not figure among the "Fundamental Rights of Man" as defined by the Consultative Assembly of the European Parliament, Strasbourg, 1949.

The question has been raised, in philosophical terms, as to the legitimacy of ownership rights 1/, and the answer proposed have all had their influence on positive law.

The positions taken by the various schools of thought reviewed in what follows show a marked evolution away from the sacrosanct character once accorded to ownership.

For the partisans of the natural law theory, with its variants from Grotius to Loke, and for the physiocrats and the encyclopaedists, man's right to own proceeds from natural i.e. by virtue of a natural right that is superior to positive law and based on concepts of reason and justice.

The historical school takes up an opposing stance to the legal idealism of the naturalist school. Reacting against the doctrines of Kant and XVIIIth century liberal tenets, it teaches that the right to property came into being within the human community through the slow section of time. It is a right, moreover, that evolves and should not be petrified through codification.

The positivists attempted to construct a general theory of the law of property based on social and materialistic concepts, which also explain, why certain members of this school have concentrated exclusively on the economic aspects of the question. From this it was but a short step to the marxist doctrine of historical materialism.

Ethnology and comparative law illustrate how humanity has always practised - and continues to practice - the most varied forms of appropriation, and that subject-object relationships (in this case the man-land relationship) may cover an equally varied range of situations. Many authors have accordingly concluded that there is no such thing as "property" or "ownership" in the singular, but "properties" or "ownerships" 2/ - a view which helps to explain the many semantic modifications that either word has undergone.

If we keep to the classic, traditional connotation of ownership rights, we may say that these cover a complex of powers and freedoms that are recognized as belonging to the person owning. Certain theorists hold that these powers and freedoms are not susceptible of individual identification and enumeration. This is tantamount to saying that ownership rights are defined less by what they permit than by what they do not permit. For, where limitations on one person's rights end another person's rights begin. Everything that is not prohibited is permitted. The powers of the owner continue nevertheless, to be the rule, while prohibitions on a given use or act of disposal are the exception. This, in turn implies the existence of a formal rule of restrictive interpretation.

1/ S. Augustine: Private property is the source of quarrels, wars, insurrections, killings and mortal and venial sins besides. Accordingly, if it is not possible to renounce property as such, at least let us renounce private property.... We have too many superfluous possessions. Let us be content with what God has given us, and let us not hold on to more than we need in order to live; for what is necessary is God's doing; what is superfluous is the work of human grasping. The rich man's superfluous possessions are what the poor stand in need of. Who has a superfluous possession has something that does not belong to him". The City of God. Book IV.

2/ - R. Josserand. Cours de droit civil positif français I. Paris, 1938.

- Vassali. Per una definizione legislativa del diritto di proprietá. Roma, 1939.

1. The social function of property 1/

One thing is certain, namely that, while the expression itself is of fairly recent date, the social function concept where land ownership is concerned is not especially modern. In one form or another, and without any explicit definition being assigned to it, the principle has left its imprint down the centuries now more distinctly, now less so, in the legislation of country after country. This is particularly true in those instances where an attempt has been made systematically to promote agricultural development.

Examples may be cited among the Leyes de Indias, the Ley III of 1523, whereby Philip II of Spain commands that the lands (of the New World) shall be cultivated and improved under penalty of expropriation and in some cases a fine; the United States' Homestead Act of 1801 - referred to sometimes as the poor people's Act - setting up the family farm, or homestead, accompanied by the obligation that the land thus provided shall be cultivated; and the Weimar Constitution of 1919, which proclaims (article 153) that the cultivation and working of the land are a duty toward the community.

The social function theory in its modern form has become a bedrock of positive law and has given rise to ideologically slanted interpretations. In their extreme form these interpretations have been cited to justify both unlimited liberalization and the most rigid functionalization of property.

In the former case, the reasoning adopted leads on to the guaranteeing of ownership rights in the most exclusive sense since, so the theorists say, those rights are an a priori right that is exercized with the general social interest in mind; in the latter case, ownership rights are completely voided of substance and reduced to the mere exercise of a function in the public interest under the responsibility of the State.

The search for a new equilibrium between the rights and the duties of individuals in human society has brought the legislator to functionalize - to socialize, even - the exercise of ownership rights, thereby marking the end of the traditional triad ius utendi, ius fruendi, ius abutendi. By doing so, he has confined the exercise of ownership rights, particularly when it is land that is owned, within a series of restrictive norms, which he has declared as being of public utility.

From this point on, therefore, the private appropriation of land or of natural resources in general is justified only if it brings benefit to the community and performs a social function, itself geared to the collective interest and to the economic needs of organized society. Ownership rights are thus exercized via a succession of delegations of the community's authority for the efficient working of a given resource in that community's interests.

1/ See also A. Bailarín Marcial. "Nueva función social de la propiedad rústica", in Rivista di Diritto Agrario, January-March 1972; and, again, the viewpoint of S. Rebullida in "La autonomía del derecho agrario", Revista de derecho agrario II, Madrid, 1965.

At the same time, there has been a return to the traditional quasi-mystical conception of land ownership whereby the latter (and by extension, tenancy and use rights), are grounded exclusively in a man's working of it 1/.

Under this doctrine, moreover, since rights are associated with a function, then that function must be exercised vis-à-vis certain kinds of assets: they achieve their fullest expression only when those assets have been assigned their ultimate economic purpose, i.e. have been transformed into producer goods, from being formerly mere consumer goods. It is on the basis of this distinction, therefore, that the social function concept can be appealed to in order to place those assets which are also instruments of production under a special juridical regime determined by the purpose that they serve.

This "instrumental" conception of property is intimately bound up with insistence on the legal/economic conception of farm qua enterprise, within which productive activity ceases to be a way of exercizing ownership rights, and within which ownership takes on an essentially entrepreneurial dimension, the owner's powers being subordinated to the objective interests of what is in effect a business undertaking.

At the same time, of course, the social function concept has also attracted bitter ciritcism and even violent oppòsition 2/.

1/ According to Manu-Smiriti (II-130-X-118, the owner or lord of land is not the King but "the tiller, the peasant, the man that has worked the soil and with his labour has made if fertile..."

- See also E. Bassanelli: "I1 lavoro come fonte della proprieta della terra" in: Atti del Primo Convegno Internazionale di Diritto Agrario, Florence, 1954.

2/ An excellent critical commentary on the social function of property may be found in the work of Professor S. Rodotà of the University of Rome: "Note critiche in tema di proprietá" publicado en Rivista trimestrale di diritto e procedura civile, September 1960, Giuffré. Milan.

See also (cited by S. Rodotà) the view put forward by P. De Martino in "Della proprietà" in "Comentario del Codice Civile", Bologna, 1957: "... the social function of property is a vague, abstract, high-sounding concept, but juridically empty ..."

- V. Gsovski. "Private rights and their foundation in the soviet system", in Soviet Civil Law. Michigan Law School Review, 1948: " ... the theory of the social function of property... is profascist..."

- K. Radbruck in "Kulturlehre des Sozialismus", Berlin, 1927: "...the social function of property is no more than a conventional lie".

- V. Ripert, in"Le déclin du droit", 1947: "... the latent hypocrisy of the social function thereof..."

It is noteworthy that in general contemporary legal scholars in the socialist world reproach the social function for being less a genuine legal concept than a sociological doctrine and for being used to render less ugly or hide the true essence of capitalistic property. On this point see A. Rescigno: Proprietà et famiglia, Bologna, 1971.

It is chiefly the reforming legislation brought in since the second World War that has isolated and crystallized the social function principle where land ownership is concerned. This has been brought about by assigning to the concept a clearly defined scope by means of a series of limitations and the requirement to do this, or not to do that, and through the granting of rights.

2. Obligations and restrictions placed on owners

Obligations and restrictions are geared to the social function that the ownership of land is expected to fulfil. They are also conceived as a means of achieving the greatest possible efficiency and productivity in the interests of all. Underlying them generally are the following principles and concepts:

(a) the obligation to work one's land in a manner consonant with the exigencies of the national economy. For this it may be necessary to enforce rules laid down in development plans or introduced by land reform authorities. A corollary to this particular obligation, is that land may not be left idle or undercultivated. Failure to comply is usually punished by expropriation;

(b) the obligation to farm one's land directly and personally - this is an attempt, also, to combat absentee landlordism -, the prohibition on the holding of land by other than physical persons, and the abolition of (or, rather a strict control over) all forms of tenure deemed to be antisocial, notably share-cropping and similar traditional systems. By creating the obligation to farm one's land directly and personally the legislator has sought to make the tenure of land a matter of individuals and to create and strengthen the physical links between man and the land;

(c) the obligation to farm one's land efficiently and with an eye to conservation so as not to jeopardize fertility, and to apply cultivation methods recommeded or imposed by the authorities.

This obligation usually comes accompanied by the further requirement of joining a cooperative or similar association whose purpose is to bring farmers together with a view to improving productivity and the division of tasks.

(d) restrictions on the right to dispose of land by conveyance, transfer inter vivos, or by succession. These apply particularly in the case of family units, or economic-sized holdings. The purpose here is to prevent fragmentation.

In this last-mentioned case, the restriction has considerable legal impact in that it greatly restricts a persons' freedom choice. It also implies the institution of a special law of succession, which crystallises in the sole heir principle, this last being the basis of agrarian succession law in many countries nowadays.

V. THE LAW OF AGRICULTURAL CONTRACTS

A careful study of the different agrarian laws, and especially land reform laws, reveals the existence of certain contractual relationships. Some of these are new creations, such as land adjudication contracts or agro-industry contracts; others have arisen through the development of novel concepts as regards contractual relationships long contemplated by the classic rules of private law, such as tenancy contracts.

These relationships, whether entirely novel or a revised version of the conventional type, together making up a context of ends pursued and of means of pursuing them, and imbued with public and private law implications, conspire to hallow the existence of a new legal category, a new type of contract, which cannot but be properly assigned to the specific area of agrarian law.

1. Tenancy contracts 1/

Where tenancy contracts (providing for rents, sharecropping agreements etc.) are concerned, the principles that held sway until the fairly recent past were of fundamentally liberal inspiration and derived strictly from private law. Based, as they were, on the threefold postulate of the autonomy of an individual's will, the freedom to contract and the equality of the parties, they left the definition of the terms and conditions of the contracts practically to the entire discretion of the parties, whom the legislator did no more than provide with a legal framework based on certain rules of the general law.

The need to improve agricultural productivity has been felt in almost all countries to such an extent that the State has seen fit to intervene in the legal relationships between landlord and tenant-farmer in order to secure for each party his rights and interests. The State, again, has assigned a mandatory force to the newly introduced regulations and in some cases declared them to be in the public interest also. Thus public law came to penetrate a domain formerly covered by private law.

Thus, too, a special branch of legislation has developed - a fully fledged law of rural leases with its own characteristics and peculiarities both as regards underlying principles and as regards the actual rules applied - all confirming the emergence of a new type of contractual relationship departing considerably from classic lines. For example, the assumption of equality of rights of the contracting parties has given way to the recognition of a de facto inequality. The legislator, in introducing provisions designed to protect the tenant - considered as being economically and juridically the weaker party - accords priority to social justice over commutative justice. A rapid review of the main points where the legislator has intervened to make major departures from the general law of contract will be in order at this point. Thus:

(a) formulation and test of the lease. State control to ensure that the contract is in order; obligation of registration and other measures designed to protect the tenant against any clauses judged to be against his interests;

1/ See P. Ourliac "Tenures et contrats agraires", in Atti del Primo Convegno Internationale di Diritto Agrario, Florence, 1954.

- G. Carrara: "Contratti agrari".UTET. Turin, 1960.

- M.G. Marty: "Les contrats agraires en droit français" and E. Romagnoli: "I contratti agrari in Italia", in Rivista di diritto agrario, Florence, 1961.

(b) duration of lease. Minimum periods are laid down by rules pertaining to public order;

(c) form of payment:

1) payment in advance or on completion of harvest, the latter formula being fairer to the tenant, who often (virtually always in the case of the peasant) does not have the means of paying in advance, a circumstance that forces him to remain idle or under conditions of wage hire for the entire year;

2) Price

2.1 in cash;

2.2 in kind (crops);

2.3 combination of cash and kind;

(d) termination of lease. State control of the conditions of rescinding the contract and the eviction of the tenant, together with restrictions on the exercise of the owner's right to take back his property;

(e) rental regulation. The amount paid in rental is regulated by establishing a scale (revised from time to time) of minimum rentals. The public authorities revise the rates in the light of circumstances;

(f) tenant's access to ownership of the land worked by him. This is achieved by granting presumption rights or by other means. The laws of certain countries grant a sort of absolute right of preemption by prescribing that the land leased may be sold only to the tenant. In other countries, again, it is laid down that with certain types of lease (protected tenancy; social tenancy) and in certain other circumstances (donation inter vivos of the land under lease) the tenant enjoys preemption rights. In yet other countries, one finds provisions designed to encourage nonfarming owners to make over clear title of their land to their tenant farmers;

(g) succession in tenancy. The laws of many countries provide for the inheritance of tenancy rights. In most cases, these are reserved to close relatives of the deceased, who are normally expected to have shared in working the farm.

Again, the creation of agencies with special jurisdiction for litigation concerning rural leases demonstrates beyond any doubt the pattern whereby these contracts tend to fall outside the scope of the general law of the country.

All these considerations go to show that the law on rural leases, as this has emerged from the evolutionary process that has gone on in the agrarian reform context (or even outside it), is a basic ingredient of modern agrarian law.

2. Sharecropping contracts

This is the kind of contract most frequently met with in the developing countries and in countries where the law harks back to the Roman system. It is based on close personal collaboration between the parties, the personal element predominating. And it is this circumstance, coupled with the fact that the owner is frequently in a better favoured position than the tenant, that has opened the way to numerous abuses. For these reasons, the sharecropping contract has been the target of considerable criticism from those who advocate agrarian reform. Several land reform laws, in fact prohibit it outright. Where such prohibition is not contemplated, the legislator usually takes care of the following points:

(a) duration of contract. Generally the provisions are common to other types of rural leases. An exception concerns stockraising, where local custom is often allowed to be the guide;

(b) amount of shares for owner and tenant respectively;

(c) share in produce and other proceeds. The shares due to the respective parties, is determined contractually, or where this is not done, the law will provide;

(d) improvements made by the tenant. Here again, the usual rules governing rural leases apply;

(e) protection of tenant against unjustified pressure from the owner.

3. Land adjudication contracts

Land redistribution is one of the essential processes in any land reform. Generally it entails the allocation of a plot of land which it is intended shall constitute the basis of the smallholding, or family farm. The adjudication or allocation is effected by means of a novel type of contract. It comes into being by an act of the State, which grants to the beneficiary ownership rights over the land in question. The beneficiary must comply with certain conditions which limit his freedom under the contract 1/. On the other hand, these rights imply a number of additional advantages, such as access to credit and to technical assistance, and also many obligations pertaining to public order and deriving from the social function of property concept.

The type of contract described will not be found in any of the conventional systems. In its case traditional criteria do not apply.

Again the land adjudication contract cannot be classified under administrative contracts or under private law contracts, because jurisdiction for disputes arising out of land adjudication is vested now in administrative bodies or in the ordinary courts, depending on the country. Nor, again, from the standpoint of

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1/ Generally the main conditions are that the adjudicatee should be a farmer with no land or insufficient land, reside on the plot or undertake to work it himself with the help of his family, to apply determinate cultivation methods, within the general planning scheme.

its purpose can the land adjudication contract be considered as a contract coming under the general law, since the individual parties are involved in the carrying out of public law measures, of a public service, even, and in any case because it contains clauses that lie outside the sphere of private law 1/.

For all the above considerations and by reason of its peculiar and original character, the land adjudication contract may be placed in a new category - that of agrarian law contracts.

4. Marketing contracts 2/

Agrarian reforms usually provide for radical changes in law governing the sale of agricultural produce, Sale by the producer is not normally looked upon as a commercial transaction, so that the relevant contracts do not come under commercial law, or under the jurisdiction of the commercial courts, but under ordinary civil law and the civil law courts. However, as defined in the most recent bodies of legislation, especially in agrarian reform laws, sales contracts together undoubtedly make up a distinct class of contracts. This is due to their several peculiar features, which for the most part remove them from the rules of contract contemplated by civil law.

(a) Crop sales contracts

Here the trend is toward the replacement of the individual contract, with its freely thrashed-out terms and conditions, by model contracts. These are individual types of contract that lay down general rules governing vender/purchaser dealings. Otherwise there are collective contracts or trade agreements which prescribe the framework within which contracts between one occupational group and another may be made.

All the contracts described entail a notable restriction on the will of the party, sanctions in the form of a progressively greater intervention on the part of the State, quality standardization and production programming geared to development plans.

(b) Agro-industrial contracts

This type of contract is instituted and governed exclusively by agrarian reform legislation 3/ and concerns the supply of agricultural products to the processing industry. They have their own rules and contain clauses that confer on them a highly specific character. Thus, generally speaking, the legislator provides for the intervention of a government official in the control of such technical operations as product classification, prescribing the relevant standards and price determination.

1/ For example, the obligation to maintain the land in a state of productivity according to rules and methods ordered by authority, and the obligation to become a member of a cooperative.

2/ See also M. Gavilán Estelat: "Algunos aspectos del contrato en la comercialización de los productos agrarios". ICIRA, Santiago de Chile, March, 1970.

3/ Honduras: Agrarian Reform Act, 29 September 1962 (Sections 174-176). Panama: Agrarian Code of the Republic, 21 September 1962 (Sections 399 and 400). Peru: Agrarian Reform Act, 24 June 1969 (Sections 144 to 147). Venezuela: Agrarian Reform Act, 5 March 1970 (Sections 151 and 152).

Provision is also made for credit facilities in favour of industries making a greater use of the output of the small and medium-sized farmers or cooperatives and similar farmer associations.

Lastly, certain contracts of this kind may contain clauses providing for the supply to the farmer of selected seed and technical assistance and even loans to be made available by the purchaser.

In the case of sales of agricultural produce made within the agrarian reform context, there may be brought about a substantial evolution in the economy of the classical law of contract in the direction away from ordinary civil law toward acquiring a decidedly specific character, adding in the process a new element to the edifice of agrarian law.

5. Agricultural credit contracts

These may concern:

(a) start-up credit;

(b) credit for current operation

1. for the purchase of live and trade stock;

2. for the purchase of land;

(c) credit for agro-industry contracts.

6. Contracts concerning easements, in particular for;

(a) wayleave

(b) passage of water conduits

(c) canals

(d) canal acqueducs

(e) siphons

(f) dam/intake abutments

(g) hydrometric/hydrometeorological services

(h) pasturage

(i) livestock watering

7. Contracts for pledges (without transfer of things pledged)

(a) agricultural pledge: contract for starting-up loan (pledging of anticipated crop);

(b) livestock pledge (animals branded with pledge mark)

This type of contract is most important, being of the very essence of agrarian law. The pledge without transfer of the thing pledged is governed by rules that are sui generis. It differs from the civil law pledge in that in the latter case something material comes into the creditor's hands. The pledge without transfer may be resorted to only in agricultural activities, the trust being placed in the borrower rather than in the thing pledged, which is in any case something futurable of otherwise subject to uncertainties. Hence the importance of this formula.

8. Agricultural insurance contracts

Where this sort of contract has been provided for under land reform it is markedly social in character. Characteristic of it are:

(a) its nonprofit nature;

(b) the protection it affords small farmers;

(c) State intervention to cover a portion of the premiums. Different criteria are applied depending on, in the first place, whether the insured farmer is a beneficiary under land reform, and, in the second place, on the kind of crop and the area where it is being cultivated.

Insurance contracts follow a standard form. This facilitates large scale resort to them.

9. Usufruct contracts, between private persons or between private persons and the State where the latter remains vested with the bare property title.

10. Farmers' consortium or other types of association, including mixed forms, where the State enters into a contract with an individual for a given use of land or other assets, benefits being established for both parties, as with the consorcios forestales in Spain 1/.

VI. OTHER AGRARIAN LAW INSTITUTIONS.

In the previous chapter it was seen how agrarian law, in its broadest connotation, has its foundations partly in the application in contract matters of certain legal concepts that constitute so many derogations from the general law. The concepts in question have been developed in response to the structural and institutional changes that agriculture has undergone and in order to provide farmers with the ways and means of improving both their productive potential and their standard of living. In this same spirit, the legislator has felt the need to promulgate specific rules designed to standardize and develop agricultural activities. Coming within the scope of these rules are the support services - credit, social security, as well as succession law, tax law, etc.

1/ See also the Forests Act of El Salvador issued under Legislative Decree No. 268, 8 February 1973.

1. Succession law 1/. Measures relative to country planning, and especially to the consolidation of land holdings and the creation of economically viable farming units, such as are to be found in most recent agrarian laws, would soon be stultified if the prevailing law of succession (which is one cause of fragmentation) were to continue to apply in the agricultural sector.

To secure the indivisibility of the farm holding many countries have introduced a special law of succession containing provisions departing from the classical approach. These contemplate: a single heir, who receives the farm, whole and entire, so that it may conserve its character as a unit of production; facilitating the buying out of the other co-heirs by granting the heir benefiting from the adjudication of the property financial aid in the form of long-term, law-interest loans; and imposing on the adjudicates certain obligations, in particular that of not selling the property before the expiration of a certain term.

Accordingly, there is such a thing as a specifically agrarian succession law, differing from the classical civil law rules, and constituting a virtually autonomous system.

2. Agricultural credit legislation 2/. One constant in agrarian matters, particularly in the developing countries, is the fact that the financial world and the farming world are in water right compartments vis-à-vis each other. Ordinary bank loans are beyond the reach of the farmer because the latter, in the bank's way of thinking, is not credit-worthy, being able to pay only a low rate of interest and needing longer repayment periods than the bank is normally prepared to allow. This is why most countries have declared agricultural credit to be a public service and, as such, an instrument of economic and social policy. This is a further reason why Governments themselves promote, manage and control it.

The usual approach is to set up, at the topmost level, a national agricultural credit fund. This will be a public law institution. At the base, local or regional funds will be established and perhaps organized on credit union, i.e., cooperative, lines. The management of the national level institution is entrusted to a board of governors, whose membership includes representatives of the local and regional funds, vis., the farmers themselves. Here, of course, public law and private law join hands, in which case the usual connotation of public service is somewhat attenuated.

At the same time, where security is concerned, the legislator introduces, in addition to the security and legal privileges afforded by the general law, - specific contractual agricultural securities. These take the form, for the most part, of pledges without transfer of the possession of the thing pledged, and mortgages on land 3/, which constitute radical departures from ordinary law. "

1/See: "Retirement schemes and inheritance laws as applied in European Member Countries". ECA/15/67(9) Rev. 1, prepared by the FAO Legislation Branch for the European Commission on Agriculture, Rome, 1968.

2/ See: D. Mylonas "Legal and Institutional Aspects of Agricultural Credit", FAO, 1972.

3/ See, for instance, Title II of the Act on chattel mortgage and mortgage without transfer of possession, 20 December 1972, Gaceta Oficial de la República de Venezuela, No. 1570, Extraordinary, 27 February 1973.

To complete the list, there is the newly created credit system that is adapted to the special needs and conditions of the farm family, which harmoniously brings together credit and the technical aspects. This is supervised agricultural credit, a system described in full in Manual of Supervised Agricultural Credit in Latin America 1/, where the author, an acknowledged authority on the subject, has this to say:

> "It is for this reason that there has arisen a new system of so-called supervised agricultural credit, combining credit with training, that takes into account the special needs and living conditions of the farm family. This system, which is also called in some countries: training, "habilitation" or planned credit, is characterized by its essentially educational and social purpose. Its main goal is to raise the economic and cultural level of farmers so as to increase their production and income, improve their living conditions and set them up as independent farmers able to obtain and use properly any other type of credit.
>
> Supervised agricultural credit differs from ordinary banking credit in that its success depends on three main factors: a) careful planning of farm management and home improvement; b) participation of the farmer's family in drawing up and carrying out the plans; and c) proper guidance given by supervisors.
>
> Here are some of the features by which certain Latin American experts describe supervised agricultural credit programmes:
>
> (a) Loans are based on long-term programmes for the improvement of farms and home living conditions. These plans are an integral part of annual work programmes and are carried out in accordance therewith.
>
> (b) The terms of payment are flexible, being adjusted to non-fixed term payments, according to the borrower's ability to pay and the pace set for carrying out of the planned work.
>
> (c) The borrowers are selected farmers chosen because, given their working conditions and adequate training or guidance, they can make progress. A local advisory committee helps in selecting them.
>
> (d) The interest rates may be lower than the prevailing rates; they are not expected to cover the costs of the programme, which are not actually attributable to the loans only but also to the cost of educational work with farmers and their families.
>
> (e) The basic security for this type of loan is the properly selected borrower, careful planning of his farming and domestic activities and, above all, the guidance and supervision given him.

1/ Dario B. Brossard: Agricultural Development Paper No. 47, December 1954.

(f) Finally, but of paramount importance, is the fact that the farmer is more than a mere borrower; he is the beneficiary of a broad, educational effort in respect of both his production techniques and his home. Credit is a mere instrument for this basic work. The formulating of a training plan, technical assistance in carrying out, supervision of loans and the efforts of the social worker, are the means used to change the habits and customs of the farmer and raise his material and cultural level. Such educational work is both individual and collective, being conducted among all farmers in a village whether or not they are borrowers.

3. Legislation on social welfare and security

Special laws have been introduced governing the social security of systems applicable to farmers, particularly in the countries of the European region. The provisions of these laws will differ to a greater or lesser degree depending on the country from those of general law but the broad trend is toward the introduction of laws and regulations specific to the agricultural sector, whether farm labourers or farm entrepreneurs are concerned.

In some cases, the introduction of special measures, for example the grant of supplementary benefits, perhaps in the form of annuities to aged farmers relinquishing their farms under certain conditions, follows naturally from the policy carried out for the reform of a country's agrarian structures.

There is in this field, furthermore, a certain specialization governed by the end pursued (i.e. its application to agriculture) by social legislation, which, again constitutes a clear-cut departure from general law.

4. Fiscal legislation 1/

The need to stimulate productivity and to promote reform has implied the further need to develop fiscal measures not so much to provide the State with a tax revenue as in order to bring pressure to bear by way of implementing a given policy and guiding agricultural activities along lines contemplated by it.

Depending on the country, the measures in question will be included in either general taxation laws or in specific fiscal enactments relevant to agriculture or, again, in agrarian reform acts. The objective to be attained vary according to local contexts and conditions but generally the legislative provisions in question are hinged on a limited number of basic concepts. These are:

(a) stimulation of investment in certain domains of agriculture and of better use of farmland;

1/ See in this connection: P. Moral López: "Tax legislation as an instrument to assist in achieving the economic and social objectives of land reform", FAO, 1965; J. Gimeno Sanz: "Taxation - Some considerations concerning its importance in the economic development of the agricultural sector."ICIRA, Santiago de Chile, 1970; A. Gelsi Bidart "Derecho agrario y Derecho tributario", Segunda reunión Ibero-americana de derecho agrario, Bogotá, 1972.

(a) penalization of owners who allow their land to lie idle or underfarm it, and of absentee landlords letting their lands to tenant farmers;

(b) prevention of the formation of large estates and encouragement for the dividing up of the latifundia and for land redistribution;

(c) granting of tax exemption to farmers who have recently come into the ownership of their land;

(d) levying of tax on increased value resulting from improvement works, notably irrigation, provided by the public authorities;

(e) granting tax exemptions to groups, associations and production cooperatives with a view to encouraging associative forms;

(f) promoting certain lines of production geared to the nation's needs, an example being incentives for afforestation or reforestation on land suitable for that purpose 1/.

VII. THE "AGRARIAN JUDICIAL SYSTEMS" 2/

From what precedes there is clearly a fully-fledged series of juridical institutions (agricultural contracts, agricultural credit contracts, agricultural social security, succession laws, etc.) with a common denominator. This is to be seen in their purpose, namely agricultural production and related matters, and also in the fact that the rules governing them constitute exceptions to the general law of the country and provide for the existence of, to use a phrase of G. Longo 3/ an "agrarian situation".

Taking these facts as starting point one may readily visualize the elaboration of an organic conceptual entity bringing together doctrine and the specific rules making up such juridical agrarian situations.

At this point, it will be useful to refer to the research done in this field by Prof. A. Carrozza, who set out to define what he calls the "concetto di agrarietà", in which he sees an ideal tool for systematizing the legal

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1/ An example is given by the Forests Act of El Salvador which provides (February 1973. Section 37): "The State shall provide the necessary credit and tax incentives and incentives of any other kind whereby owners of non-forested land may be encouraged to create or improve forest stands thereon. Taxable landed property shall be exempted from the payment of tax in respect of those portions of it that are given over to afforestation or reforestation from the time that such operations are put in hand until the time that income accrues upon the normal maturation of the trees".

2/ The expression "agrarietà" was coined and developed by A. Carrozza, of the University of Pisa, in his paper "La nozione di agrarietà, fondamento ed estensione", delivered at the Jornadas italo-espanolas de derecho agrario held in Salamanca and Valladolid, 4-8 november 1972.

3/ Cf. G. Longo: "Profili di diritto agrario italiano", Turin, 1951.

rules that apply to agricultural and related activities. This study would fail of its purpose if it did not include an exposé of the ideas of this eminent scholar. Accordingly, without any value judgement being implied, a succinct account of those ideas is now given.

In Professor Carrozza's view, the specifically "agrarian" concept (agrarietà) where agrarian law is concerned, acts, as it were, as a catalyst of the legal rules making up this discipline. Accordingly, it should be possible to group together the institutions from which these rules flow in such a way as to bring out their homogeneity and their relevance to agrarian law and, from these, to develop a thoroughgoing system. The term originates in an attempt to build up an organic body of concepts capable of bringing together scholarly opinion and legislative rules making up the "agrarian juridical situations" referred to earlier. Accordingly, the "specifically agrarian" used here takes in the entire range of actions whose common characteristic is their agricultural prupose.

The identification of this concept will thus make it possible to discern the lines of force linking the various distinct agrarian institutions and, from there, to advance to the stage where the subject can be organized on scientific lines, in other words to construct an authentic branch of law that is agrarian law.

The purpose then is to identify in all these institutions a common denominator - the specifically agrarian denominator - that automatically places them under agrarian law and withdraws them from other branches of law.

The survey of agrarian law, institution by institution, is intended as a means of defining the concept more exactly and demarcating its connotation.

To take the formula proposed by N. Irti 1/, and cited by Carrozza, it is desirable "to proceed from the particular to the general, from the fragment to the organic whole" in order to reconstruct the systematics of agrarian law through the analysis of its institutions.

The specific agrarian concept that one is dealing with here is also important for the establishment of a methodology for the study and teaching of agrarian law - if, that is, it is intended to abandon the ambiguous practice of lumping agrarian law with the law on agriculture, thereby forgoing the possibility of precisely demarcating the context and scope of the subject and its relationship to other subjects.

Clearly, the methodology used should be able to retain its validity for a long period of time. This is because the line of demarcation between agrarian law and other branches, say labour law or commercial law, is continually shifting and reveals a number of breaches through which laws or legal principles which do not have their origin in agrarian law are able to infiltrate.

1/ N. Irti. "Gli istituti di diritto agrario", in Rivista trimestrale di diritto e procedura civile, 1963.

Again following Professor Carrozza's view, one may note that it is essential to identify precisely the agrarian concept by reference both to the "subjects" of agrarian relationships and to the "objects" of those same relationships or, again, to acts and activities whose intrinsic characteristics lend themselves to such identification.

Having brought out the main difficulties of this subject/object approach to agrarian relations, the author concludes that the only valid way is to base oneself on references to the nature of agricultural activities, or on the character of the goods that result from such activities. In this way the study of the subject may be guided, on the one hand, toward defining the typical content of the activity definable as agricultural in the widest sense of the term and, on the other, toward defining the object of that activity.

The cohesion of the agrarian system as here conceived is thus a logical consequence of the coherent specific modus operandi of agrarian law. The conceptual entity summed up in the neologism coined by the author in his own language (agrarietà). is made up of a host of particular entities which while not opposing each other nevertheless do not thereby cease to be autonomous and, by that token, susceptible of classification into chapters, which by their nomenclature will not be systematically referable to the socio-economic complex that is the agricultural sector.

At this stage of the discussion it is necessary to bring in the concept of structure. The specifically agrarian concept, as used here, takes its origin in an attempt to build up a rational system. This, like any other organizing system - whether it concern the animal, vegetable or human affairs - provides the justification of attitudes referring to a structural order in its turn defined by reference to standards that take into account the natural order of biological phenomena 1/.

Nevertheless, a rigorous analysis of the manifestations of determinism in human affairs reveals the emergence of sports, freaks and similar departures from structures preestablished by natural laws. For man intervenes at times in the "logic" of the organic living world. And interference with the biological ordor entails the risk of drastically limiting the area of application of systems that take their inspiration from structuralism. It is appropriate, then, to dwell for a moment on the development that these important efforts of Professor Carrozza toward the devising of a general theory of agrarian law, for the lack of such a general theory is particularly felt at the present time.

1/ In this connection of the "structuralism" in the works of A. Lévi-Strauss.

VIII. CHARACTERISTICS AND PECULIARITIES OF AGRARIAN LAW

The many scholars that have devoted themselves to studying agrarian law attribute to it a whole series of characteristics. Dominant among these is the fact that agrarian law is at one and the same time dynamic, interdisciplinary, protectionist and tutelary.

It is dynamic (some would say, pioneering, revolutionary law) in that it belongs to a sector where the problems associated with changes in the political, economic and social order make themselves felt with peculiar sharpness. For while law as such is "generic in space and permanent in time" (and, by that token, static in character), agrarian legislation, more than any other branch of law needs to evolve and keep pace with economic growth. It is called upon to deal with problems arising at each successive stage of that growth. Hence the need for constant readjustment.

Thus, the rules introduced by agrarian law are essentially situational, contingent, empirical, even as opposed to the static (as they are generally recognized on being) rules of ordinary law. More than any other branch of legal study, agrarian law helps to bring out the shortcomings and imperfections in the man-land relationship, while its ductility allows of rapid adjustment of the sort needed in the implementation of economic planning.

Agrarian law is also an interdisciplinary law and is not immune from the present day trend toward an ever greater complexity in law in general. The fact that in many countries land is not invariably used in a way likely to enhance the overall productivity of the nation means that resort must be had to legislative measures to encourage the working of any land suitable for farming. An example,such a measure might be making the continuance of ownership or tenancy rights conditional upon the individual working his land.

On the other hand, the State may find that it is obliged to modify the law governing property and require that land be farmed as dictated by its suitability for this or that line of production or, again, to prescribe optimum sizes of farm holdings and to formulate a land settlement policy.

Land use rationalization entails changes in social structures, the revitalizing of institutions that fall short of their purpose, the creation of new authorities, the reorganization of the administration and judiciary, and tax reform but, before all else, a renewal of minds to be achieved through compulsion and incentive.

The next point to note is that agrarian law, by reason of being the site of osmosis between public and private law, is quite a complex law. It maintains its relationship with economic, fiscal, agricultural, forest administrative and other branches of law, not to mention such areas of enquiry as sociology and ethology. At the same time, it is an integrating type of law, its unifying principle being the object it pursues and its scope coinciding with its functionality.

The fourth feature of agrarian law is that it is protectionist and tutelary. As a consequence of changes in the methods of interpetation and enforcement of civil law rules, the concepts of equality and autonomy of will of the parties to a contract yield place to the concept of protection

for the weaker party (this is tantamount to denying the very principle of equality and its corollary, the autonomy of will). So much so that it has been said that "agrarian law can be looked on appropriately as class law"— conceived as a means of protecting the economically weaker party, i.e. the party that is defenseless before the possessor of landed wealth. For the social classes affected by agrarian law are not all made to submit to the same obligations and do not all receive the same benefits; moreover they are markedly differentiated by tradition and education, to the point where in the past they have often clashed head on.

Agrarian law is at one and the same time a law of persons and a law of the community. On the one hand it tends to concern mainly individuals only insofar as the irrights and obligations as individuals making up farmer groups are involved. On the other hand it regulates relations between social groups and the need for the producer to be part and parcel of the community, the individual's freedom of action being limited to some extent thereby. The community aspect, again, is reflected in the fact that agrarian law brings about a fusion of legalistic justice and distributive justice within the context of the common good.

The considerations that precede amount to a statement of the funda-mental problems surrounding the general theory of law. At the doctrinal level especially it is important to determine the place that agrarian law may occupy in the whole composite entity that is law. Important, because from its recent and at times disorderly development there has emerged a young science with somewhat ill-defined frontiers. Because of its novel characteristics and the fact that it calls in question tenets hitherto taken for granted -sacrosant, even - such as ownership rights, and the principle of the autonomy of the will of parties to a contract, it is difficult to fit into traditional categories. Moreover, the large areas taken over from other branches of law preclude the application to it of conventional criteria.

The experts are still divided on this point, and such definitions as are given are equally balanced between those based on the sources of agrarian law and those based on its object. .

It is right, then, to speak of an autonomous branch of law - a new juridical order?

To speak of an autonomous branch of law is to say that it contains within itself all appropriate means of solving the aggregate of problems with which, as a discipline, it is called upon to deal, without resort to disciplines external to itself; and that it has its own specific approach to such problems. A number of authors have rejected the idea of agrarian law as an autonomous branch. The difficulty here lies in the fact that attempt is made to classify agrarian law in terms of existing legal categories and, by that token, to analyse it as a branch of law. What is meant by a branch of law?

Further analysis of this concept may serve some purpose. The first question to ask is whether the trend toward specialization in legal rules necessarily leads to the emergence of a new branch of law. Does the idea of a legal rule as the summation of divers particular rules enable one to determine the place a given discipline would occupy among the other branches? Is it, in order to define the category, sufficient to limit oneself to the series of rules determined solely by the extension of the legal subject matter in question? It has been said that the boundaries of the categories of law are at times determined by formal requirements whereby one may state the characteristics of those same categories. However, this chiefly appeals the fundamental elements that give them their specific Character and mark them off from adjacent branches. Applied to agrarian law, these observations bring one back to a statement made earlier, to the effect that the determinant elements are the demands of economic development. If it is necessary

to adhere to the concept of the cohesion of the different, dispersed rules of law, it is possible that this characteristic will be found in agrarian law as seen from the standpoint of its object, i.e. (the terms used vary from school to school) agriculture or agricultural activities or the agricultural enterprise, i.e. agricultural activities as organized for the purpose of production. The mission assigned to agrarian law is to promote the development of society, in this case the rural sector of society. It is the common denominator of all legal rules deriving from different branches of law. The difference between the several branches of law lies not only in the object and content of each but also in the spirit in which the rules it proposes are conceived, interpreted and applied. Such a spirit is to be found most certainly in the human approach that has left its profound mark on agrarian law.

By its cleavage from the rules of private law and by adapting to its object the norms taken from other branches, agrarian law stands forth as a discipline autonomous both in what it teaches and in the legislation in which it finds expression. Having been engendered and developed by the reforming aims of its first phase, in a second phase it becomes both a vehicle and guarantee of reform, constituting a juridical edifice based on the need to provide rules for the evolution of economic and social phenomena in so far as these have a determining influence on the agricultural sector.

Agrarian law makes up a relatively complete system and one relatively closed as to its sources, its content, its jurisdictional control, and its underlying philosophy; and it is distinct from other branches of law.

In any event, it is clear that in the present phase of its evolution, agrarian law (it has already been enshrined in one national 1/ constitution) has all the characteristics of a specific and distinct branch of law both as regards the underlying doctrine and the norms it proposes and, again, from the teleological standpoint and that of the means it makes use of. There is no doubt that it answers to the need to provide an autonomous juridical context proper to agricultural affairs. 2/

However that may be, agrarian law, whether it be seen as a novel jus proprium, or as an autonomous projection of both civil law and public law, or, again, as a synthesis of civil law governing the rural sector, the law governing the reform of agriculture and the law governing agricultural enterprise 3/ there is no doubt as to its specific nature as a branch of law and does not escape the need for appropriate courts.

1/ The Constitution of Brasil (Article 5) expressly mentions agrarian law in the list of branches of law in which the Union is empowered to legislate.

2/ See, also, the recommendation of the Fifth Regional Conference for Latin America, San José (Costa Rica), 1958. which reads "... the acquisition, enjoyment and use [of land] should be governed by a special, autonomous law .,.." FAO/59/5/3776.

3/ J.L. de La Mozos, op.cit.

IX. AGRICULTURAL LAW AND DEVELOPMENT

The suitability of agrarian law as a tool for development is contested by those schools of thought which question the peed of resorting to yet another specific branch of law for meeting the demands of economic and social development. An initial series of arguments in support of this view is derived from our analysis of the inmost nature of law as such and of its hearing on the social realities it is designed to regulate. Since the purpose of law is to uphold society, its content should be consonant with the degree of economic, social and cultural development attained. Again, by definition, law is called upon to achieve security and justice and by that token is relatively static. This does not mean that it does not evolve, but generally, unless improvements are brought in by revolutionary means, the evolution is gradual and sectorial. Now, agrarian law as conceived in most countries of the Third World tends to bring about an upheaval in the economic and social structures, and while, in principle, it applies to the agricultural sector only, it does in fact have an influence on institutions at large. Experience shows that legislation that departs unduly from social realities remains a dead letter. That is the reason, according to the adversaries of agrarian law, why the temptations of agrarian reform, deriving from an excessively "progessive" legislation, often end in failure.

But there is another body of learned opinion, this time in favour of agrarian law and in agreement with the view that development implies a profound and all-embracing transformation of society. On this premise, a country anxious to develop its agriculture and form its agrarian structures stands in need of a legislation that is up-to-date or, better still, ahead of economic and social realities, given that its purpose is to modernise those very realities. It is in this sense that agrarian law is forward-looking and is a very real motive-force of development.

It is practically impossible to settle once and for all the discussion here outlined but the fact remains that certain countries in the Third World have, during the last two decades, brought in an abundance of agrarian legislation designed to provide a framework and create the structures within which agriculture development may be promoted.

It is too early to take stock of the progress achieved in the direction advocated in these pages, though most countries can claim positive -and encouraging - results at least in certain sectors. What may be said is that the efficacy of agricultural law is in direct ratio with the conditions surrounding its implementation and with specific enforcement measures. One essential factor in this context, however, is the assent of the entire population, all of which, of course, calls for a change in attitudes and in a number of social structures. It also requires a firm resolve on the part of the Executive to take adequate measures.

Wherever the collaboration between agrarian lawyers and the government is founded on mutual trust and harmony, real progress has been achieved in adapting land tenure systems and agrarian structures to the demands of overall development policy.

X. CONSTRAINTS ON THE ENFORCEMENT OF AGRARIAN LAW

There is clear evidence that agrarian law - affecting, as it does, the essentially traditional world of the agricultural sector - frequently encounters obstacles in the way of its enforcement. These derive from both the personality of the individuals affected and the very position in which they find themselves, and from the inadequacy of the existing legislative, executive and judicial institutions and structures. Enactments introduced in order to . protect the farmer and improve his lot often remain a dead letter. That this should be so is due to the fact that the intended beneficiaries are often unaware of the new provisions. The presumption that interested parties can have to an effective acquaintance with new enactments through a series of extra-juridical mechanismes - press, radio, television and what one may call the channels of transmissions of law, namely the trade and professional groups - farmer's unions, cooperatives, associations, etc., to which the individuals affected by the new law belong.

The conditions making for the diffusion of law in the developing countries are far more restricted, and the conventional media reach out to little more than a minority. Most of those affected by a new law - and they are often illiterate - do not feel concerned. As for the relay stations just referred to, they usually constitute only the sketchiest of systems for bringing the law to the stage of enforcement.

At the present time, even when novel enactments are sufficiently advertised and understood they are not always complied with. There are several considerations, mainly sociological and economic, that explain this. The enforcement of a newly issued decree is often hindered by opposition from entrenched sociological forces. Thus, since they modify structures or a well-established system, reforms affecting ownership rights or the pattern of land tenure, come up against the typical conservatism of rural populations and bring out a reactionary response to reform.

Again, it often happens that the institutions it is intended shall carry out or otherwise support the new legislation are too complex for the mentality of the persons affected and exceed the capacities of the specialized staff available.

Often, too, under economic pressures, the farmer will not take advantage of the provisions of the law which give him access to agricultural credit at preferential rates or offer him guaranteed minimum prices but will rather resort to the village moneylender or sell his produce below that minimum in order to have the ready cash that he needs.

The inadequacy of executive and administrative structures is yet another major obstacle in the way of applying new legislation. When these are over-oentralized their procedures delay reform and offer loopholes for evading the law.

The even greater intervention of the State in the agricultural sector has resulted in the creation and strengthening of economic enterprises which undeniably can - if properly controlled and channelled in the right direction - provide a major tool of economic development. At the present time, however, State intervention in certain countries shows an alarming

degree of dispersion and absence of control, due to the fact that legislation governing State activities is fragmentary and does not reach out to all the aspects of those activities. If anything, legislation lags behind the enormous development that State intervention in the rural sector has undergone in recent years.

Administrative law theory is very rudimentary and uncertain, and the separation of powers is usually not respected to the full. Relations between the various centres of administrative authority are not clearly defined, and procedures for national budget formulation and for planning do not deal with specific land reform problems. And yet these authorities have an extremely important part to play, since it is they that are called upon, in the terms of the regulations made under the laws or their own rule-making powers, to translate into reality the political and technical principles asserted by the Legislative. Clearly, if the ministries are not equipped to carry out their respective tasks efficaciously, reform measures are likely to misfire. There can be no exact valuation of farm holdings, for example, if there is no cadaster and if the land registers are not kept up to date.

Legal structures must therefore be reformed if the State is to carry through it activities in the agrarian law sector, and particularly where land reform is involved. Also,the necessary control machinery must be the subject of precise regulations.

As a final point one may note that the bringing in of novel agrarian legislation causes for a time a widespread feeling of uncertainty vis-à-vis the law among the very persons whose job is to enforce it. The situation will be more difficult, or less difficult, depending on how far-reaching are the changes introduced into the legal tradition and principles hitherto applied. That is why it will be necessary to set up special agencies enjoying a considerable measure of autonomy, corporate status and trained staff, as well as having machinery that allows for rapidity of action and a certain pragmatism and flexibility in promoting plans and programmes.

The way the judiciary is usually organised also constitutes a serious drawback since it is grounded in constitutional principles and legislation redolent of an out-of-date formalism unconducive to solutions for the problems that emerge in the process of change implied in agrarian reform.

Once agrarian reform has been consolidated, the next task is to organize within the judicial system autonomous courts to guarantee the farmers' their rights. Land redistribution, for example, would be unavailing were those principles of law that guarantee equity to be disregarded, for it is the law that gives people adequate means restoring the equilibrium when inevitable conflicts arise between them. The introduction of novel juridical concepts meets with considerable difficulty, for there is always a time lag between economic developments and the corresponding developments in the law.

Frequently there is an overlapping of jurisdiction between the ordinary courts, the agrarian courts and the administrative arm. The agencies of the last-mentioned, by intervening in agrarian disputes, frequently arrogate judicial functions to themselves, with the result that the ordinary courts come to be looked upon with suspicion and as holding up structural reform in the rural sector.

Legislative formulas ill-geared to the ends proposed usually result in enactments that are functionally inadequate, because they are at times in conflict with existing laws or because they contain too many, too detailed and too complex provisions.

Situations of the kind arise mostly when the basic enactments having to do with land reform are drafted without prior research into the economic and social background and without making allowance for existing institutional and juridical structures. This happens particularly when the lawmaker has to act in emotionally charged situations and time is short, or is apprehensive that the Executive may be slow in issuing enforcement regulations. At times what is missing in this developments is the presence of those skilled in agrarian law.

It is essential that the basic enactments shall be clear, concise and schematic. Their contents should be limited to a statement of general principles, while it should be left to regulatory texts to lay down supplementary provisions - this is in order to ensure greater flexibility and expediteness in dealing with foreseeable situations.

PART II

AGRARIAN JUDICIAL SYSTEMS

I. ADMINISTRATION OF AGRARIAN JUSTICE

The specific character of agrarian law is itself so dominated by the need to speed up the process of evolution in economic and social affairs that the translation into action of novel juridical concepts inevitably encounters difficulties in the institutional and structural context within which that law is called upon to operate. This state of affairs is due in large measure to the time-lag that occurs between living, dynamic realities and an entire juridical system which is static and has petrified over the decades in forms ill-adapted to spontaneous evolution. One constant in all this is the fact that economic developments precede the relevant developments in the law in a certain period of time, for most organic basic enactments on which it is intended to build up the respective systems are devoid of economic and social preoccupations.

Even reforming legislation is at times paralysed by a lack of flexibility in, and harmonization between, legislative, executive and judicial powers as exercised. Often the legislator himself tends to get bogged down in detail that will later make the implementation of his new laws difficult.

Existing judicial/administrative institutions frequently reveal structural defects that hamper the application of agrarian justice 1/. This is particularly noticeable when the problems concern the implementation of agrarian reform legislation. The problems that arise in this way are often acute, and speed is of the essence in their solution (though it must be remembered that litigation involving rural leases also demands the intervention of an entire judicial apparatus).

Generally the judiciary is insufficiently decentralized, geographically, and is thus physically out of the reach of those needing to have recourse to it. It is also paralysed by a degree of formalism that is incompatible with the speed at which economic and social realities evolve and with the need to deal with urgent problems. It is, moreover, at a disadvantage in that not enough people are trained in agrarian law.

Nor should it be forgotten that there are human considerations - and they are of no little importance - that affect the very personality of those whom the new laws are intended to benefit. For these are in a large measure frustrated people, with the complex born of long years of quasi-serfdom and geographic isolation, who are morally influenceable and are unable to participate effectively in the implementation of laws introduced for their benefit.

1/ See: P. Moral-López: Temas jurídicos de la reforma agraria y del desarrollo. ICIRA. Santiago de Chile, 1968.

- Reunión Latinoamericana de Derecho Agrario, Bogotá, Colombia, agosto 1972, Tema 2. "Jurisdicción agraria y sistema procesal agrario." Documento de trabajo presentado por la Universidad Externado de Colombia y "Obstáculos jurídicos e institucionales a las reformas agrarias y medidas correctivas", by J. Masrévéry.

At the same time, deeprooted traditions make them agree without protest, to forego the benefits of the new legislation, and continue to work clandestinely under the same conditions as before, with the satisfied complicity, and sometimes under pressure from, the great landlords.

"Although all persons are supposed to be equal before the law, the traditional judicial process places a heavy advantage on the side of the more educated, and more powerful (usually landed) social classes. Inasmuch as the land reform attempts to change this socio-economic dominance, so also the administrative and judicial bodies for the implementation of these reforms will have to be so designed in respect of their organization, composition and procedures, as to enable the achievement of the ends of the socio-economic reforms, while respecting the rights of all parties under the law." 1/

The specific character of the legal problems arising in the implementation of land reform (the identification of the land to be expropriated, the expropriation process itself, compensation, land transfers, owners' rights of reservation, fiscal measures, etc.) justify to adequate jurisdictional instruments 2/.

1/ Progress in Land Reform. Fifth Report, United Nations, New York, 1970.

2/ See in particular: Report on the Joint FAO/ECAFE/ILO Seminar on the Implementation of Land Reform in Asia and the Far East, Manila, Philippines, July 1969. Recommendation No. 22 has this to say " ...Since judicial organizations and procedures whereby land rights are determined under the Land Reform Law are an integral part of the implementation machinery, the establishment of special types of tribunals or more speedy procedures should be introduced to ensure that such cases would be settled more speedily at much less cost to the weaker sections who are to be benefited by the reforms."

ECLA - Twelfth Session, Caracas, Venezuela, May 1967. Report on "Evolución y situación actual y futura de la agricultura latinoamericana", stating that "...otro importante factor que limita el alcance de la reforma agraria es la falta de tribunales independientes que puedan poner rápidamente en vigor las leyes de reforma agraria y controlar la observación de las leyes laborales que afectan a los obreros rurales."

XIIth FAO Regional Conference for Latin America, 1972. "El Derecho Agrario en la Reforma Agraria"... LARC/72/10.

First World Agrarian Law Congress, Caracas, Venezuela, 1970, concluded inter alia that "a specialized jurisdiction may be necessary, or otherwise appropriate in many countries, especially in those where land reform has been introduced, in order to guarantee farmers' debts, the due application of rules and, indirectly, in order to create in each country groups of agrarian specialists closely acquainted with realities, and devoted to the progress of agrarian law..."

Latin American meeting of agrarian law experts, Bogotá, Colombia, 1972: Experience has shown that the application of agrarian rules by the ordinary courts turns out to be a fraud and a denial of justice. For this reason there needs to be instituted in our countries a special jurisdiction for hearing and settling disputes arising out of a rule of law having agrarian implications."

There follows a discussion of "those jurisdictional institutions "before which nowadays lie matters arising in the administration of agrarian justice, together with a review of the formulas adopted in the various political, economic and social contexts.

II. AGRARIAN LAW ENFORCEMENT INSTITUtIONS 1/

Variety seems to be the rule where the institutions responsible for applying agrarian legislation is concerned. The task of these institutions is to deal with the juridical problems and to forestall or settle disputes arising out of agricultural activities, land use planning measures, agrarian reform or land tenure situations - in other words, to administer agrarian justice in the widest connotation of the term. This is due to the fact that, for a long time, now, control over and litigation relating to rural leases has led to the creation of a system of public bodies with regulatory, para-judicial and jurisdictional powers, involving different degrees of competence and adding up to a solid institutional complex. Land reform laws in the developing countries - more particularly those of the New World - have brought about changes in existing structures and have created new structures adapted to the needs generated by the changes currently taking place. And while these tend, generally, to fuse into a single, homogeneous system, old structures and new continue side by side in many countries.

The jurisdiction ratione materiae of these new or reformed bodies varies with local needs. In some cases, it is limited to administrative and regulatory functions for checking on whether contracts and other legal deeds relative to the use of land are in order - a jurisdiction, therefore, that anticipates events, often to good purpose. In other cases, this competence is exercized over all aspects of litigation arising out of operations conducted under the heading of land use planning (consolidation, improvements, etc.) or (and especially) under that of land reform implementation (¡expropriation, compensation, redistribution of land etc.). In certain extreme - and admittedly rare -circumstances, where the reform is part and parcel of a revolution, the institutions here referred to are empowered to inflict severe penal sanctions.

To summarize, it may be said that there is a marked variety in schools of thought where the administration of agrarian justice is concerned, ranging from the view that the bodies involved are of a merely advisory nature to the view that they should be empowered to impose penal sanctions, with a whole gamut of special jurisdictions, including that for dealing with litigation, in between.

The directions taken by countries in equipping themselves to ensure an efficient administration of justice in the agrarian sector are dictated less by a desire to arrive at a sound systematic approach than by an empiric response to different situations. This is why it is practically impossible to put the various formulas into a neat classification. However, since the purpose here is to simplify where possible, these formulas have been grouped under four main headings, namely 1) administrative bodies; 2) bodies set up for specifically agrarian reform purposes; 3) the ordinary courts and 4) special courts.

1/ See: A. Agúndez. "Justicia agraria en Iberoamérica" and "Tribunales agrarios", in Rivista de Estudios Agro-Sociales No. 79 and 81, Madrid, 1972.

The first two kinds should he considered as government administrative organs vested with a rulemaking function; the other two are true courts (though they may, as in certain countries, have rulemaking powers as well, which is why it is not always possible to draw a hard and fast distinction between the different institutions. However, the division here attempted can, generally, be validly applied to institutions which to-day are responsible for administering justice in the agrarian sector. This does not mean that some of them do not owe their inspiration to the different concepts listed earlier. They may be correctly looked on as mixed institutions. Again, in one and the same country, there may be found side by side bodies that come under two or more of the headings here proposed.

1. Administrative bodies

Many countries entrust to the Executive - i.e. existing government agencies or those newly created perhaps on a temporary basis - the exercice of certain judicial or quasi-judicial powers in the agrarian sector.

These bodies are given different names - land arbitration chambers, land boards, administrative boards, and so on.

They are placed under the control of either a public official, usually one vested with authority - chief of district, prefect, chief of province or a judge. They may be constituted as a committee under the chairmanship of the official (or the judge) and have among their members persons whose occupation is agriculture representing the communities whose members are parties to the dispute.

In some cases, only the chairman of the committee (usually an official vested with authority for the purpose) has power to decide a case - after consulting the members.

Normally it is possible to appeal to a higher administrative authority, say, the Minister, or the ordinary courts, or, again, to the agricultural courts, where these exist.

The bodies here referred to have jurisdiction for hearing disputes that can be settled by arbitration or conciliation.

It will be appropriate at this point to attempt a brief analysis of the agencies and other bodies referred to above. At the practical - i.e. physical - level these bodies usually have both an administrative and jurisdictional competence. This dual competence finds expression in a twofold domain - conciliation, which (because it is handled by an administrative body) is only an administrative procedure, and arbitration, which is an act of jurisdiction both as to its form and as to its effect.

Under the terms of their constitution and the procedure by which their numbers are appointed, they fit naturally into the "administrative" arm.

However, their officials are not usually there to exercise specific powers, nor do they come hierarchically under the civil servants. They do not take instructions from the latter but enjoy complete independence, as a general rule, in reaching their decisions. Again, in their task of arbitration, the bodies here described often apply methods and procedures deriving from the judicial system.

More particularly where these bodies are of the joint type, and include representatives from the farmers' associations, it is difficult to see them as part of the Executive - or, for that matter, as part of the Judiciary.

It is legitimate, therefore, to look on these as public law bodies with a part to play in maintaining order and the public peace and additionally in the administration of justice. But this justice is for a markedly social kind, and governed by the principles of agrarian law. These bodies are independant of the Judiciary just as they are independent of the Executive: their position is on the confines of the principle of the separation of powers. By this token it would also be legitimate to speak of them as a constituent element of a fourth arm, an emanation of the social classes which are in this way able to exercise - materially - judicial functions within the administration of agrarian justice. They have a link with the Executive in the appointment of representatives of the State without thereby being hierarchically subordinate thereto. Moreover, they are required to observe certain forms of judicial procedure subject to appropriate modifications.

2. Agrarian reform agencies

Agrarian reform agencies are a variant of the formula just descrived, the administration of agrarian justice remaining in the hands of the Executive. In most cases, jurisdiction is vested in the agency responsible for the execution of agrarian reforms and bearing some such name as "Agrarian Reform Institute". The latter will delegate powers to its own officials or to officials of other government departments. It may be noted, incidentally, that the nomenclature sometimes used - agrarian magistrates, agrarian juries, popular tribunals - may make for confusion; but what is indicated is always an official or an institution of the Government. These bodies continue to be closely bound up with the authority of the Executive even in those cases where they are under the guidance of or are presided over by magistrates representing the Judiciary. They hear, at first instance, litigation concerning farm leases and land reform matters, and their rulings may be appealed to a higher body-administrative (Ministry of Agriculture and sometimes the Head of State, or to the ordinary courts or, again, where these exist, to special courts.

It is also worth noting that in certain countries the legislator has made these bodies provisional in character for the duration, that is, of the critical phases of the implementation of land reform (as in Algeria) or of the state of emergency (as in Uruguay), after which they are to hand back their powers to the ordinary courts. The remarks made earlier in paragraph 1 above, regarding the juridical nature of these administrative bodies apply as a whole to the land reform bodies discussed in this section.

3. The ordinary courts

Resort to the ordinary or civil courts of first and higher instances, is the formula followed in Argentina (for all matters save litigation over rural leases), Colombia, El Salvador, Morocco, Nicaragua, Paraguay, Uruguay, Venezuela and Yugoslavia. These courts deal with agrarian litigation usually after conciliation has been attempted between the parties before the administrative or land reform authorities.

The Colombian system has an original feature in that agrarian lawyers, and not the representatives of the Attorney General, appear before these courts in all matters arising within the agrarian justice context. These lawyers are government officials and are experts in agrarian law.

Even where the ordinary courts are vested with jurisdiction in agrarian matters, the legislator has nevertheless usually introduced rules to ensure that the procedure followed by these courts shall be simplified and rendered more expeditious, with oral hearings and shorter regulation time-limits, and by rendering the taking of evidence an easier procedure.

4. Special agrarian courts

The institution of special agrarian courts sometimes comes up against those articles of a country's constitution that prohibit special tribunals of any kind. It is then necessary to amend the Constitution, as has been done, for example, in Iraq and Panama 1/,

In those countries that have opted for a specialized judicial system for agrarian affairs, a variety of formulas have been applied. In one country there will be a court of the first instance, whose rulings may be appealed to a higher court of the ordinary judicial system. In other countries, it may be possible to appeal from the lower court to a specifically agrarian court of appeal. In certain countries, these agrarian courts are conceived of as special sections of the judiciary. Prance, Germany, Italy and the Netherlands are a case in point, as are, in general, all those countries where rural lease litigation is the main problem arising in the agricultural sector.

A different approach is adopted in developing countries - more particularly those that have introduced agrarian reform - namely that of autonomous courts coming under the control of the judiciary and the presiding judge of the Supreme Court or the head of the judiciary, as in Chile, or under the control of the Executive in the person of the Minister of Agriculture, as in Peru or the State of Kerala in India.

In all these different examples the court is a collegiate body and in both the first and higher instances, consists of one or more magistrates from the judiciature, who are advised by persons elected from among those professionally engaged in agriouiture.

With very few exceptions, the agrarian tribunals of the various countries studied come under the Judiciary and under the control of the Courts of Cassation or the equivalent. Nevertheless, their composition and the procedures they apply endow them with a character all their own. An attempt will now be made to describe their main features, this in answer to the question as to whether these courts are courts of law or courts of equity.

1/ The revised Constitution of the Republic of Panama, as approved on 11 July 1972, provides (Art. 117). "there is hereby established an agrarian judiciary and the law shall determine the organization and functions of courts."

Courts of equity, it is well to remember, are characteristic of periods of transition, not to say revolution. Using the same sources as the legislator, they elaborate the law in the light of a social diagnosis usually made within the legislative institutions. These courts have a primary part to play in those periods when society is balancing between the older principles of a law that is becoming out of date and the newer principles of a law that is in the process of creation and is bedding down on to its foundations. At times when the old juridical order is undergoing rapid change, they offer a valid contribution to the evolution of law by bringing into being a case law in turn providing a foundation for these furter developments in the new legislation. These same courts of equity, moreover, guarantee the continuity of the juridical order at times when the latter is going through a phase of renewal.

From what has just been said, agrarian courts cannot readily be placed on the same footing as courts of equity. They undoubtedly play an essential part in the affirmation of agrarian law, the latter being a novel kind of law, which has its application in a given context - a temporal context, perhaps, as well as a spatial one - in full career of change. But the fact that the rulings of these courts may be appealed implies that they are required to conform to strict procedural formalities and to apply well-defined legal rules. Now, as pointed out earlier, this is not the case with the courts of equity. Moreover, if agrarian tribunals may be looked on as special - exceptional - courts, this does not necessarily mean that they are transitional or provisional in character (though they may be so in particular cases).

Yet there is no denying the fact that the agrarian tribunals largerly apply principles peculiar to the courts of equity, namely: (a) that procedural formular it ies should be reduced to a minimum; (b) that everything should be done to speed up the procedure; (c) that the services of the agrarian tribunals should be free of charge; and (d) agrarian judges should enjoy wide discretionary powers; in order to base their decisions on their own assessment, in equity, of the merits of the case.

To conclude therefore, agrarian tribunals may be looked upon as courts of law operating to a large extent on principles of equity.

III. PROCEDURE

Though there is a fair amount of variety in the kinds of bodies or agencies that have jurisdiction for the administration of agrarian justice there is a relative homogeneity in the main principles governing agrarian procedural law. Specifically, where litigation procedure is concerned, most legislators have tended to make rules designed to simplify that procedure as much as possible and to make justice more accessible to those needing to resort to it, to the extent that one Mexican author has spoken of "social procedural law" 1/.

1/ R. Fix Zamudio. "Estructuración del proceso agrario", in Rivista de la Facultad de Derecho Agrario de México, 1961; "Introducción al estudio del derecho procesal social*[1], in "Rivista Iberoamericana de Derecho procesal, 1965; "Lincamientos fundamentales del proceso social agrario en el derecho mexicano,", in "Atti della Seconda Assemblea dell'Istituto di Diritto Agrario Internazionale" Milan, 1972.

This explains the predominance of the principle of the oral hearing and and also why the agrarian magistrate - be he an official vested with judicial powers or a member of the judicature itself - has wide discretionary powers at the enquiry stage. The taking of evidence is also made easier by a considerable elasticity in the rules applicable in agrarian affairs as compared with the conventional rules. The administration of agrarian justice, even in the Common Law countries, is based on the enquiry. The magistrate must first and foremost seek to arrive at objective truth. For this purpose he is empowered to decide as to the probative force to be assigned to the various items of evidence submitted.

At the same time, and in increasingly more numerous cases, the intervention of attorneys or certain other members of the legal Frofession may be dispensed with, at least before the court of first instance. There a litigant may opt to be aided or represented by a number of the trade-organization or trade-union of which he is a member. The trend is toward the litigant not having to pay, not only as regards costs in the strict sense but also as regards lawyers' etc., fees.

It is intersting to note, in conclusion, that many laws explicitly or implicitly give the magistrate wide powers for intervening personally (subject of course to the rule that requires him to maintain independence and impartiality) in order to guide the litigants and clarify matters for them, the parties being the weakest element in a case.

Accordingly, it is no over-statement to say that the present phase of evolution of agrarian law (because it is less a system of rules than a body of theoretical propositions, and because it gives plenty of scope for treating each case on its individual merits), the application of its principles to litigation tends to be more a matter of equity than of hard and fast legal rules. By that token, too, agrarian law provides some sort of meeting ground for positive law and natural law. It is not the intention to develop the point here, though that might prove a most interesting exercise.

IV. ORGANIZATION OF AGRARIAN JUSTICE

The pages that follow seek to give a concise description of institutions and other organizations responsible for settling disputes arising out of the implementation of agrarian law. The procedure will be to classify these institutions and organizations into: administrative bodies, land reform agencies, ordinary courts and special agrarian courts. It should be noted, however, that many countries make use of institutions and organizations belonging to more than one of the classes considered here. Thus, in one and the same country, agrarian disputes may, depending on the nature of each, be placed before an administrative body or an agrarian court or, again (as is usual with appeals), the ordinary courts.

1. Administrative bodies

In Argentina, the 1948 Rural Leases and Sharecropping Agreements Act 1/ enjoins it upon the Executive, acting through the Ministry of Agriculture, to set up joint conciliation and arbitration chambers at the regional level, and a Central Chamber. These are collegiate bodies which perform their task under the chairmanship of technical officers of the Ministry of Agriculture, and each consists of three representatives of the landowners and three representatives of the tenants. They have sole jurisdiction 2/ in matters involving litigation between landowner and tenant concerning the performance of lease contracts.

The procedure at first instance consists of two stages: one, a mandatory attempt to reconcile the parties and, where this attempt fails, another, which is the actual litigation stage, the latter stage being oral, simple and expeditious, and no costs have to be borne by the parties.

Ordinary rulings of the regional chambers may be appealed to the Central Chamber, the principal purpose of which is to bring some unity into the practice in dealing with these cases. Rulings decided by the unanimous vote of a regional chamber may not be appealed to the Central Chamber, except in the event of a plea of jurisdiction or if the law has been violated on a matter of substance. Once these rulings of regional chambers are final they take on force of law, and, as the case requires, the judicial authorities, provincial or federal, may be called upon to secure their enforcement.

The 1966 Rural Leases and Sharecropping Agreements (Contracts) Act 3/ nevertheless places rental determination and revision under the jurisdiction of the ordinary courts, which hear cases by oral and summary procedure.

In Cameroon, the law governing land ownership 4/ provides that disputes relating to the classification or change of classification of the

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1/ Act No. 13246. Farms leases and sharecropping. 10 September 1948. Boletín Oficial. 18 September 1948.

2/ Act No. 13897 concerning joint compulsory conciliation and arbitration chambers, 20 May 1950. Boletín Oficial, 19 May 1950, and Decree No. 28405 issuing regulations for sections 5 and 6 of Act No. 13897.

3/ Act No. 16883. Farm leases and sharecropping (contracts), Chapter VII. Judicial Procedures. 14 June 1966. Boletín Official, 17 June 1966.

4/ Act No. 59/47, 17 June 1954.

public domain are to be brought before the Administrative Litigation Council (Art. 10), while proof of working a concession is to be established by an Administrative Commission (Art, 43). Subsequently, Decree No. 64-6, of 30 January 1964, which deals with incorporation into the State private domain on grounds of public utility of land held under customary law but where there is no proof of title, provides that the ascertaining of tangible signs of occupation shall be the responsibility of a Proof of Titles Commission consisting of the prefect of the region, a representative of the Director of State property, a topographer from the Cadastral Service, a Public Works official, an Agricultural Services official and two municipal councillors (Art. 4). In addition it is laid down that claims affecting members of a community shall be brought before the appropriate judicial tribunal (Art. 7) and, lastly, that controversies over the enforcement of this Decree shall be settled by the administrative tribunals (Art. 10). Again, Decree No. 64-9 of 30 January 1964, relative to the organization of the system for the proof of individual customary titles, provides that there shall be a public enquiry by a proof of titles commission, with a similar membership to that described above (Art. 5), and that appeals against the enforcement of this Decree shall be heard by the Tribunal of the first degree in the Departement concerned 1/ (Art. 10).

In El Salvador, the Land Tenancy Act places the obligation on both lessor and lessee of submitting any litigation that may arise as regards the working of the holding to a conciliation procedure either at the Legal Department of the Minister of Agriculture or with the local branch of the extension services. The request so to submit may be made in writing or verbally. The Head of the Legal Department will attempt conciliation between the parties. If the attempt at conciliation fails he will propose out-of-court settlements. A report is made of the result of the conciliation attempt for the signature of the Head of the Legal Department. No court proceedings may be initiated unless an attempt at conciliation has first been made.

In France. side by side with bodies vested with virtually special court powers (see II. Pub. IV.4, P. 62), there is a system of administrative authorities that are empowered to act with a quasi-jurisdiction ratione materiae. this material scope being carefully defined. These authorities are:

(a) The Commune Commissions and the Department Commissions for land use planning and consolidation 2/. The former have original jurisdiction over claims made by landowners concerning operations affecting them. The latter have appellate jurisdiction vis-à-vis the former;

(b) The Department Commission on agricultural structure 3/. These have a standing committee to advise the Prefect on claims for annuities for relinquishing farms;

(c) Commissions on Social Mutal Benefit Schemes in Agriculture 4/. These deal with disputes arising out of the implementation of the law on this subject.

1/ This is an administrative body with jurisdictional powers, specializing in customary land litigation.

2/ Code Rural, Art. 1 bis ff.

3/ Decree, 2 December 1965.

4/ Code Rural, Art.1143-1 to 1143-4.

In Ireland the Land Committee originally set up unnder the Land Act, 1881, has in the course of time undergone many changes. At the present time it consists of a Juridical Commissioner, who is a judge of the High Court and of three lay members appointed by the Government, with a status similar to that of the members of the Judiciary.

The members come under the Minister of Land in all general and administrative matters. They have exclusive jurisdiction for the application in individual cases of the provisions governing the purchase of land and the settlement of farmers. Decisions of the Land Committee may be taken to the Court of Appeal.

In Kenya, land consolidation operations have brought about a thoroughgoing reform of the system of land tenure. Litigation concerning these operations is brought before the appropriate Government bodies. Even in matters concerning the proof of customary rights (which must precede the actual consolidation and entry in the register) the ordinary courts have been replaced by a special organization for these purposes. This was modelled on existing administrative systems and not on the judicial system. Accordingly, all judicial proceedings regarding customary land rights have been suspended in the area where land adjudication operations are in process (Art. 8 of the Land Adjudication Ordinance).

The chief result of the newly introduced system is the creation of land control boards consisting of a certain number of persons resident in the areas concerned appointed and controlled by an officer, i.e. an agent of the Central Government nominated by the provincial commissioner.

The purpose of the land control boards is to build up an exhaustive statement of existing landed rights in a given area. Where the board is unable to reach a decision it refers the matter to an arbitration board appointed by the Minister and again consisting of local residents. The fact that only the Board may refer the matter to the arbitration board marks the independence of this arrangement and the clearout division between it and the usual judicial procedures. Equally significant is the fact that the responsibility of the village councillors or councils of elders does not end with the recognition of existing rights but continues over into the actual reform phase, i.e. that of the concentration of fragmented holdings and of land redistribution. provision is also made for a committee to determine in the course of the consolidation process the proportion of the area concerned to be reserved for public use - for schools, roads, markets, community centres and so on. The same board is required to assist the official whose task it is to demarcate the new holdings. Decisions regarding land redistribution are final, just as if they were decisions of a court.

There is yet another category of official bodies with quasi-juris-diction, namely the Land Control Board. Provincial Land Control Appeals Boards and the Central Land Control Appeals Board l/, which are responsible for ensuring that land transactions are carried out according to the rules.

1/ Act No. 34, 1967. The Land Control Act, 1967. The Kenya Gazette, No. 65, Supplement 98, 11 December 1967.

These and the provincial board have a membership consisting of government officials and representatives of local residents. They are chaired by an official vested with special authority. The Central Land Control Board consists of the ministers concerned and also includes the Attorney-General, who has control over the operations of this body from the legal standpoint.

In Madagascar, the different enactments dealing with expropriation on the grounds of public utility and the regulations governing the public domain and those governing the national private domain, as well as other questions relating to land reform or the obligation to farm land that is suitable for that purpose, lay down that any disputes arising out of their enforcement shall be brought before the ordinary courts or ordinary administrative tribunals and, on occasion (particularly as regards the assessment of compensation and proof of working, or equipment of, land), before administrative commissions.

Special mention should also be made of the system of consolidation and arbitration in civil matters that exists within the terms of reference of the Fokolona. A Fokolona is a semi-autonomous and decentralized customary community-type body. Its terms of reference cover economic activities and the political and administrative sectors as well. It is the basic unit for popular participation in the development process.

For Civil Law litigation there is a mandatory attempt at conciliation before the Fokontany Committee, which is the administrative subdivision of the Fokolona. The conciliation proceedings may be used as a basis for taking a case to the courts.

Arbitration is dealt with either by the general assembly of the Fokolona, or by an enlarged Council, which includes the Fokontany Committee and delegates from the villages. Hearings are public and the decision must be given within three months of the date that the property of a deceased person at the time of his death came under the ownership,in the fullest legal sense, of his heirs.

Arbitration decisions may be appealed to the courts of first instance and from these to the Court of Cassation.

The same system obtains, with certain variations, in Malawi 1/. Land Boards have been instituted, consisting of persons resident within the respective land control division so that there may be participation in the allocation procedure, account being taken of the customary law applying in the event of dispute between two or more claimants to any interest in land or as to boundaries of holdings. Where no amicable settlement is reached, the matter is referred to the board. Allocations may be appealed to the executive officer of the board concerned, who decides on equitable principles. Appeals are dealt with as far as possible following the pro-cedure to be observed in civil suits. There is an exception, however, in that the official may admit evidence which would not be admissible in the civil courts; he may also use evidence adduced in any other claim or contained in any official record and may call evidence on his own initiative. Proceedings thus conducted by the allocation officer are deemed to be a judicial proceeding for the purposes of the Penal Rural Code.

1/ The Customary Land Development Act. 26 April 1967. The Malawi Government Gazette Extraordinary, Vol. IV, Ko. 31, 9 May 1967.

Again where Malawi is concerned, mention should be made of the recent institution of local land boards which are assigned functions normally belonging to the ordinary courts. These committees accordingly are charged, whenever application is made to them for a division of family land, with checking the names of the members of the family owning a given holding and the dimensions of the holding, and with partitioning the land followed by the settling of the family members thereon or, failing this, with applying the relevant customary rules.

In Malaysia 1/, litigation in connection with paddy land tenancies is dealt with by tripartite committees chaired by a public officer. The functions of these committees are:

(a) to hear and determine applications made under the provisions of Act No. 43 of 1967. Paddy Cultivators (Control of Rent and Security of Tenure) Act, 1967;

(b) to hear and determine disputes between landlords and tenants arising out of their tenancy agreement;

(c) to conduct enquiries, administer oaths and affirmations, to examine any witnesses on oath or affirmation, to summon any person, take and record evidence of any such person and award costs to any person appearing and giving evidence before them;

(d) to make such decisions or orders as may be necessary to give effect to the determination of any application or dispense.

For the purpose of exercising their functions, the Committees (or their Chairman) are vested with all the powers of a First Class Magistrate and may deal with any case of contempt or misbehaviour any party has been committed in the view or presence of a Committee (or Chairman) in accordance with the powers conferred upon such magistrate.

A Committee may, at any time it deems necessary or useful, call for and receive all such kinds of evidence, whether oral or in writing and whether that evidence be admissible or not under any written law in force relating to evidence or procedure.

Every enquiry must be held at such place and time as a Committee may direct.

Every enquiry must be open to the public, unless the Committee, for reasons to be recorded, decides otherwise.

A Committee may cancel or postpone the holding of any proposed enquiry or adjourn or change the venue of an enquiry.

The Committee's decisions and orders may be appealed to a Tribunal, whose ruling is final.

The members of Committees are deemed to be public servants.

1/ Act No. 43 of 1967. Paddy Cultivators (Control of rent and security of tenure), Act 1967. 26 September 1967. H.M. Government Gazette No. 20, Supplement No. 8 (Acts), 28 September 1967.

In Papua/New Guinea the Land Titles Commission Ordinance 1963 (Ordinance No. 5), vests in that Commission independent jurisdiction with powers to define and protect land right titles, in particular those affecting land held by indigenous communities.

In Senegal, the decree 1/ which prescribes the procedures for the enforcement of the National Landed Property Act (the latter laying the foundations of a thoroughgoing land reform) Provides for the operation of rural councils. These are advisory bodies and are representative of the inhabitants of a given locality. They may consist of one or more representatives from each village in that locality, who are elected from among persons legally domiciled in the village in question, together with one or more officials or public servants appointed from among the staff of the Rural Expansion Centre (CER) of the Departmental Development Committee and, again, representative of the farmers' cooperatives in the area (these last being nominated by the general assembly). The Chairman of a rural council is appointed by the Governor for a term of three years, upon nomination by the Prefect and subject to a decision to that effect by the CER of the Departmental Development Committee.

Rural councils pronounce on changes of the purpose to which land is to be given over and on the payment of compensation to a predecessor by the beneficiary of a readjudication land. The decision may be appealed to the courts with jurisdiction in these matters, i.e. the judicial tribunals (Art. 6).

Again, as regards the assignation to the Government of land belonging to the national estate following declaration of public utility, it is provided that the assessment of compensation to be paid shall be made by a commission consisting of a prefect, a representative of the Public Works Services, a representative of the Ministry of Rural Economic Affairs, a representative of the National Estates Services and two representatives of the adjudicators.

In Spain, part of agrarian litigation is the responsibility of administrative bodies. The principal bodies in question are:

(a) Arbitration tribunals of the Syndical Fraternity of Farmers 2/. These consist of the president of the fraternity and three judges elected thus: two from among the farmers and one from among the members of the local authorities. These tribunals deal with any controversies between members of the fraternity that are submitted to them. They may also impose sanctions on any members that fail to carry out the provisions contained in the rulings issued by the Tribunal;

(b) Land consolidation committees. These were set up under the Land Consolidation Act 3/. They are presided over by a judge of the first instance and are empowered to apply rules of law even though they are typically administrative bodies;

1/ Decree No. 64-973, 20 July 1964.

2/ Order issuing regulations for farmers' syndical fraternities.

3/ Land Consolidation Act, 20 May 1952.

(c) Jury for landed property susceptible of improvement 1/. This is a body under the Ministry of Agriculture. It is empowered to decide (and the decision may not be appealed) in cases where there is a discrepancy between the individual improvement plans drawn up by the Ministry and the plan put forward by the landowner concerned, as to which plan shall be implemented under compulsory terms. The Jury consists of a magistrate appointed by the Ministry of Justice (chairman), two officials of the Agricultural Services, one representative of the owner farmers and one of the farm workers.

In Sri-Lanka 2/ litigation occasioned especially by the eviction of farmers, the delimitation of paddy land and the determination of the status of growers is dealt with by the Commissioner of Agrarian Services, whose decisions may be appealed to a Review Board. The last-mentioned is an administrative body whose members are appointed by the Ministry of Agriculture. Its decisions are final.

In the United Kingdom, side by side with the specialized courts (see II.4) there is an arbitration system, with origins going back to feudal times, which has envolved to the point where it now constitutes an instrument of remarkable efficacy and flexibility for settling agricultural disputes.

Recourse to arbitration for such disputes received considerable encouragement from the Arbitration Acts of 1851 and 1883. Yet it was the 1900 Agricultural Act that was to solemnize the emergence among the legal profession of a marked school of thought in favour of instituting a special system of arbitration for agricultural disputes. Under the Agricultural Holding Act, 1923, the basic principles of which were taken over into the Agricultural Holding Act, 1948, agricultural arbitration was removed from the system contemplated by the Arbitration Act 1889, and assigned to agricultural arbitrators (lay persons, not magistrates) vested with quasi-judicial powers and applying a judicial procedure.

The jurisdiction assigned to the arbitrator embraces, generally, all disputes arising during the execution of a contract of lease and, accordingly, disputes concerning the compensation to be paid to a tenant for disturbance of possession; reimbursement for tenant's improvements; application of intensive farming methods; compensation of the landlord for bad husbandry on the part of the tenant; rentals land related matters.

Proceedings must be initiated within a stated period under penalty of being time-barred. The arbitrator is chosen by the parties or by the representatives of the latter. If the parties fail to agree the arbitrator is appointed by the Minister of Agriculture from a panel drawn up by the Lord Chancellor. The arbitrator thereupon invites the parties to submit a written statement of their cases. The submission must be made

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1/ Decree No. 118/1973 approving the text of the Agrarian Reform and Development Act, 12 January 1973. Boletin Oficial, del Estado No. 30, 3 February 1973 (Title III). Despite the fact that this body was set up under a land reform act, its characteristics are such as to justify including it in this section on administrative bodies.

2/ The Land Reform Law, 7 July 1972.

within 28 days of the appointment of the arbitrator and constitutes an essential element in the procedure since it binds the parties for the entire duration of that procedure and may not be altered unless the arbitrator expressly agrees. At this point the arbitrator satisfies himself that the dispute does come within his jurisdiction and that it concerns agricultural land. Should the jurisdiction be challenged the dispute is referred to the County Court for a ruling.

Up to this point in the proceedings the parties may settle out of court and desist, and may apply for the inclusion of the terms of their settlement in an award (Award by consent of the parties).

If the arbitrator is not a member of the legal profession, he may call in the services of a solicitor in order to clarify points of law, though this does not prevent him seeking a ruling from the County Court where a point of point of law is raised.

The award must be made within 56 days from the date of appointment of the arbitrator. This time-limit may be extended by decision of the Minister of Agriculture. The award, again, must be in writing and published following notification of the parties.

Awards may be appealed to the County Court and the High Court. The County Court provides juridical control over the arbitration process and ascertains and corrects any misconduct of which the arbitrator may have been guilty. By misconduct in this context is defined as "transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, etc.". Misconduct on the part of an arbitrator entails the cancellation of the award by the County Court and, also, the arbitrators' appointment.

The High Court ensures the legality of the award and ascertains errors on points of law. Originally the arbitrator was at liberty to give the reasons for the award but was not requried to do so unless the parties so requested. Under the Tribunal and Inquiries Act, 1958, however, it is now mandatory in certain types of arbitration to give reasons for the award. The reasons are part of the award. The award is binding on the parties and is immediately executory; it is enforceable by the County Court by highly simplified procedures.

Where costs are concerned, the arbitrator has discretionary powers and is not required to order the defeated party to pay these. This harks back to a longstanding rule of English law whereby "costs are not a punishment for the loss of a case but just an inevitable sequel to the result"•

Where the parties disagree over the arbitrator's fees these will be determined by the Registrar of the County Court, subject, however, to appeal to that Court.

Agricultural arbitration has found increasing favour in recent years and constitutes an efficient tool for administering justice expeditiously and efficiently.

In Viet-Nam each province has a Provincial Joint Committee 1/ consisting of a chairman, who is the head of the province, and a representative of the Agricultural Services, who acts as rapporteur, and representatives of land owners and tenants. The committee has, inter alia, jurisdiction for hearing disputes and litigation between owners and tenants, especially as regards breach of contract of lease. In the exercise of these functions the committee takes on the title of Provincial Arbitration Committee and may require the parties to appear before it and call upon any other person whom it considers will be useful in ascertaining the truth. Arbitrations so made by the Committee may be appealed to the civil courts of the territorial jurisdiction concerned. Recourse to the provincial Arbitration Committee is entirely without charge.

2. Agrarian reform bodies

In Afghanistan the Land Reforms Law of 1975 2/ provides for the establishment of a special High Court on land reforms and of lower specialized courts.

The lower specialized courts may either have a fixed venue or be made an itinerant court. They have the right to deal with disputes arising from "land relationships". Such disputes must be referred to them by the Office of Land Reforms.

Article XXIX of the law provides that "if during the handling of a case the lower specialized courts overlooked the consideration of authentic documents on which the decision should have been based, or if the decision of the specialized court is repugnant whith the law or to utter loss to the person or the State, the case shall be handled by the Special High Court".

The decision made by the Special High Court is final and irrevocable.

In Albania, Act No. 676 of 4 March 1949, provides that all disputes due to improper application of agrarian reform are to be settled directly by a Central Commission operating within the Ministry of Agriculture under the chairmanship of the Deputy Minister. This Act unifies and simplifies previous legislation whereby disputes were to be submitted first to the arbitration of the Agrarian reform offices, which operated together with the farmers' committees; thereafter, the case would go, in the first instance as appropriate, ¡to a Commission chaired by the president of the peoples' tribunal of the district, and at the appeal stage, a Commission chaired by a member of the Supreme Court of the Republic.

In Algeria, the Ordinance of 1971 on the Agrarian Revolution 3/ dedicated an entire title to the courts which have jurisdiction for hearing claims arising out of land nationalization measures. In this country the commissions of appeal are bodies of joint jurisdiction of

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1/ Order No. 20 determining the farm tenancy statutes. 4 June 1953 (Arts. 20-26). Công-Báo, Viêt-Nam No. 31. 15 June 1953.

2/ Land Reforms Law of Afghanistan, 23 August 1975, enforceable as from 23 August 1976.

3/ Ordinnance No. 71-73, of 8 November 1971, Title V, Journal Officiel de la République Algérienne No. 97, 30 November 1971.

an ad hoc and provisional nature with powers to hear appeals lodged against orders for the complete or partial nationalization of land holdings and land allocation orders issued by the walis 1/ as part of the practical implementation of the operations for nationalization and allocation of land under the agrarian revolution. These commissions also hear appeals lodged against compensation decisions issued by the relevant services of the Ministry of Financial Affairs. Orders and decisions so appealed against are referred in the first instance to the commissions of appeal of the wilayas 2/ and in the final instance, to the National Commission of Appeal. The mandate of any commission of appeal comes to an end upon completion of the list of cases due to he heard by it. Appeals against nationalization orders issued by the walis filed with the wilaya commission of appeal have the effect of a stay of execution. Appeals made to the National Commission of Appeal have no such effect.

These commissions of appeal act in complete independence vis-à-vis both the administrative authorities at whatever level and the organs and agents appointed to carry through the agrarian revolution.

Each wilaya commission of appeal consists of:

two magistrates, one of whom acts as chairman;

two representatives of the party 3/ and the mass organizations;

two members of the wilaya people's assembly;

one representative of the chief of the National People's Safety s sector;

two representatives of the Treasury, one of them to be a representative of the Department of State Property;

two representatives of the Ministry of Agriculture and Land Reform;

two members of each enlarged people's assembly to be elected among the representatives on the farmer's unions, with a view to examining appeals affecting the municipality within whose territory the assembly in question exercises its powers under the Agrarian Revolution Law.

The wilaya commission of appeal examines, at first instance, all appeals filed with it, on matters within its jurisdiction, by persons indicated in the wali's nationalization order of those who feel they are aggrieved in any way as regards the compensation provided for in the Ordinance introducing the Agrarian Revolution.

The National Commission of Appeal is the last court of appeal for deciding on the orders of the wilaya appeals committees. It may interprete the provisions of the Ordinance and regulations thereunder. For this purpose it issues "interpretation orders".

The National Commission of Appeal consists of:

two magistrates of the Supreme Court, one of whom acts as chairman, the other as rapporteur;

1/ Wali: administrative head of a wilaya.

2/ Wilaya: administrative district.

3/ National Liberation Front.

two representatives of the party and the mass organizations;

four representatives of the farmers' unions;

two representatives of the National Agrarian Revolution Committee;

two representatives of the Ministry of Agriculture and Land Reform;

two representatives of the Treasury.

The appeal procedure before the commissions under the agrarian revolution is regulated in detail by the Decree of 7 June 1972 1/.

Proceedings both at first instance and in appeal are dealt with as expeditely as possible. Gases taken before the wilaya appeals committees and the National Commission of Appeal are free of charge (including postal charges) 2/.

In Bolivia, the administration of justice in agrarian affairs is entrusted to the Rural Boards provided for under the land reform and to agrarian judges 3/. Despite their title the last-mentioned are not magistrates but government servants employed in the National Agrarian Reform Service. This Service comes under the authority of the President of the Republic, who is the highest court of appeal in matters arising out of the implementation of Agrarian Reform.

The Rural Boards have the following terms of reference:

(a) to enforce, within their respective areas, the provisions of the Decree-Law and regulating decrees issued under the conciliation procedure, upon request by the parties or by thermal inspectors, and putting new owners in possession of their land;

(b) to confirm new owners possession and demarcate the land so allocated, in accordance with the relevant decision.

The so-called agrarian judges are required to:

(a) receive claims regarding land at the litigation stage, and, in the event of a rehearing, take cognizance of the proceedings of the rural boards against which no appeal has been filed;

(b) take cognizance of such claims and settle them in the first instance;

(c) take cognizance, in the event of appeal, of the reports of the judges in water matters (jueces de aguas) and, in the first instance of cases to be determined by a special law.

1/ Decree No. 72-116 regulating procedures of appeal to the Appeals Commission pursuant to the Agrarian Revolution. Journal Officiel de la République algérienne No. 51, 27 June 1972.

2/ Ibidem.

3/ See Decree Law No. 03464 providing for the implementation of land reform.

In China, one notes the provision in the Agrarian Reform Law, approved on 28 June 1950 at the eighth session of the Council of the Central Peoples' Government, to the effect that (section 32): "there shall be set up a people's tribunal in each hsiang.1/ "The said tribunal shall sit in each locality in order to try and punish rebellious elements guilty of offences which the masses of the people demand shall be punished as well as any person opposing the implementation of the Agrarian Reform Law or violating any of its provisions ...".

The judges are officials of the hsianq government. The part of the public prosecutor is played by the peasants themselves, who make the charges. For practical purposes, the district people's tribunal may set up subsidiary tribunals, endowed with the same degree of authority, at the chow 2/ level.

No appeal lies against the ruling of the tribunal.

For the purpose of dividing the rural population into categories - such division constituting a phase preliminary to that of implementing land reform - jurisdiction is vested in ad hoc committees appointed by the hsiang government and consisting of representatives of peasants' associations. Procedure is similar to that of the people's tribunal. Appeal may be made against the classification made by the people's tribunal or the peasants' association.

In Costa Rica 3/ the chief problem confronting the legislator was that of the squatters and others with no ownership title to the land they occupied. A solution was sought in promoting contracts of sale between these people and the actual owners. The National Bank has been vested with what amounts to court jurisdiction, with powers to conduct enquiries and to order the parties to appear before it in an attempt to arrive at an amicable settlement.

Failing agreement on the value of the land as assessed by the Bank, a fresh valuation is made, this time by the Direct Taxation Service. Thereafter appeal is made to the Assessment Tribunal, which is an administrative law body linked to this Service.

Egypt has a highly elaborate and decentralized system of bodies vested with jurisdiction, in addition to courts as such 4/. The former deal, as voluntary juri sdiction, with matters affecting the ownership of holdings and the performance of lease contracts. The latter have compulsory jurisdiction for hearing litigation concerning injunctions and expropriation.

1/ Hsiang. Administrative area or district.

2/ Chow: Subdivision of the hsiang.

3/ Act No. 2825. The Land and Land Settlement Act, 14 October 1961.

4/ See under "Ordinary Courts", page 71 .

Judicial committees 1/ have been appointed to ease the workload, and to take the place, of the ordinary courts in matters such as the examination and proof of title to land affected by requisition measures for agrarian reform purposes. They operate under the chairmanship of a counsel of the national courts, appointed by the Minister of Justice. Their membership consists of a technical officer of the Council of State, i.e. a magistrate from the Administration, and three other officers.

The Supreme Agrarian Reform Committee takes into account the reports sent up to it by these judicial committees in order to reach a final decision, which is unappealable and settles any litigation concerning the requisition of land.

Committees dealing with matters arising out of the extension of contracts of lease for agricultural land 2/ have, as their name indicates, a specific jurisdiction. These are set up in each police district with membership consisting of a substitute judge from the Public Prosecutor's Office - a magistrate of the ordinary judiciary - (chairman) of the mâmour 3/ of the police district, one farmer and two public figures appointed by the Government. The decisions of these committees are, in fact, executory immediately and unappealable. They are provisional, however, in the sense that there is no bar to resort being had to other courts vested with jurisdiction for settling the matter in dispute.

Each village has its "committee for agricultural disputes"4/. This is chaired by the agricultural overseer of the farmers' cooperative, and consists of a member of the Arab Socialist Union of the village concerned, a member of the board of governors of the farmers' ocooperative and the village tax collector - all appointed by the Governor of the province.

These committees meet once a week and are empowered to settle disputes arising out of landlord and tenant relations. Their decisions may be appealed to a commission, presided over by a judge, to which these matters are delegated by the Minister of Justice and consisting of a member of the Public Prosecutions Office, two officials and two delegates of the Arab Socialist Union, and representatives principally of the landowners and tenants in the area of the committees' jurisdiction. No appeal for annulment or stay of execution lies from the decisions of the committees or those of the Commission of Appeal.

The bodies described in what precedes are recognized as possessing special jurisdiction with a view to easing the workload of the ordinary courts. The system has its advantages in that its high degree of decentralization brings justice out to the people needing recourse to it and provides them with excellent guarantees through the presence on these committees, etc., of magistrates reporting to the Ministry of Justice.

1/ Act No. 225, 7 May 1953, to amend Decree-Law No. 178 on Land Reform, of 9 September 1952.

2/ Act No. 476 of 1 October 1953, Diario Oficial No. 79.

3/ Mâmour: Commissioner of police (usually a title of a person holding a degree in law).

4/ Act No. 54, 8 September 1966, Diario Oficial No. 206.

However, the personal relations and ties within villages between certain classes of owners ad the members of these Committees have apparently undermined the impartiality in some cases of the decisions taken and, as a result, have contributed to creating among the public an attitude of defiance toward these committees.

In Ethiopia, prior to the land reform introduced by Proclamation No.3 of 4 March 1975, which provided for the transfer to collective ownership by the Nation of all rural lands l/, any disputes involving rural land came within the jurisdiction of the ordinary courts. This arrangement ceased under the terms of Art. 28 of the 1975 Proclamation.

Since then the competent courts have been the Woreda 2/ judicial tribunals (first instance), and the Awraja 3/ tribunals in appeal. The latter were instituted under Art. 11 of the same Proclamation, and are a direct emanation of the Woreda and Awraja peasant associations.

The Woreda peasant association is composed of delegates of the farmers at the area level. It is required to provide for a coordination and administration and to establish a judicial tribunal.

The Woreda judicial tribunal has twofold powers. It decides appeals from decisions of judicial tribunals at the area level. It decides at first instance in land disputes.

The Awraja judicial tribunal is established by the Awraja peasant association, itself composed by delegates from the Woreda associations. It hears land disputes decided at first instance by the Woreda judicial tribunal. Its decisions are final.

These tribunals operate under the chairmanship of an area Land Reform Officer, with the assistance of lawyers.

In Guatemala, the President of the Republic, as supreme authority and executive of the agrarian reform, is the final instance of appeal for questions arising out of the implementation of the Land Reform Act 4/. These questions are essentially disputes occasioned by expropriation. Litigation proceeds first before the local agrarian committees, next before the Departmental Agrarian Commission and, finally, before the National Agrarian Council.

1/ Negarit Gazeta No. 26, 29 April 1975.

2/ Administrative County.

3/ Administrative district.

4/ Decree No. 900, Land Reform Act, 17 June 1952, El Guatemalteco No. 86, 17 June 1952.

Local committees consist of five numbers one of whom is appointed by the Executive and the rest by the municipal authorities, and the farmers' organizations. Their decisions may be appealed, successively, to the two higher bodies just mentioned.

Departmental commissions are similarly composed of five members, under the chairmanship of a representative of the National Agrarian Questions Department. Their decisions may be appealed.

Lastly, the National Council for Agrarian Questions has nine members under the chairmanship of the head of the National Agrarian Questions Department. Four members are government officials and four are representatives of the farmers, though all are appointed by the President of the Republic.

The Agrarian Statute of 1956 1/ assigned the main jurisdictional powers to the Agrarian Affairs Directorate as regards violation of the Act and to the Lands Section as regards litigation on other matters. Court decisions in appeals against acts of government being final, no further appeal for their annulment is possible.

Under the new rules introduced by the Agrarian Transformation Act in force since 1962 2/ a revised judicial system has been brought into being. Thus, in all violations of the decisions of the National Agrarian Transformation Institute - not expressly provided for in the Act - the National Agrarian Transformation Council (this is the governing body of the Institute) is empowered to impose fines, though the offender must be given a hearing first. In all cases expressly provided for in the Act, jurisdiction is assigned to the head of the Lands Section.

In Honduras, under the Agrarian Reform Act 3/ the National Agrarian Institute (INA) has a Legal Department which has jurisdiction for dealing by summary process, and in a single hearing, with claims and other matters relating to ownership rights and rights of possession over units allocated in the newly set up farming population centres, and with any matters arising in connection with the administrative functioning of these centres and brought before it by the parties concerned either personally or with the assistance of agrarian lawyers. The body made up by these lawyers was created within INA to defend the interests of persons requesting the

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1/ Agrarian Statutes, 25 February 1956. El Guatemalteco No. 73, 27 February 1956.

2/ Agrarian Transformation Act, 17 October 1962, El Guatemalteco No. 97, 19 October 1962.

3/ Decree of 1962, 29 September 1962, La Gaceta No. 17.843, 5 December 1962.

adjudication of land and to counsel them in their reports or complaints against employees and officials who have contravened the Act (Sections 199 to 203). The agrarian lawyers mentioned are government agents whose appointment is made, or terminated, by INA. They come under the authority of the Chief Agrarian Legal Officer, who is required to submit a report on the year's activities to the Director of the National Agrarian Institute.

In Iraq the Agrarian Reform Act No. 117, of 1970 1/ strengthened the judicial and extra-judicial attributions of the land reform agencies. The earlier Land Reform Act (No. 30, of 30 September 1958) had in effect replaced the special tribunals (created by Act No. 29 of 1938) for settling agrarian disputes with judicial commissions. The latter were set up by Order of the Minister of Justice and consisted of two magistrates (the senior acted as president), the director of agrarian services, a delegate of the Treasury, and a senior Land Reform delegate. Their task was to conduct enquiries, in the event of litigation, on statements made and on agricultural debts, to determine the income from expropriated land and pronounce on claims against decisions made by the expropriation, taxation and land distribution commissions. These judicial commissions were empowered to take over from the courts and arbitration commissions cases of litigation over land in the possession of persons affected by the 1958 Act, whenever in their view the public interest required them to do so (Sections 21 and 22).

In addition to the foregoing, in each Qadha or Nahiga 2/ having a justice of the peace, there had been set up commissions whose task was to judge agricultural disputes. These bodies were created by Order of the Ministry of Justice, and included one delegate of the Supreme Agrarian Reform Committee, nominated by the Minister of Agriculture, and one delegate of the Minister of the Interior. They settled disputes arising out of agricultural relations. Their decisions were provisional and did not deal with the merits of the dispute. They were administratively executable but. there was no bar to the parties appealing against these decisions to the ordinary courts.

Since then, under the 1970 Agrarian Reform Act, which reappealed the 1958 Act, all litigation relating to the implementation of agrarian reform is brought before certain commissions appointed by the Minister of Agrarian Reform. The decisions of these commissions are final only when approved by the Supreme Agricultural Council 3/. The rulings of the Council on disputes regarding ownership rights cannot be appealed. However, the Council has powers to set up a sort of court of cassation, consisting of not less than three members, one of whom must be a member of the judiciary and nominated by the Minister of Justice.

In Iran, the Land Reform Act of 9 January 1962 provides (Sec.8) that the Land Reform Council (consisting of the Minister of Agriculture, who is chairman, the Director of the Land Reform Institute and four officials of the Ministry of Agriculture) may fine landholders who refuse to submit to

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1/ The Weekly Gazette of the Republic of Iraq, No. 14, 17 April 1971.

2/ Qadha; Nahiga: administrative districts.

3/ Appointed by Law 117 of 1970. The Weekly Gazette of Iraq, No. 13, 31 March 1971.

to the formalities of declarations regarding ownership rights. There is yet another commission, provided for in Sec. 13, consisting of the Prime Minister, the Minister of Agriculture, the Treasury and Justice and of a number of agricultural experts appointed by the government. This Commission is responsible for examining objections filed by the landholders' representatives against land distribution operations. Its decisions are not subject to appeal. Section 33 of the Act provides that agricultural labour disputes between landholders and peasants must be submitted to a Disputes Settlement Board to be found in each district and consisting of the district commissioner, the judge of the district court and a representative of the Minister of Agriculture. The Board's decisions are final and are enforceable by the ordinary courts.

Under the Federal Land Reform Act of 1971 1/. Mexico set up joint agrarian commissions, which are land reform agencies with administrative and juridical powers. Their chief task is to settle "disputes over agrarian property and rights" (Sec. 12.1(iv)).

These joint commissions consist of a chairman, three members and a secretary. The office of the chairman is held by a delegate of the Department of Agrarian Affairs and Land Settlement in the territorial jurisdiction (State or Federal Territory) concerned.

The first member is appointed by the Chief of the Department of Agrarian Affairs and Land Settlement, the second member and the Secretary by the local government, and the third member, representing the ejidatarios 2/ and comuneros 3/, by the President of the Republic from a list submitted by the league of farming communities and peasants' trade unions of the ejido or comune in question.

The members of these joint commissions, with the exception of the "third" member just described, are required to possess the qualifications necessary for being members of the Agrarian Advisory Corps as regards uprightness of character, occupation (which must be related to agriculture) and experience. The rules of procedure for the respective commissions are laid-down by the governing body of the ejido or comune following consultation with the Department of Agrarian Affairs and Land Settlement.

The main terms of reference of these joint agrarian commissions are to deal with nullity claims in respect of divisions of ejido and comune of acts and documents in conflict with the agrarian laws. The Commissions may likewise give decisions, which may not be appealed,on the suspension of the exercice of agrarian rights. - Decisions on the forfeiture of such rights are submitted to the President of the Republic, whose ruling is final. To complete this list, the commissions deal with disputes arising within the ejidos and comunes, following attempts at conciliation on the part of the commissions for agrarian matters. Decisions taken by the commissions in these cases are irrevocable.

1/ Federal Land Reforms Act as amended and codified. Published in Diario Oficial No. 41, 16 April 1971.

2/ Ejido: "that complex of land, forests and water and, generally all natural resources making up the assets of a nucleus of rural population (Preamble to the Federal and Reform Act, 16 March 1971. Diario Oficial No. 41, 16 April 1971). Ejidatario: beneficiary of ejido land.

3/ Comunidad: group of peasants which de iure or de facto engage effectively in farming. Comunero: member of such a group.

The Department of Agrarian Affairs and Land Settlement, ex officio or upon petition by the parties, deals with disputes over the merits or points of law affecting limits of communal land. It delegates the hearing of these cases to the agrarian agency of the district concerned. The rulings given may be appealed to the Supreme Court, whose own decisions are communicated, for enforcement, to the local court. The procedure followed is that determined by the Agrarian Code, supplemented, where necessary by the provisions of the Federal Code of Civil procedure.

Mention may also be made of the fact that in Mexico, too, as in other countries of the region, there are agrarian lawyers (procuradores agrarios) 1/ government officials with the specific task of providing legal aid without charge to farmers in their dealings with the land reform agencies, especially where judicial matters are involved. In these last-mentioned, they act as lawyers in the fullest sense of the word.

IN Nepal 2/, the preamble to the 1956 Act on special courts (as amended in 1961) states that "it is desirable to set up special courts to deal with certain matters".

In the initial phase (1964-1968) of the implementation of the 1964 Agrarian Act, which ushered in comprehensive land reform, a number of tribunals were set up whose terms of reference extended to questions concerning rights to land affected by the land reform itself. Chief among such questions were:

- litigation concerning rights over land;
- acquisition or termination of rights over land;
- farm leases;
- transactions concerning debts contracted by farmers and farm werkers.

In specified cases of violation of the agrarian laws, the Government itself may initiate proceedings. The tribunals described ceased to exist in 1968, though they can be revivified where need be.

The procedure is of the summary kind, allowing the judge wide powers of discretion in ordering on-the-spot enquiries without notice. The tribunals may conduct hearings at whatever place they deem appropriate. No appeal lies from their rulings. Appeal may be made to the Supreme Court only in respect of alleged violation of the Constitution.

The "special judges" of the agrarian tribunals are government officials who must hold a licenciate degree in law and have reached a certain grade in the civil service.

1/ Instituted by the Regulations of 3 August 1954, Diario Oficial, 3 August 1954.

2/ Entry based on the paper on "Agrarian Tribunals in Nepal", by M.A. Zaman, FAO expert attached to the land department of the Nepalese Government.

Subsequent to the suspension of the special tribunal, the land reform officials and agrarian administrators have retained quasi-judicial powers for certain minor matters. Their decisions may be appealed to the ordinary courts.

In Tunisia, Act No. 58-63, of 11 June 1958, introducing land reform in the lower Medherdha Valley (subsequently amended by Act No, 60-6 of 1960) provides that compensation for expropriation is to be determined by a committee chaired by the Director-General for the Development of the Medjerdha Valley, The committee has as members the Secretary of State for the Treasury, a representative of the governor of the circonscription of the territorial jurisdiction in which the landed property in question falls and a representative of the National Union of Tunisian Farmers (Section 13).

Where land reform matters are concerned, there is a committee that pronounces on claims lodged by landowners. This is chaired by the aforementioned Director-General for the Development of the Medjerdha Valley, and consists of a magistrate appointed by the Secretariat of State for Justice, representatives of the Secretary of State for Agriculture, of the Secretary of State for Commerce and Industry, and of the Secretary of State for Public Works and Housing, together with three representatives of landowners nominated by the regional authorities. The decision and the relevant plan are to be approved by Order of the Secretary of State for Agriculture (Sections 16 and 17).

Coming, now, to expropriations effected as part of land reform in public irrigation areas (Act No. 63-18, of 27 May 1963), one may note that compensation is assessed by a committee chaired by a representative of the Secretary of State for Planning and the Treasury, and consisting of two representatives of the Secretary of State for Agriculture and one representative of the National Union of Tunisian Farmers (Section 14).

The Act of 4 June 1964 takes this approach a step further, by establishing the Collective Lands System. It assigns to several specialized bodies powers to arbitrate and to rule in disputes arising out of the implementation of the collective land holding system. Accordingly, the conseil de gestion (an election body instituted by the Act (Section 6) in order to secure the farming of collective land until such time as it is assigned to cooperatives) is mandatorily required to hear disputes concerning the use of collective land arising between individuals of one and the same community or between such a community and one of its members. The decision of the conseil de gestion, however, are executory only upon approval by the body representing the State, namely the Regional Supervisory Council (Section 9).

Disputes arising between two communities or between communities and outsiders over the extent of collective land must be submitted to arbitration by the Regional Supervisory Council.

Disputes arising between communities belonging to different administrative regions over the extent of land come within the jurisdiction of an interregional commission, consisting of two or more regional supervisory councils under the chairmanship of a representative of the Secretariat of State for Agriculture.

The decisions of the regional supervisory councils and of the interregional committees may be appealed to the Secretariat of State for Agriculture.

The final decisions of the bodies here named become executory, upon approval by the Secretariat of State for Agriculture, in the same way as final (i.e. last instance) sentences pronounced by the ordinary courts (Section 10).

Where objections to entries in the register are filed by a community or supervisory authority on behalf of a group, the Land Tribunal is required to refer the parties to arbitration, as described earlier (Section 11).

Side by side with the bodies described there is the Land Tribunal (Tribunal Inmobiliario), an institution of long date with the main task of seething claims for entry in the registry. The president of this tribunal rules in respect of difficulties emerging after the determination of ownership titles.

In Venezuela the Agrarian Reform Act of 1960 1/ (Section 141) provides that the Executive may, where litigation or dispute over agricultural leases affect, or are likely to affect superior community interests, intervene as arbiter or conciliator, and that the ruling given in these cases must be adhered to.

Mention may be made of the procuraduria Agraria instituted in 1971 to provide aid for peasants in land litigation matters before the various courts.

It may be noted that the original agrarian reform bill called for the institution of agrarian courts.

As the time of writing, agrarian reform bills are under study calling for, inter alia, an agrarian judicial system along the lines of that in Peru. At the first instance there will be agrarian courts and, in appeal, higher agrarian tribunals. Legal aid is also provided for. 2/

3. The Ordinary Courts

In Argentina, agrarian disputes other than those regarding lease contracts, come within the jurisdiction of the ordinary courts 3/ (magistrates' courts, courts of first instance, appeals chambers, and the Supreme Court). The procedure will be civil, criminal, commercial, or other, depending on the case.

In Brazil, the 1964 Land Statutes Act 4/ provides that the jurisdiction in matters of expropriation lies with the court of the place where the property in question is situated (Section 19(4)). Decision determining the price of a holding at a higher level than the amount offered by the expropriation agency are mandatorily and ex officio appealed to the Federal Court of Appeal (Section 19 (5)). Disputes over leases between landowner and tenant follow the procedure prescribed by the Code of Civil procedure (Article 107 (l)), while those concerning employer/employee relations come within the jurisdiction of the labour tribunals and follow labour law procedures.

1/ Agrarian Reform Act, 5 March 1960, Gaceta Oficial No. 611, Extraordinary, 19 March 1960.

2/ J.R. Acosta Cazaubón, Manual de Derecho Agrario. Universidad Central de Venezuela, Maracay, 1967; and Necesidad de una Jurisdicción Agraria en Venezuela, Giuffré, Milán, 1969.

3/ National Justice Organization Act, 29 September 1950.

4/ Act No. 4504 relative with Law Statute. 30 November 1964

It is worth noting, however, that a reform of tine judicial system based on the work of a special commission appointed by the Minister of Agriculture in 1967, is currently under consideration. It calls for the setting up of agrarian courts thus: Higher Agrarian Tribunal: regional agrarian tribunals and conciliation and judgement boards (juntas de conciliação e julgamento). These special courts will, it is intended, have jurisdiction embracing all legal relationships governed by agrarian legislation, including the fiscal system, labour relations, agricultural credit, all disputes relating to the implementation of land reform and, in general, all matters having to do with agriculture now covered by the Civil Code.

In Colombia, under the terms of the Agrarian Reform Act 1/, disputes arising out of land reform in the strict sense are dealt with by the ordinary courts, whether of the judiciary or administrative, in both first instance and in appeal. The parties may appeal to the Council of State against expropriation orders issued by the Colombian Land Reform Institute (INCORA) (Section 23). Appeals so filed against INCORA decisions, in particular those affecting the adjudication of baldío (unclaimed) land, may, if either party so elects, be pursued either by first exhausting their normal administrative remedies or by instituting proceedings before the appropriate court (Section 42). INCORA decisions relative to the classification of land as part of the expropriation procedure may be appealed by the owners, who may seek redress from the appropriate administrative tribunal of appeal. The latter is empowered to uphold or set aside the classifications so contested. There has also been instituted the office of agrarian attorney (procurador agrario). The officials concerned are delegates of the Attorney General (procurador General de la Nación), by whom they are appointed in conformity with the rules of political parity (i.e. between the Conservative and Liberal parties) for two-year terms. They must possess the qualifications required of officials of the higher courts; their terms of reference are as follows:

(a) to act for the Government Attorney in judicial, administrative and police proceedings arising out of the agricultural context, where under the laws in force is required the intervention of the Public Prosecutor;

(b) to request the Colombian Land Reform Institute, Or any bodies to which it has delegated any of its functions, to initiate action for the recovery of public domain land occupied by squatters, for the reversion of baldio land and for rulings concerning the extinction of ownership rights within the meaning of Sections 6 and 8 of Act 200 of 1936 on the land tenure system 2/; also, to represent the nation in administrative, judicial or police proceedings to which such action give rise;

(c) to submit to INCORA requests for the examination and allocation of land parcels or for the concentration of holdings wherever necessary and to represent the nation as agents of the Government Attorney in expropriation cases brought before the courts;

1/ Art. No. 135 on social agrarian reform, 13 December 1961, as supplemented and otherwise amended by Act No. 1 of 1968, 26 January 1968.

2/ This is the Land Tenure Act (No. 200 of 1936), published in Diario Oficial, 26 January 1937.

(d) to intervene on behalf of the Government Attorney in disputes arising between those claiming to occupy baldío land and those claiming ownership title to such land. The purpose here is to provide support in the defence of the legitimate interests of the settlers and to safeguard the rights of the nation;

(e) to ensure that adjudications, endowments, sales and leases of land made by INCORA conform to the laws and regulations in force and to its own constitution;

(f) to report to the INCORA Board, the Government and the Social Agrarian Council any irregularities or shortcomings in the implementation of the Act.

The action taken by the agrarian attorneys under (a), (b), the second part of (c), and (d), above, proceeds ex ufficio, by order of the Attorney General or at the request of INCORA whenever these officials or INCORA are of the view that for specific proceedings it is apropriate that the officials should replace the ordinary officials of the Government Attorney's office.

In Chile, parallel to the special courts for agrarian matters 1/, the ordinary courts may hear disputes arising within implementation of land reform. Thus, in cases of expropriation of estates over 80 ha in size or abandoned or badly farmed, the Land Reform Corporation is required to pay that portion of the compensation, in cash, to which the person expropriated is entitled in the presence of the judge responsible for dealing with civil cases involving large sums (juez de letras de mayor cuantía en lo civil).

It is likewise the juez de letras de mayor cuantía en lo civil that may, upon a plea by the owner, declare an expropriation order lapsed, where the statutory payment has not been made within the prescribed time limit (Section 39).

In addition, there is the native persons' attorney (abogado defensor de indígenas), who is required to conduct cases before the indian court (juzgado de letras de indios) where the question is one of deed of possession and payment of compensation for land subject to expropriation and belonging to Indian communities. The judges (jueces de letras de indios) have as their principal task that of apportioning compensation among the members of the community.

Ecuador is peculiar in that it has discontinued the system of special agrarian courts instituted by the Land Reform and Land Settlement Act issued under decree No. 1480, July 1964. There were agrarian tribunals and district land courts, together with a specialized chamber (Fourth Chamber) of the Supreme Court. Following a period during which agrarian litigation was dealt with by the Executive 2/, the new Agrarian Reform Act of 1973 3/ provides that disputes concerning farm leases are to be settled by the ordinary courts.

1/ Act No. 16.640 on the Agrarian Reform Act, 16 July 1967.

2/ Agrarian procedure Act No. 918, 21 June 1971, Registro Oficial No. 253, 25 June 1971, repealed in part by the Agrarian Reform Act of 1973.

3/ Agrarian Reform Act, 9 October 1973. Registro Oficial No. 410, 15 October 1973.

It will be of interest, however, to analyse briefly the Agrarian Procedures Act, now largely repealed. Under it, the administration of agrarian justice in matters arising out of, or related to land reform and land settlement, came within the jurisdiction of the Ministry of Production, the executive Director of IERAC 1/ and the district chiefs.

The executive Director of IERAC had original jurisdiction for hearing at the national level, litigation relative, in particular, to the adjudication of land forming part of IERAC assets and to the adjudication to certain owners of land. He was empowered to delegate, by order, his jurisdiction to district chiefs or to other officials. These officials were required to possess the same qualifications as those required for a provincial judge. These were aided by a secretary who had to be a practising lawyer or a licenciado in law, or hold a diplom of a recognized law school. Appeals would be referred to the Minister, who gave his ruling with the help of a secretary-rapporteur.

Nowadays, under the terms of the Land Reform Act of 1973, disputes arising out of claims relating to contacts for sharecropping, lease of farm holdings, lease for the sowing of crops and similar traditional contracts, except for those relating to appropriation, entered into prior to the promulgation of the Act do not come within the jurisdiction of IERAC or that of the Ministry of Agriculture. They are settled in the ordinary courts by verbal, summary procedure (sixth transitional provision).

Disputes affecting the allocation of land must be brought before the Regional Appeals Committees set up by the Agrarian Reform Act and vested with powers defined in the General Regulations for the implementation of that Act 2/. The member of these Committees are appointed by the President of the Republic for a term of four years, renewable, and must have a doctorate in law.

The terms of reference of a Regional Appeals Committee include the examination at the second (and final) resort, of cases sent up to it by either party in appeal or, by the inferior judge, for review; call, de oficio, for such evidence as is strictly essential for an adequate understanding of the case.

Rulings of these Committees are executory and may not be appealed whether administratively or judicially.

1/ Agrarian Reform and Land Settlement Institute of Ecuador.

2/ General Regulations for the enforcement of the Agrarian Reform Act, 12 September 1974. Registro Oficial No. 642, 19 September 1974.

The courts instituted in Egypt to settle matters arising out of the implementation of the Agrarian Act 1/ are presided over by a vice-chairman of court and include a court judge, a member of the legal department of the Agrarian Act Executive Committee and two civil servants. All members are appointed by order of the Minister of Justice. These courts are peculiar in that they are vested not only with normal civil jurisdiction but also with criminal jurisdiction empowering them to impose even prison sentences. The Code of Civil Procedure is followed in civil actions, which may be instituted at no charge by any person or by the Government Attorney, while the Code of Criminal Procedure is applied in criminal Procedures, which may be instituted by the Government Attorney only. No appeal lies from the rulings of these courts whether in civil or criminal matters.

In Jordan, the Agricultural Code, of 23 April 1973 2/ this is an essential technical enactment), provides for appeal to the courts of first instance against decisions taken by the compensation committees set up by the Minister of Agriculture and responsible for evaluating compensation payable to owners of materials and means of transport requisitioned in the course of pest control operations.

The appeals procedure involves no charge to the appellant. The ruling of the court in these cases is final.

In Paraguay, under the terms of the 1963 Act 3/ to bring in the Agrarian Statutes, arbitration duties are assigned to the Rural Welfare Institute in disputes concerning the eviction of occupiers in peaceful and bona fide possession of private property. All other matters come under the jurisdiction of the ordinary courts. Thus the civil judges of final instance have jurisdiction to deal inter alia with disputes concerning the assessment of the price of land and of improvements made there by the owners, with the enforcement of expropriation decrees, and with conflicts arising out of the division among heirs when this may lead to fragmentation of the land. No reference is made to appeals. The provisions of the Code of Civil and Commercial Procedure apply to agrarian litigation.

In Spain, the main provisions on the administration of agrarian justice are to be found in the land tenancy legislation 4/. These provide that the ordinary courts have jurisdiction to interpret and enforce the laws and regulations governing rural leases. Depending on the annual rent involved, jurisdiction at first instance and in appeal is vested, respectively, in the municipal or district courts (with appeal to the court of first

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1/ Act No. 494, 17 October 1953.

2/ Diario Oficial No. 2419, 16 May 1973.

3/ Act No. 854 establishing the Agrarian Statutes, 29 March 1963. Gaceta Oficial No. 32, 29 March 1963.

4/ Decree No. 745/1959 approving the Regulations for the enforcement of rural lease legislation, 29 April 1959. Boletín Oficial del Estado, No. 109, 7 May 1959.

instance) and in the courts of first instance (with appeal to the regional courts or audiencias territoriales). The decisions of the courts of first instance in appeals against those of the municipal or district courts are final. Appeals against the decisions of the audiencias territoriales on appeals against the rulings of the courts of first instance are limited to points of law and lie to the Social Affairs Chamber of the Supreme Court. The procedure followed is that prescribed by the Civil Proceedings Act, with certain modifications, in particular as regards the taking of evidence and time limits. Oral hearings are the rule and court costs are kept low.

There is a further interesting provision in the Agrarian Reform and Development Act 1/, which entered into force recently. This assigns to the Social Affairs Chamber of the Supreme Court the review of resolutions issued by the Minister of Agriculture upon appeal against orders of the Land Reform and Land Settlement Institute as regards the determination of fair price, payment and taking possession of holdings affected by expropriation measures.

Again, disputes concerning the implementation of land reform especially as regards the consolidation of holdings, fair price for property affected by expropriation, and compulsory exchange of land came within the jurisdiction of the court of first instance of the area concerned 2/.

The Act on measures preliminary to land reform, adopted in Turkey in 1972 3/ contains a section entitled "Jurisdiction and Procedure", which provides that disputes arising out of the enforcement of the Agrarian Reform Act are to be brought before the courts and follow the normal judicial procedure.

In Uruguay 4/, following on a period during which emergency laws were Promulgated and the trend prevailed whereby agrarian litigation was assigned to a number of juries, including a national jury, the decision was finally made to entrust this litigation to the ordinary courts. The juries in question were ad hoc bodies whose duration was set by law, with a membership mainly of civil servants who were not career magistrates.

The 1954 Land Tenancy Act 5/ introduced a number of provisions regarding jurisdiction and judicial procedure in land tenancy matters. As a general rule original jurisdiction belongs to either the justice of the peace or the civil judge of first instance (juez de letras de brimera instancia), of the territorial department concerned, depending on the importance of the case. The first phase of the proceedings entails a mandatory hearing to attempt conciliation. Appeal lies from the court of first instance to the next higher court.

In assigning agrarian disputes to the ordinary courts the legislator has sought to streamline procedures, insisting, further, that the hearing shall be oral, imposing mandatory time limits and abolishing appeal beyond the courts of second instance.

1/ Decree No. 118/1973 approving the text of the Agrarian Reform and Development Act. 12 January 1973 (Art. 114).

2/ Ibid. (Arts. 233 and 245).

3/ Act No. 1617 to issue preliminary provisions for land reform. 26 July 1972, Resmê Gazete No. 14257, 26 July 1972.

4/ See also A. Gelsi Bidard "Justicia Agraria en el Uruguay". Paper read at the Jornada universitaria sobre Justicia Agraria, La Plata (Argentina), 9 September 1961.

5/ Act to provide for a system of rural leases, together with rules governing contracts, terms, prices, eviction rulings and for related purposes, 27 April 1954. Diario Oficial, No. 14.224, 15 May 1954.

In Yugoslavia, the Agricultural Land Expropriation Act, of 19 October 1959, reassigns to the district courts questions relating to compensation payable to former owners of land by beneficiaries under land consolidation schemes (Section 66 (3)). The decision of the court of first instance - the district court - may be appealed to the area court (Section 66 (5)).

It is interesting to note that orders relative to consolidation proposals are issued by the Council of the district peoples' committee that has jurisdiction in agricultural matters. From these appeals lies to the State Administrative Service.

4. Special courts

In Chile,the Land Reform Act of 1967 replaces the special agrarian expropriation courts, which were first set up by the 1962 Land Reform Act, with an agrarian judicial system consisting of provincial agrarian courts and agrarian appeal courts. The former are courts of first instance, and have been set up one to each province. They consist of a judge responsible for dealing with civil oases involving large sums (juez de letras de mayor cuantía en lo civil), who presides, and two persons professionally engaged in the agricultural sector, who act in an advisory capacity, together with a secretary-rapporteur. The judge in question is appointed by the president of the court of appeal for the area from among the judges of the civil court of the province.

Where the volume of work warrants, the President of the Republic may appoint a judge responsible for dealing with civil cases involving large sums (juez de letras de mayor cuantía) as president of the provincial agrarian court. Persons professionally engaged in the agricultural sector are appointed by the President of the Republic, one from among those serving in the public administration and state enterprises, and the other, upon nomination from a list of three persons, by the governing board of the trade of professional association of the province. The secretary-rapporteur is appointed by the President of the Republic upon nomination, from a list of three persons, by the court of appeal in question among lawyers in the latters' territorial jurisdiction.

provincial agrarian courts have both original jurisdiction to hear cases concerning expropriation, compensation, taking possession of land subject to expropriation, reservation rights, obligations placed upon allottees of land and, in general, all disputes arising in connection with land reform. These courts give their ruling, from which no appeal lies, on requests filed with the Land Reform Corporation concerning land forming part of the succession of a beneficiary which the Corporation is to partition. Procedure is by oral hearing, though the parties may submit written pleadings. Interlocutory motions must be introduced together with the main plea, and do not have suspensive effect. A time limit of five days is allowed for appeal to the higher court.

Agrarian courts of appeal consist of two judges of the Court of Appeal and one person professionally engaged in the agricultural sector, assisted by a secretary-rapporteur. The two judges are appointed by the President of the Republic upon nomination in a list of three persons by the Supreme Court from among the judges of the Court of Appeal of the territorial jurisdiction concerned. Where the volume of cases requires,

these judges may be given express mandate to devote their entire activity to the agrarian court of appeal. The person professionally engaged in the agricultural sector is likewise appointed by the President of the Republic upon nomination by the governing council of the trade or professional association concerned. The duties of secretary-rapporteur are undertaken by the secretary to the court of appeal for the area where the agrarian court of appeal is located.

The courts here referred to have appellate jurisdiction over rulings of the provincial agrarian courts.

The members of the provincial and agrarian appeal courts, whether magistrates or persons professionally engaged in the agricultural sector, are appointed for a two-year term. Matters pertaining to the good order, administration and budget of these courts are under the supervision of the Supreme Court, as provided for in the Constitution of the State.

The fact that the trade and professional associations have a part to play in constituting and in operating these agrarian courts is a feature peculiar to Chilean legislation. The purpose is to assign a function to economic-social groups in the administration of justice.

In Cuba, the Agrarian Reform Act of 17 May 1959 provided for the creation of land tribunals to hear proceedings arising out of its imple mentation and other matters connected with agricultural contract and landed property in general. The National Land Reform Institute (INRA) is-charged with drafting a basic Bill governing these tribunals (Section 54). Within the remaining of Act No. 588 of 7 October 1959, the ordinary courts are to retain jurisdiction until such time as the land tribunals are set up. Appeals against expert assessments of compensation for expropriation lie to the Court of Constitutional and Social Guarantees. whose decisions are final.

In France, the joint agricultural tenancy tripunals 1/ set up within each tribunal d'instance now replace the various special courts formerly existing 2/. They constitute special courts which have original jurisdiction to hear under litigation procedure disputes between landlord and tenant on matters relating to the enforcement of the land tenancy regulations. Appeal lies from these tribunals to the ordinary court of appeal for litigation involving sums above a certain figure determined by law and revised from time to time.

A tribunal consists of a president elected from among the judges of the tribunaux d'instance, and four advisors, two representing landlords and two the tenants, and elected for five-year term. It follows a procedure which is basically that of the Code of Civil procedure but is more expeditious and simpler and does not call for the appearance of an attorney. Emphasis is placed on conciliation, which the judge is mandatorily required to attempt at the start of proceedings. The judge, too, has wide powers as examining magistrate and for the taking of evidence.

1/ See Decree 58-1293, 12 December 1952.

2/ Joint conciliation and arbitration commissions for rural lease matters, instituted by the Act of 4 September 1943, and converted into joint tribunals by the Act of 13 April 1966, as amended by the Act of 12 January 1950 and 22 March 1953 (Rural Code) and by the Decree of 5 August 1957.

Mention may also be made of the agricultural sections of the joint arbitration committees 1/ (conseils de prud'hommes), which hear disputes between employers and agricultural workmen and other employees. These committees are special tribunals and exist to attempt conciliation or to pronounce in litigation arising in connection with individual contracts of employment. They are a joint trade courts, and their membership consists exclusively of elected representatives of employers and employees.

In Germany, there are agricultural courts (Landwirtschaftsgerichte). 2/ specially instituted within each local court (Amtsgericht). These have wide terms of reference and determine at first instance matters connected with the performance of agricultural lease contracts, disputes over succession and conveyance of farm, forest or similar property.

Appeals are heard by the Land Court of Appeal (Oberlandesgericht) from which further appeal may be to the Federal Court (Bundesgerichtshof). None of these are special courts. All the courts named consist of judges whose number may vary but who have the assistance of advisors elected from among persons professionally engaged in one or other agricultural activity.

The procedure followed is that of voluntary jurisdiction and is based on the oral hearing. The judge has wide discretional powers for expediting and simplifying the process. The presence of an attorney is not required except where the case is taken to the Federal Court.

In Haiti, the Land Tribunal has limited territorial jurisdiction. It was instituted in 1952 with the establishment of a special procedure for land use planning the Artibonite Valley but was abolished in 1961 and replaced by the Haiti Land Tribunal set up as a special chamber within the Civil Court at Port-au-Prince 3/. This is an agrarian court, therefore, and is presided over by the Dean of the Civil Court, assisted by four judges, the Government Commissioner to the Civil Court acting as public prosecutor and being assisted by two substitutes. It has jurisdiction for dealing with all matters relating to agricultural improvements, cadaster, registration, etc.

In Italy, the Act of 2 March 1963 4/ abolishes the special 5/ sections that had been set up earlier in the tribunals and courts of appeal and were responsible for settling disputes over farm contracts. Their jurisdiction was transferred to specialized sections of the tribunals

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1/ Act of 25 December 1932, and Decree of 22 December 1958.

2/ Act on Court Proceedings in Agricultural Matters, 21 July 1933, and Act on Agricultural Tenancy (Agricultural Tenancy Act), 25 June 1952, Bundesgesetzblatt. Teil I, No. 26, 26 June 1952.

3/ See the Act of 12 July 1961, Le Moniteur. 22 July 1961, and the Decree of 18 October 1961, Le Moniteur. 19 October 1961.

4/ Regulations governing disputes before the specialized agrarian tribunals, 2 March 1963, Gazzette Ufficiale. Mo. 36, 30 March 1963.

5/ Act No. 1894, of 4 August 1948, as amended by Act No. 392, of 3 June 1952, and No. 1140 of 18 August 1968, institute two categories of specialized sections. These are the specialized sections for matters affecting the lease of farm holdings and the specialized sections for hearing disputes in the strict sense. These bodies replace the "district commissions and the regional commissions set up by Legislative Decree No. 311 of 19 October 1944. as amended by Legislative Decree No. 157 of 5 April 1956; No. 63 of 10 August 1965 and No. 273 of 1 April 1967.

and courts of appeal (Section 1). The specialized sections of the tribunals (i.e. of first instance) consist of three career magistrates and two experts and alternates. The experts and alternates are appointed by the Supreme Council of the Magistracy from among persons holding degrees in agricultural science, agronomists and surveyors (Section 3). They are deemed to he judges vested with full jurisdictional powers.

The special sections of the courts of appeal consist of five councellors and two experts, appointed following the same procedure as for their colleagues on the special sections of the tribunals, though chosen exclusively from among those with a degree in agricultural science. These special sections of the courts of appeal have appellate jurisdiction over decisions of the special sections of the tribunals.

Section 7 of the Act provides for attempt at conciliation at the first hearing.

The Code of Civil procedure is followed (Section 5). The reform introduced by the 1963 Act has been viewed in certain quarters as a retrograde step, with the formality it requires and the resultant forfeiture of expediteness. 1/ However, under the special provisions (Art. 429 s) of that Code, dealing in particular with cases of labour disputes and agrarian disputes, special powers are vested in these courts in order to facilitate the administration of agrarian justice. The presence of an attorney is still required.

Litigation procedure in connection with agricultural tenancies and land reform in Kerala (India) comes within the jurisdiction of land tribunals set up by the Kerala Land Reforms Act 1963 2/. These tribunals have one member only who is an official of the judiciary. They are set up by the Executive on an ad hoc basis as regards their jurisdiction both ratione materiae and ratione loci. Their functioning comes under the control of the Land Commission, which, however, does not constitute a court of second instance, for the rulings of these land tribunals may be appealed to a so called Subordinate Judge, whose decision is final. The High Court hears appeals on points of law.

In the Netherlands, each cantonal court has a "farm leases section" (Pachtkamer) consisting of the cantonal judge, who acts as president, and two independent counsellors, appointed for a term of five years, renewable. The counsellors are governed by Statutes guaranteeing them effective independence vis-à-vis the Executive.

The farm leases section has original jurisdiction for hearing all matters relating to the perfomance of agricultural lease contracts. From its decisions appeal lies to the Farm Leases Section of the Court of Appeal at Arnhem. The latter consists of three counsellors of the

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1/ See A. Germano, op.cit. 10.B.b.

2/ The Kerala Land Reforms Act 1963 [Act I of 1964]. 31 december 1963, Kerala Gazette, Extraordinary No. 7, 14 January 1964.

The Kerala Land Reforms' (Tenancy) Rules, 1964, 25 March 1964, Kerala Gazette, Extraordinary No. 60, 25 March 1964.

Court itself, one of whom acts as President, and of two of the persons who have no connection with the judiciary, are representing the landlords, the other the tenants.

These courts apply the Code of Civil procedure, subject to certain modifications. Thus, a distinction 1/ is made between litigation procedure, which refers to the rules applicable to ordinary cases, and the procedure for written pleas, which do not refer to court cases in the strict sense. In the latter event, appeals must be presented by an attorney.

Parallel to these farm leases sections there is a further class of specialized institutions. There are the Grondkamer or agrarian chambers, which have jurisdiction for the inspection of tenancy contracts before they are entered into by the parties and, more particularly, ensuring that all the rules have been observed in contracts for the conveyance of agricultural land 2/.

In Peru, the Decree-Law of 1969 3/, which brought in the new agrarian reform law and set up the Agrarian Court (Fuero Agrario) and the agrarian tribunals, has been followed up by important legislation in the form of several decree-laws 4/'. These clarify or amplify the provisions of the principal decree-law. All that has been described amounts to a thoroughly agrarian judicial system, worked out in every detail.

The first Land Reform Act (No. 15037 of 1964) set up a agrarian court of first instance with land judges assigned somewhat limited jurisdiction ratione materiae. The decisions of these land judges could be appealed to the. ordinary judiciary. Under more recent legislation, the first instance courts are made up of land judges, one for each land reform zone or area - on a highly decentralized basis, therefore.

The agrarian court strictly so called - it is a court of appeal - consists of five members chosen by the Executive, by Supreme Decree, with the approval of the Council of Ministers. The land judges are chosen from among professional lawyers and the members of the agrarian court from among lawyers or persons holding a degree in agriculture with not less than fifteen years professional experience.

1/ Rural Leases Act, 23 January, 1955. Staatsblad, text No. 37, 4 February 1958.

2/ Act on the alienation of farm land. 7 August 1953, Staatsblad. text 446, 9 September 1953.

3/ Decree Law No. 17716: Agrarian Reform Act. 24 June 1969. See also M. Gavilán Estelat, Peru,"Legislación de la Reforma Agraria", ICIRA, Santiago de Chile, 1969.

4/ Decre-Laws Nos. 17767, 18003, 18168 and 18268.

No appeal lies from the decisions of the agrarian court, which produce all the effects of res judicata.

Under the terms of article 153 of Decree-Law No, 17716, the jurisdiction of these courts covers all conflicts and disputes concerning the enforcement of the legislation not only on land reform but also on water, land left uncultivated, the selva and all matters pertaining to agrarian land in general.

Decree Law No. 18003 extends this jurisdiction to all suits affecting real property or persons, or property and persons together, concerning the ownership and occupation of agricultural holdings.

All the enactments here referred to seek to give a precise delimitation to the field of action of these specialised courts, in such a way as to preclude any conflict of powers with other courts that might jeopardize the proper administration of justice.

proceedings, especially at first instance, are summary and oral and entail no charge to the parties. The judge has wide powers of discretion in the matter of taking evidence. Time limits for appeals and the execution of decisions are now reduced to five and six days respectively.

Again a highly important role is assigned to the judge in the conduct of the case. The judge has wide powers for an equitable appreciation of the facts before him 1/. One president of the Agrarian Court has described this as a "protective function", so that, furthermore, a judge should "not confuse legal truth flowing from the evidence, and providing the ground for a decision, with the truth of things and the social context, a truth which may be opposed to the former when the rules of procedure are based on enactments divorced from reality"•

In the Philippines, under the terms of Republic Act No. 8844, 8 August 1963 there were set up courts of agrarian relations distributed among the regions and consisting of principal judges and regional district judges. Statutorily, these judges have the powers and prerogatives of judges of first instance (Section 141).

The jurisdiction of these courts covers all actions relating to matters, litigation, cases or money claims having to do with agrarian relations and to expropriations carried out by the land authority.

Courts of agrarian relations tribunals give rulings at first instance (Section 141, Art. 143). These may be appealed to the higher court on points of law only.

The new rules introduced in 1971 into the Agricultural Land Reform Code 2/ are designed to expedite the procedures followed by the

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1/ Report of the President of the Agrarian Tribunal. Agrarian Judicial Year 1969-1970.

2/ See Republic Act Ho. 6389. amending Republic Act No. 3844 (Agricultural Land Reform Code). 10 September 1971. Official Gazette No. 5, 31 January 1972.

Court of agrarian relations. The latter may depart from the usual procedure, notably where the taking of evidence is concerned, except in cases of expropriation. In addition, the new rules authorize those not represented by an attorney to have themselves represented by the officers of the farmers' associations of which they are members. At the same time, the tribunal may on its own initiative require the parties to submit first to conciliation procedures. Lastly, tenants may avail themselves of the entitlements and other advantages accorded to pauper litigants (Section 185).

To complete the list, mention may be made of the fact that tenants, farmer workers and owner-cultivators who are unable to pay for a private lawyer, may be represented before the courts including appellate courts by the staff of the Office of the Agrarian Counsel.

The Agrarian Counsel is appointed by the President of the Republic and has the status of first assistant to the Attorney-General. His office is a clear example of the "protectionist character of the land legislation, having been created for the specific purpose of enhancing the help made available to farmers. The Counsels' role is similar to the agrarian attorneys of Honduras and the Indian defense lawyers of Chile.

In Sri Lanka, there has been an evolution away from the ordinary courts 1/ in the direction of special agrarian tribunals, passing through various administrative organs on the way. At the present time the Minister is empowered to declare, by order, areas where agricultural tribunals shall be set up. Each tribunal consists of eight members appointed by the Council of Ministers on the recommendation of the Judicial Services Advisory Council. At least one member must be a solicitor or a barrister with not less than five years' professional experience. The Council of Ministers appoints the president and vice-president of the tribunal. Members are appointed for three years and receive a stipend.

A secretary is appointed to each tribunal, with responsibility for convening, as instructed by the president. Five members, one of whom must be a lawyer, constitute a quorum.

The tribunal may receive complaints by private persons and by the Ministry of Agriculture or productivity committees. Any recourse to it must be made in writing and contain a concise statement of the facts relating to the dispute. The parties may appear in person or be represented.

The president of the tribunal is empowered to call witnesses and administer the oath to them. He may also demand the production of documentary material. The Code of Civil procedure is followed. Decisions are taken by the majority of the members and, in the event of a tie, the president has a casting vote. The tribunal's decisions must be accompanied by a statement of reasons. These decisions are executed by

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1/ Agricultural productivity Law No. 2 of 1972 (21 September 1972).

the district tribunal following the procedure laid down in the Code of Civil Procedure. They are final and may not be appealed except on points of law. In that event the appeal may be brought, exempt from stamp tax, before the Supreme Court by a solicitor or a barrister. The ruling of the Supreme Court on an appeal is final.

Jurisdiction ratione materiae of the agricultural tribunals extends to disputes concerning eviction, entry into possession, conveyance of rights inter vivos and succession, determination of rental, payment of rent and recovery of debts and in the field of agricultural credit, etc. The agricultural tribunal hears land tenure and related litigation. 1/

In Syria 2/ there is a somewhat original kind of system in that the decisions of the special tribunal are not final until they have been approved by an administrative body - the Administrative Council for the Establishment of Land Reform.

The special judicial tribunal, which has replaced the former judicial commissions, consists of three magistrates appointed by the Minister of Justice.

The task of these magistrates is to deal with litigation arising out of the implementation of the Land Reform Act, in particular as regards limitations on ownership and the distribution of expropriated land.

The ordinary tribunals are not empowered to hear disputes relating to the implementation of land reform.

In the United Kingdom, the Agricultural Land Tribunals 3/ were instituted in 1947 under the terms of the Agricultural Holdings Acts, 1947 and 1948, as courts of appeal against the decisions of the administrative authorities in the agricultural sector, viz.., the Minister of Agriculture, Fisheries and Food and the County Agricultural Executive Committee. Under the Agriculture Act of 1958 these became courts of first instance. They are presided over by salaried judges and their jurisdiction ratione materiae embraces, in particular, amendments of the terms of a tenancy, the cancellation of a tenancy, improvements and, in general, all common offences under the agricultural tenancy laws, whether committed by the landlord or committed by the tenant. The tribunal consists of a president, who must be a barrister or a solicitor, appointed by the Home Secretary, and two experts representing, respectively, the landlords and the tenants, appointed by the president for each case,

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1/ Agricultural Lands Law No. 42 of 1973 (17 October 1973).

2/ Legislative Order No. 161, 27 September 1958, introducing Agrarian Reform in the Syrian Arab Republic, as amended by Act No. 193 of 8 November 1958, and Legislative Decree No.2, 2 May 1962.

3/ Agricultural Land Tribunal Rules. Rules 24-27. The Agriculture (Procedure of Agricultural Land Tribunals) Order 1968, S.I. No.186, 1948.

whose names appear in lists established by the Home Secretary upon nomination by the recognized associations of the landlords and of the tenants. The proceedings are expedite, uncomplicated and involving no great cost, and are regulated by means of orders. The tribunal has considerable freedom of action, and formalities are reduced to the minimum. The judge is not required to bind himself to precedent. He has great flexibility in the matter of taking evidence (oral in all but very exceptional cases), to the point of accepting information that would not be receivable in the ordinary courts. He may work together with the parties, which amounts to allowing him to help the less expert party. His rulings are grounded more on equity that on the dictates of statute law.

CONCLUSIONS

The pages that precede have given a picture of the diverse forms of administration of justice in the field of agricultural activities. While the institutions empowered to deal, under voluntary or compulsory jurisdiction, with cases arising out of farm tenancy contracts seem to give satisfactory results, it is difficult to assess the situation with regard to disputes arising out of land reform. It is too early to draw up a final conclusion on the various formulas adopted. However, many voices have been raised, especially in the countries of the New World, in defence of, and in order to promote, the concept of the specialized jurisdiction. This suggests that the administrative bodies and the ordinary courts are inadequate for dealing with the disputes arising from the implementation of land reform. Ecuador, for example, after several years' experience of agrarian tribunals, has abandoned this system and returned to an exclusively administrative one, taking the view that the latter was better suited to meeting the farmers' demands. No evolution (or involution) of this kind has been recorded elsewhere.

On the other hand, the objection is usually raised to the effect that administrative bodies vested with court functions, whether or not these are ad hoc land reform organs, do not enjoy the autonomy that is the only guarantee of impartiality. In those countries where the Constitution upholds the principle of the separation of powers, such a situation amounts to an unwarranted encroachment upon the judiciary by the Executive arm.

In order to offset these difficulties it is necessary on the one hand to define very clearly the field of action of the special courts and to institute a strict system as regards matters affecting jurisdiction; and, on the other hand, in order to prevent conflicting interpretations, to vest general jurisdiction in a single appellate court for dealing with appeals against the decisions of the various lower courts. In this way it would be possible to organize agrarian justice on the basis of a system of specialized tribunals of the first and second degree, widely decentralized and presided over by magistrates with training in agrarian law and applying special procedures.

It is on these criteria that the agrarian court system should be established, though one should not lose sight of the likely conflicts of jurisdiction and of interpretation that often arise when special courts are set up. At the same time it should be borne in mind that, if a proper administration of justice is to be assured, then some measure of unity of jurisdiction should be maintained.

In the present circumstances, however, it would be inappropriate to attempt to bring the entire organization of agrarian justice under a single, generalized formula; nor can there be any unification, in terms of model procedures, of agrarian justice across national frontiers, without taking into account the political and social context of each and every country, or without allowing for the temperament and mentality of the human groups concerned.

Those systems which assign agrarian disputes to the ordinary courts are criticized as regards both structure and procedure, for their lack of flexibility and for their formalism, which are ill-suited to the enforcement of agrarian law rules. To counteract this tendency, in many cases the procedures applied in agrarian litigation have introduced rules that derogate from those of general law procedure.

Criticism is directed especially at the fact that the ordinary courts are constituted on the basis of a legal philosophy that is replete with individualism and an excessive respect for the private ownership principle. For these reasons the ordinary courts would not be readily receptive to the concepts of social justice and public interest.

The lack of specialization in agrarian law on the part of magistrates or the ordinary judicature and heavy reliance on written pleadings in the courts they preside over, are less easily defensible.

The Peruvian experiment, entailing the institution of a highly elaborate agrarian judicial system, seems to have yielded very positive results 1/, to judge by the reports of the authorities concerned.

Those who uphold the doctrine of the unity of jurisdiction constantly deplore the tendency of the modern legislator to multiply special jurisdictions. Such a multiplication and the increasing importance assigned to special courts is undoubtedly one of the most defective and controversial characteristics of modern law. It reflects a fragmentation of the law manifested in the elaboration of special rules which derogate from the general law and are applicable to certain classes of persons. It also corresponds to the need to provide an appropriate courts system for the novel branches of law emerging pari passu with the evolution in the political, economic and social spheres. As a general rule, it is the only way to obtain justice at less expense, more speedily, and with greater ease of access.

However, there is the risk that the evolution referred to may, if not carefully controlled, become a source of conflicts of jurisdiction and interpretation, which can only redound unfavourably on the administration of justice.

The duty of the authorities both national and international is to bring home to people the need for a universal principle that can be defined within the general framework of law in order to guarantee the rights of all those who share in the tilling of the soil.

The ideal would be to arrive at the most universal formula possible, which could be used as a basis for a Code of Principles of Agrarian Justice. This in its turn would provide the model for all countries offering a single conceptual approach to all problems arising out of the man-land relationship.

1/ Memorias del Presidente del Tribunal Agrario - Años Judiciales Agrarios 1969-1970 y 1970-1971.

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