

# Insecurity of Secure Land Tenure - Case of Service Tenure formalization in Sri Lanka

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## Abstract

The government of Sri Lanka has recognized the title registration as a tool against insecure land tenure. However, global experience reveals that success of such projects depends on several factors. As such, it is of primary importance for the country to investigate the effectiveness of title registration in providing secure land tenure under the local conditions. With the above mentioned background, the objective of the paper is to investigate the effectiveness of title registration in Sri Lanka in areas where service tenure exists. Service tenure system is one of the very complex tenure systems in Sri Lanka and thus allows a better judgment of the effectiveness of the title registration.

A case study method was adopted to investigate the service tenure system. An identified analytical framework from a wide literature survey has been used to analyse the service tenure system. The outcome of the study reveals that most of the land tenure insecurity is caused by institutional inconsistencies and also that focusing on individual titling alone would not eliminate these inconsistencies.

**Key words:** Land Tenure, Title Registration, Property Rights, Institutions

## The Introduction

The title registration system in Sri Lanka, named *Bimsaviya*, has many objectives. Among them the provision of secure land tenure is considered to be of primary importance. Secure land tenure is recognized as one of two priorities that need urgent attention by The United Nations Centre for Human Development (Deininger, 2003). According to the Bathurst Declaration (UN-FIG, 1999), insecure tenure inhibits the proper use and investment in rural and urban lands. They hinder good governance and civic engagement. This leads to uncoordinated development. Without effective access to secure tenure, economies are unable to progress and the goal of sustainable development can not be realized.

According to the GTZ (1998) a country must fulfill the following in order to fulfill the tenure security needs;

- functional certainty and security of the law and human rights;
- public participation in the politics of land issues;
- credit systems that acknowledge secured tenure as collateral;
- functional and accountable institutions and authority;
- improved employment and business investment opportunities; and
- a functioning land market and economy (GTZ, 1998).

Further, even though such conditions fulfill its importance to ascertain whether the existing tenure system provides insufficient tenure security (e.g. number of prevalent land disputes), there are many situations where customary tenure system provides sufficient security for investments. There is also no need for formal land registry when it is of little or no demand for land transactions, as customary systems are sufficient to facilitate the volume of transactions (Feder and Nishio, 1999). It is also worth not to overlook the social or cultural norms, retractions and prohibitions which limits the transaction of land. Neglecting them would result in difficulties to achieve the desired objective of formal land registration systems. It may also contribute to 'land grabbing' by the well privileged groups (e.g. land officers, elites) in societies. This may contribute to form landless classes within the society due to the fact that smallholders and the poor will be tempted to sell their lands to larger landowners and wealthier persons. Hence it is imperative to investigate the title registration of Sri Lanka and study its effectiveness in providing secure land tenure before further investing large sums of money. In embarking on such a study the present paper confines its investigation to one of the customary tenure system in Sri Lanka named service tenure. This system is one of the very complex tenure systems in Sri Lanka due to its unique development under various political, cultural, economical and natural influences. Hence, the outcome of the study clears the way to evaluate the effectiveness of the Sri Lankan title registration system against one of the most complex tenure systems in Sri Lanka.

In view of the above observations it is intended to identify the outcomes from secure tenure elements within the areas where service tenure exists and investigates the factors behind the outcomes so as to find the effectiveness that affect security of title registration in providing secure land tenure with the service tenure areas.

### **Theoretical Framework**

The objective of this section is to find an analytical framework to study land tenure system so as to identify the effectiveness of a tenure system in providing a secure land tenure.

First let us look deep into the understanding of land tenure. Land tenure has different meanings according to the stream, to which it is applied. In legal sense land tenure deals with rights over land and its attached resources. Hence in legal sense “land tenure can be defined in terms of a ‘bundle of rights’-specific rights to do certain things with land or real property. The institutions governing the land tenure answer the question who, what, when, how much, and where?” (Dekker, 2003) These bundle of rights can be in six forms, namely;

- Right to manage
- Right to get income
- Right to transfer
- Right to use
- Right to get compensation

However, strengths and weakness of these rights are determined by socio-economic aspects of land tenure which is laying more emphasis on the web of relations resulting within a land tenure system. The Socio-economic aspects of land tenure defines how property rights over land are allocated within societies, how access is granted to the right to use, control, and transfer of land, as well as associated responsibilities and restrains (FAO,1999). As such, it affects the fundamental relationships between the people themselves and their relation to land. Such relations, especially in rural areas, cannot only be economically defined; rather they also have social and cultural dimensions, and hence become more imperative for our discussion.

According to Kirk (1991) a land tenure system comprises three components; system of ownership, system of labor sharing and system of resource rights. System of land ownership regulates the relationship of people to the land, specifically the power of dispossession of the land and the right to use the land, while the system of labor organizations regulate the relationship between people carrying out the work on the land, particularly the method of dividing the work and yield. Resource tenure comprises both land and resources attached to it, such as right to use water, wood etc. This model of land tenure is closely related to the Sri Lankan context and will be used for the analysis of empirical results.

Land tenure relations are governed by institutions. According to North (1986), institutions arise because of the interaction of individuals based on need satisfaction. Within a society, individuals require to interact with each other in order to satisfy their various needs. As such they form constrains in such human interactions. These constrains can be formal (conventions, laws of property rights) or informal (sanctions, taboos, customs, traditions and codes of conduct). They reduce the uncertainty in exchange (North, 1991).

According to Feder and Feeny (1991) formal institutions consist of the constitutional order and institutional arrangement while informal institutions consist of normative behavioral codes. The constitutional order refers to the fundamental rules and how society is organized. Institutional arrangements are created within the rules specified by the constitutional order. These arrangements include laws, regulations, associations, contracts and also the property rights in land. The third category, normative behavioral codes, refers to the cultural values which legitimize the arrangements and behavioral constraints.

When studying the land tenure systems in Asian, African and certain other countries, the informal institutions need to be differentiated further. Within these countries, informal institutions consists of customary and other legitimate institutions. Customary institutions can be distinguished from other legitimate institutions as customary institutions have standard organizations<sup>1</sup> while legitimate institutions may or may not have organizations. If it has organizations they are common only for a few groups of people (e.g. a small community). Hence, for the purpose of this study four types of institutions were used; namely, constitutional order, institutional arrangement, customary institutions and other legitimate (or informal) institutions (Piyasena, 2009).

The creation of institutions within a land tenure system can be explained as follows. Due to the interests and ideological imperatives on the lands by individuals, a human to land interaction is created. However, as humans live in a community, other individuals who are living in the same community may have the same or different interests and ideological imperatives over land and demand property rights to satisfy their interests. As such, human to human interactions are created. Nevertheless, these human to land and human to human interactions also form organizations in order to regulate such interactions. Such organizations can be formed from formal institutions such as constitutional order or informal institutions. However, once they are formed we can consider them as separate bodies with their own interests/objectives over the land and its resources (e.g. forest department). Hence, in order to satisfy their interest, individuals need to have an interaction with these organizations as well. As such, there are basically three kinds of interactions (or relations) created from an individuals' side; namely individual to land, individual to individuals and individual to organizations (Figure 1). The institutions governing these interactions define not only rights and restrictions but also responsibilities, values and norms. As we discussed in the above session, these institutions can broadly be classified into constitutional order, formal, customary, and informal. Individual to land and individual to

individual relations have formal and informal institutions while individual to organizations have formal and customary institutions (Piyasena, 2009).

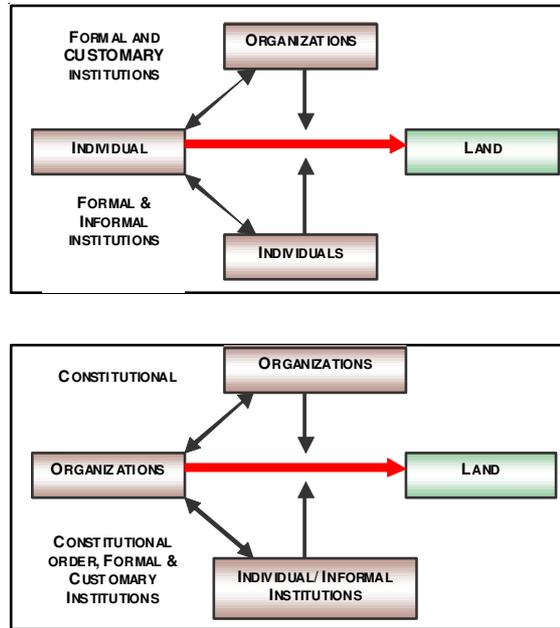


Figure 1: Individual to land interests and resulting relations (Piyasena, 2009)

Formal and customary institutions can be differentiated from informal institutions, as they represent not only the interests of individuals or small communities but more or less on the society as a whole. But in practice this may change as some institutions can be developed without the interest of the whole society, but because of the influence/interest of a single person. However, formal and customary institutions can be treated differently as they have their own interests over a land and therefore also have land rights which are mandated through organizations. These interests are disturbed or supported by the interests of other such organizations and individuals, who are also demanding property rights over land (Figure 2). As such, another three types of relations are created; namely organization to land, organization to individuals and organization to organizations. Organizations to land and organization to organization relations are controlled by institutions called constitutional order, which is formed by parliament, in the case of a democratic country, while other relations are controlled by constitutional order, formal and customary institutions (Piyasena, 2009).

As such total relations created within land tenure system can be represented as follow;

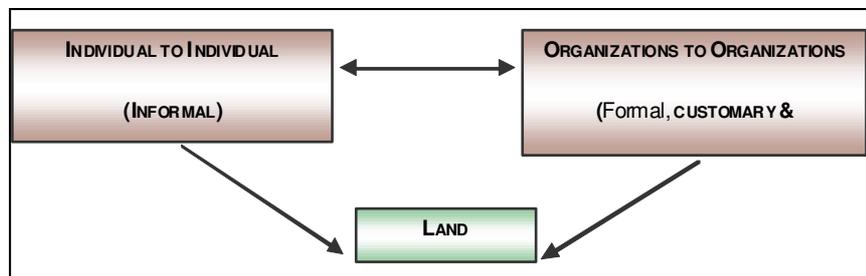


Figure 2: Land tenure system (Source: Piyasena, 2009)

A land tenure system hence consists of six complex relations. These relations are controlled by institutions which contain rights, restrictions, responsibilities, values and norms.

The proper function of the above institutions is necessary for providing land tenure security, which has been identified as the prime requirement by The United Nations Centre for Human Development (Deininger, 2003). The elements of secure tenure may change according to the objectives of the stakeholders. However, according to Deininger (2003) general elements of secure tenure are namely: “duration of rights, boundary definition, subject of rights, properties of enforcement institutions, and the evolution of rights in response to changing relative scarcities. Duration of rights provide sufficient time to reap the benefits of investment (FAO, 1999). Proper boundary definition leads to less ambiguity and thus fewer disputes. Mean while, subjects of rights; either private or communal rights, need to be selected according to appropriate conditions under which they perform well for providing secure tenure. The enforcement of organizations needs to be easily accessible, legitimate and accountable to ensure proper implementation of such rights (Deininger, 2003). New property rights need to be defined and implemented together with changes in resource value (e.g. due to population growth) in order to accommodate new cost benefit situations. Without adequate institutional changes it would result in conflicts and thus insecure tenure (Deininger, 2003).

### Methodology

Initially, an analytical framework has been developed from literature in order to understand and analyse the service tenure system. A case study method was used to investigate a service tenure system. This method allows us to have a closer look at the ground conditions. Data were collected in pre-identified areas as service tenure is only limited to a few areas of Sri Lanka. From the initial literature survey it was able to identify that *Balangoda* and *Imbulpe* divisional secretariat divisions has well established service tenure

systems surrounding the *Bolthube* and *Aluth Nuwara Devalayers*. Accordingly, these areas were selected for the case study.

Data were collected from organizational side as well as individuals' side in order to better represent the positive and negative outcomes from the service tenure system. Tools like open ended questions, structured questioners and expert interviews were used for data collection. The outcomes were given weightages according to the opinion of the stakeholders, both from individuals' side and organizational side. The graded weightages are listed below;  
Weighing scale for Individuals' side;

Experts and villages considered highly important	6
Either experts or villages considered highly important	5
Either experts or villages considered highly important while others say not so important	4
Experts and villages considered fairly important	3
Either experts or villages considered fairly important while others say not so important	2
Relate to very few people	1
Experts and villages considered not so important	0

Weighing scale for Individuals' side;

All representatives considered highly important	6
Most of the representatives considered highly important	5
Some considered highly important while some considered not so important	4
All representatives considered fairly important	3
Some considered fairly important while others say not so important	2
Relate to very few organization	1
All representatives considered not so important	0

A qualitative method was adopted for the analysis of the results. This method was used because it was considered to be a more rigorous, reliable and valued investigative approach for studying the impact of land tenure outcomes on secure tenure. This method allows sidestepping the artificiality and narrowness of experimental studies by allowing the researcher to be more spontaneous and flexible in exploring the natural environment (Rudestam and Newton, 2001). The method describes how and what. Thus it does not only describe the data set (as most qualitative research used to be) but also interprets, explains, and understands and sometimes predict (Dey, 1998).

Main objective of the below data analysis model in Figure 3 was to identify the main causes behind each of positive and negative outcomes from the secure tenure elements. For this purpose models developed in the theoretical framework has been used. Accordingly the service tenure system can be subdivided into three main components, namely, system of ownership, system of resource sharing and system of labour sharing. Each of these components may consists of six types of relations between man, land and organization. Once relation/s are identified behind each of the outcomes, the models identified in the theoretical framework can be used to find out the main cause/s behind the outcomes. The results were put into a Table.

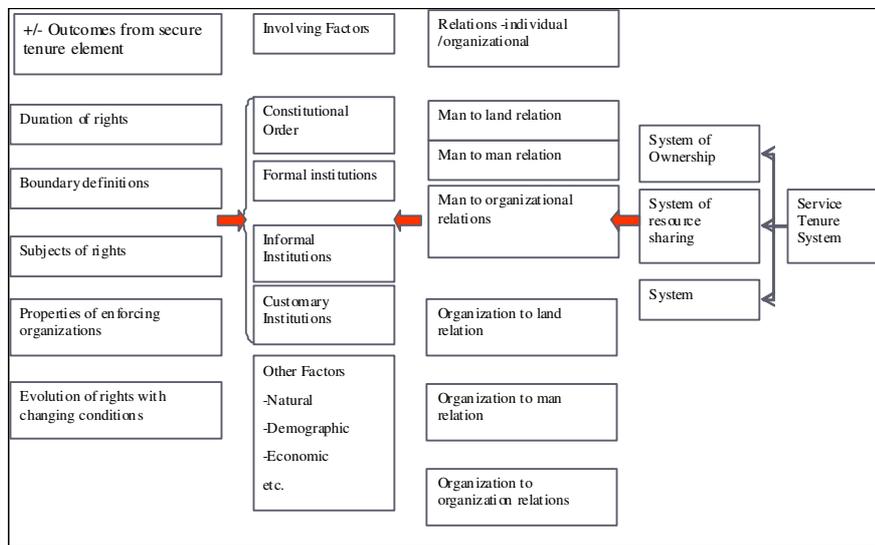


Figure 3: Analytical Model

Table 1 in section 5 represents a sample format of the table. This allows to determine whether the existing tenure system provides sufficient secure tenure or not for individuals as well as relevant organizations (e.g. *Devala*). Then the investigation was made to identify whether the measurements taken by the title registration system (*Bimsaviya*) is sufficient or not to uplift the existing tenure security, if the service tenure do not provide sufficient secure tenure.

According to Table 1 the outcomes were represented according to the relations involved. This is necessary in order to find out what causes are involved. The models in Figure 1 have being used for this purpose.

Table 1: Example for negative outcomes from the individual side - Viharagam and Devalagam

Secure tenure elements	Different need satisfactions using secure tenure	Negative Outcomes	Relations Involved	Weights	Cause
Subject of rights	Access to land rights	Females have some difficulties to acquire land rights	Individual to organization	5	
	Ownership verification	Ownership can only be identified through referring back to history according to surname.	Individual to Organization	5	
		Cannot be sold without prior approval from the temple. However some lands were sold without such approval from the temple. This is because of the lack of enforcing power. They are not legally valid in front of a court/	Individual to Organization	6	

### Results and Discussion

Models in Figure 1 have been used to identify the causes behind the outcomes under each secure tenure elements and the weightages were given according to the weighing scales shown under theoretical framework. The following Table 1 shows an example for weights given for negative outcomes from one of the secure tenure elements named “subject of rights”.

As stated, positive and negative outcomes result from one or combination of relations mentioned above. However, there are basically three relations, namely individual to land (R1), individual to organizations (R2) and individual to individuals (R3), which are engaged in creating other combination of relations. If we represent the outcomes resulting from these basic relations R1, R2, and R3 as O1, O2, and O3 respectively (see above), then other outcomes resulting from possible combination of these relations R1R2, R1R3, R2R3, and R1R2R3 can be represented as O1O2, O1O3, O2O3, and O1O2O3. Outcomes from all basic relations (i.e. O1, O2 and O3) and their possible combinations can be represented as below;

The right side of the above Figure 4 can be explained as follows. Let’s take negative outcome weight 26 from the left diagram of the Figure 3. It represents the negative outcomes resulting from the combination of relations R1 and R2 and thus the outcome can be represented in the cage R1R2, and outcome

weight 4 of the same diagram resulting from the combination of relations R1, R2 and R3, thus represented in cage R1R2R3. In a similar manner the outcome weight 24 resulting from R1 and thus represented in cage R1, 4R1 and so on.

Similar to outcomes from individuals' side, the organizational outcomes mainly result from three basic relations namely, organization to land (R4), organization to individuals (R5), and organization to organizations (R6). These outcomes can be represented as O4, O5, and O6 respectively. However, similar to the individuals' side, there are also other outcomes which result from a possible combination of these relations which can be represented as O4O5, O4O6, O5O6, and O4O5O6. The negative and positive outcomes from organizational side can be represented in Figure 4 and 5 respectively.

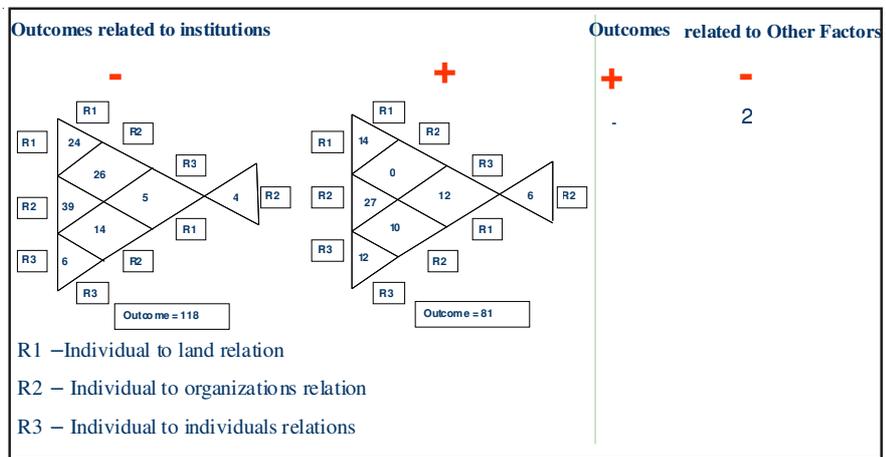


Figure 4: Outcomes from the individual's side

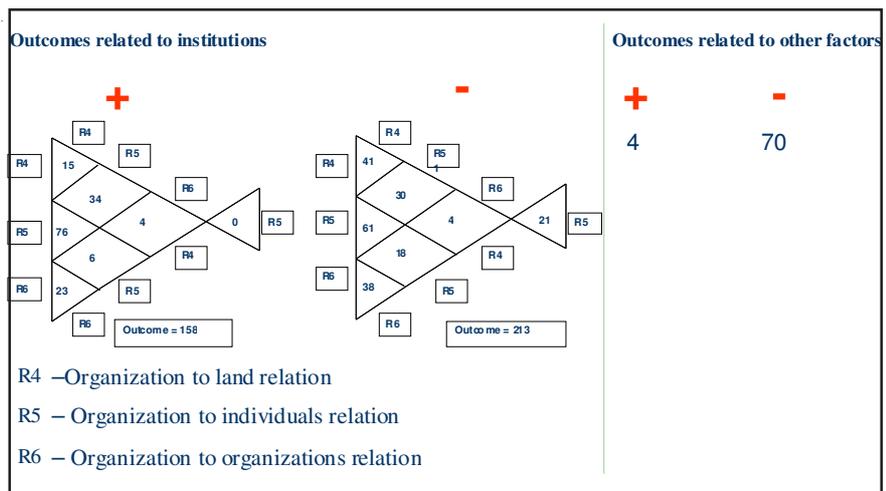


Figure 5: Outcomes from the organizational side

The outcomes from secure tenure elements reveal that service tenure in Sri Lanka is insecure. The following Figure 6 and 7 show the causes for tenure insecurity in service tenure system from individuals' side and organizational side which are obtained from the table prepared in section 4. The other causes in Figure 6 and 7 include economical and natural causes.

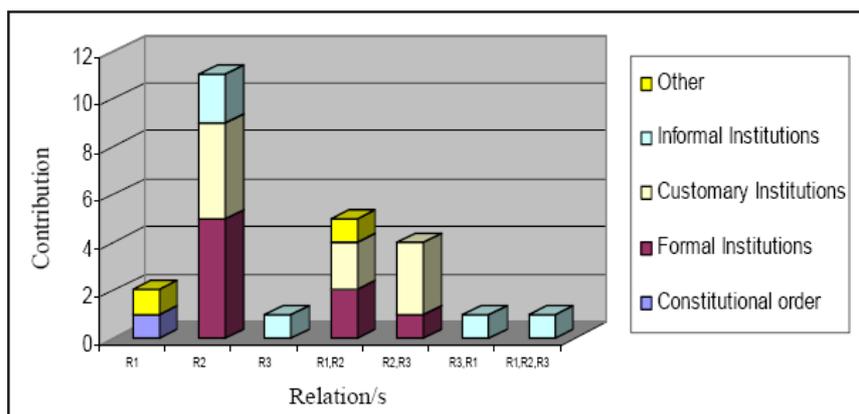


Figure 6: Causes for negative outcomes individuals' side

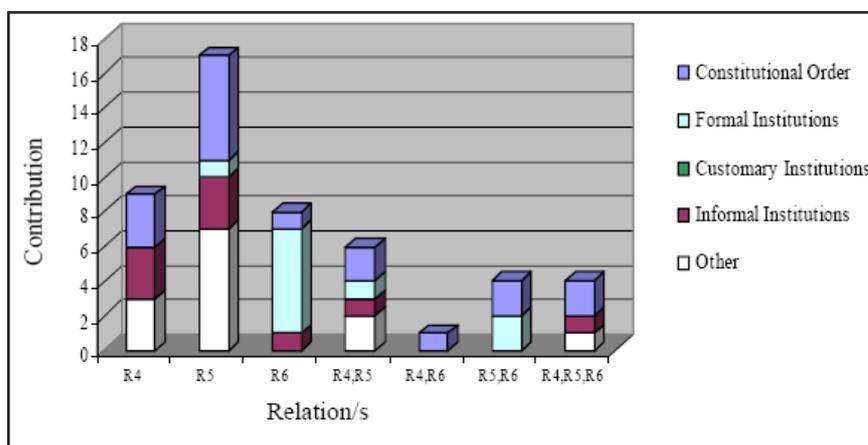


Figure 7: Causes for negative outcomes – organizational

### Conclusion and Recommendations

Outcomes from the secure tenure elements in Figure 6 and 7 reveal that existing service tenure system is reluctant to provide secure tenure for individuals as well as organizations. The main causes behind the insecure tenure can be categorized into two groups, namely institutional causes and

other causes. Other causes consist of natural and economical causes which is beyond the scope of the study. However, when studying the results illustrated in figure 6 bulk of the causes for insecure tenure lie within the category of institutional causes. To this end, individual title registration partially eliminates causes for insecure tenure in service tenure areas as it tries to formalize the existing rights over land. However, there is a risk of disturbing the existing web of relations within service tenure relations and thus further depart the institutional inconsistencies within the concerned areas as individual title registration do not recognize the secondary rights of all three components of the tenure system, namely system of ownership, system of resource sharing and system of labor sharing.

Tenure system within the service tenure areas needs to be built from the existing situations. To this end, functions of the informal institutions under the framework of identified vision of humankind to land relations (UN-FIG, 1999) are largely important. One of the main focus of informal institutional development need to empower people and their capacity building to solve local secure land tenure problems locally to a greater degrees. Further, tenure reforms can not be considered as an individual component. It must be a part of the whole process of rural development. As such, establishment of norms for good governance is important to sustain the tenure system.

### **Footnotes**

<sup>1</sup>Well known to the community and society

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