

IMPROVING LAND SECTOR GOVERNANCE IN THE GAMBIA

Implementation of the Land Governance Assessment Framework (LGAF)

AMIE BENSOU DA & CO LP
OFF BERTIL HARDING HIGHWAY
NO. SSHFC CRESCENT
KANIFING INSTITUTIONAL AREA
KANIFING MUNICIPALITY

Email – info@amiebensoudaco.net

Telephone Nos. 4495381 / 4496453

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ACRONYMS

AGC	-	Attorney General's Chambers
ANR	-	Agricultural and Natural Resource
AMRC	-	Assets Management and Recovery Corporation
ANR	-	Agriculture and Natural Resources
AU	-	African Union
BAC	-	Brikama Area Council
BCC	-	Banjul City Council
CBD	-	Convention on Biological Diversity
CBO	-	Community based organizations
CoO	-	Certificate of Occupancy
CF	-	Community Forest
CFMA	-	Community Forest Management Agreement
CFS	-	Committee on World Food Security
CILA	-	Commission of Inquiry on Land Allocation
CITES	-	Convention on International Trade in Endangered Species of Wild Flora and Fauna
CRR	-	Central River Region
DDLS	-	Director Department of Lands and Surveys
DIFID	-	Department for International Development
DLS	-	Department of Lands and Surveys
DoF	-	Department of Forestry
DPPH	-	Department of Physical Planning and Housing
DPWM	-	Department of Parks and Wildlife Management
FAO	-	Food and Agriculture Organization of the United Nations
GAMTEL	-	Gambia Telecommunication Company Limited
GNAIP	-	Gambia National Agricultural Investment Plan
GDP	-	Gross Domestic Product
GBOS	-	Gambia Bureau of Statistics
GPA	-	Gambia Ports Authority
GTA	-	Gambia Tourism Authority
GTB	-	Gambia Tourism Board
IFAD	-	International Fund for Agricultural Development
IFPRI	-	International Food Policy Research Institute
KMA	-	Kanifing Municipal Area
KMC	-	Kanifing Municipal Council
LGA	-	Local Government Area
LGAF	-	Land Governance Assessment Framework
LRIS	-	Land Resources Information System
LRR	-	Lower River Region
LFF	-	Local Forest Fund
MOL	-	Minister of Lands
MOA	-	Minister of Agriculture
MOFE	-	Minister of Forestry and the Environment
MoLRG	-	Ministry of Lands and Regional Government
NAWEC	-	National Water and Electricity Company
NBR	-	North Bank Region
NBSAP	-	National Biodiversity Strategy Action Plan
NEA	-	National Environment Agency
NEMA	-	National Environment Management Act

NFF	-	National Forest Fund
NGO	-	Non- Governmental Organizations
PACAB	-	Poverty Alleviation and Capacity Building
PAGE	-	Programme for Accelerated Growth and Employment
PCFMA	-	Preliminary Community Forest Management Agreement
RGD	-	Registrar General Department
SSFHC	-	Social Security and Housing Finance Corporation
TDA	-	Tourism Development Area
UNCCD	-	United Nations Convention to Combat Desertification
UA-MTIP	-	Urban Audits and Medium Term Investment Plans
UN	-	United Nations
UNDP	-	United Nations Development Programme
UNFCCC	-	United Nations Framework Convention on Climate Change
UNWTO	-	United Nations World Tourism Organization
URR	-	Upper River Region
WCR	-	West Coast Region

1. EXECUTIVE SUMMARY

1.1 Introduction

The Government of the Gambia has acknowledged that a prudent and sustainable management of the country's limited land resources is an essential precondition to poverty reduction and national food security. A critical step towards the realization of current national strategic objectives would be an evaluation of the land governance environment to determine where the country stands.

In order to evaluate and prioritize these issues more systematically, country experts utilized the Land Governance Assessment Framework (LGAF) developed by the World Bank and its partners. In general, the recognition of rights to land and forests is strong in the Gambia in both rural and urban areas, as is the accessibility of forums for dispute resolution. However, the country has no unified land policy, very little incorporation of equity considerations, overlaps in the legal framework and a lack of adequate regulation and procedures required for implementation. Most urban land is registered, but procedures for the registration of customary land are weak, while the process for transferring customary land to leaseholds lacks transparency. Urban plans and other spatial information are more than two decades out-of-date, and cannot guide the fast expansion of urban development or the availability of housing. The LGAF panels identified a number of recommendations to address the most pressing issues of land governance in the Gambia in the short-term. A comprehensive reform would require the establishment of a National Land Commission as proposed in the Constitution.

This chapter synthesizes and summarizes the key findings of the LGAF process in the Gambia and outlines proposals for moving forward. The next section explains the methodology of the LGAF, while the third section provides background information on the Gambia and key issues in its land governance. The fourth section presents the results of the Gambia LGAF panel discussions and validation meetings. Part five offers recommendations for prioritizing land policy improvements, and the final section concludes.

1.2 LGAF Methodology

The LGAF is a diagnostic tool that is implemented in a collaborative manner at the local level in order to benchmark land governance. This process helps to establish a consensus and priority actions on (i) gaps in existing evidence; (ii) areas for regulatory or institutional change, piloting of new approaches, and interventions to improve land governance on a broader scale; and (iii) criteria to assess the effectiveness of these measures. LGAF helps put in place a structure and process to systematically track progress in improving land governance over time.

The core version of the LGAF consists of 21 Land Governance Indicators (LGIs) covering 80 dimensions of land governance, grouped into five broad thematic areas:

1. Legal and institutional framework (LGI 1-6)
2. Land use planning, management, and taxation (LGI 7-11)
3. Management of public land (LGI 12-15)
4. Public provision of land information (LGI 16-19)
5. Dispute resolution and conflict management (LGI 20-21)

The LGAF also allows the inclusion of optional thematic modules that may be relevant to a specific country context. The Gambian LGAF process included a module on forestry, which contains an additional 12 parameters. Each LGAF dimension is rated on a scale from A to D, with scoring options based on international best practice. A few LGAF terms had to be amended or their definitions adapted, and a few dimensions could not be assessed.

The LGAF process in the Gambia commenced in November 2012 and was completed in May 2013. The LGAF process was driven by national experts in three different stages: (i) investigation and collection of data carried out by selected expert investigators; (ii) an assessment carried out by 8 panel workshops covering different governance areas based on the outcome of the investigations and personal professional expertise; and (iii) a technical validation workshop which reviewed and validated the assessments made by the expert investigators and panel workshops. A range of institutions participated in and supported the LGAF process, including:

- Ministry of Finance
- Ministry of Lands and Regional Governance
- Ministry of Justice
- Ministry of Agriculture
- Department of Lands and Surveys
- Department of Physical Planning and Housing
- Department of Forestry
- Department of Parks and Wildlife Management
- Registrar General Department
- Gambia Tourism Authority
- University of the Gambia

1.3 Overview of Land Policy Issues in the Gambia

1.3.1 The Gambia: Background Information

1.3.1.1 Economy and geography

The Gambia is the sixth smallest country in Africa, with a land mass of approximately 10,690km² (of which 5,580km² is arable). Its main feature is the River Gambia, which bisects the country into North and South Banks. The country shares a border with Senegal on all sides, except for 80 km of coastline along the Atlantic Ocean.

The Gambia has an estimated population of 1.791 million people, of whom 58% live in urban areas. Land, forests, and water are its main resources, and agriculture is one of the main drivers of the economy, contributing 29% of GDP in 2010 although dropping to 19% in 2011 as a result of droughts. GNP per capita is 510 USD. The overall poverty head count is 48.4%, which rises to 73.9% when only rural areas are included. Household heads employed in the agricultural and fishing sector having higher poverty rates than household heads employed in the other sectors.

1.3.1.2 Governance system

The Gambia obtained self-government status in 1964, independence in 1965, and full republic status in 1970 as a constitutional democracy. The country experienced a military coup in 1994, which suspended the constitution. Following a two-year period of military rule by decree, the country was returned to constitutional rule in 1997. The 1997 Constitution provides for the election of a president and a National Assembly every 5 years, and a

decentralized system of local government administration. The Gambia is administratively organized into 5 regions (Central River, Lower River, North Bank, Upper River, and Western) the municipality of Kanifing and one city, Banjul. Each region is further subdivided into districts. District authorities are called *seyfo*, while villages and towns within districts are headed by *alkalos*.

The legal system is tripartite, based on statute law/English common law, Sharia (Islamic law), and customary law, as discussed in Section 4.5.1. The court system comprises the superior courts of record (high court, court of appeals, and the Supreme Court) and a subordinate court system comprising magistrate's courts and specialized tribunals.

1.3.2 Land Issues and Land Policy

1.3.2.1 Tenure typology

The land tenure system in The Gambia is shaped by its colonial history. Three tenure types exist: freehold, leasehold, and customary. Freehold and leasehold tenure are statute-based and were introduced by the British, while customary tenure evolved from the traditions and practices of indigenous communities.

Table 1: Main tenure types in the Gambia

Tenure type	Legal recognition	Registered	Legally transferable	Area (km ²)	Population (millions)	Observation
Customary land	yes	no	Yes- w/ consent district / alkalo	9,084	0.792	
State land: freehold -urban	yes	yes	yes	537.7	0.453	Former crown land Banjul
State land freehold – forests, wild life park, nature reserves	yes	yes	no	385		Former customary land
State land freehold- acquired public land	yes	yes	Yes - if residential	n.a	n.a.	Expropriated for public interest
State land freehold- Tourism Development Area	yes	yes	Yes by state allocation through GTboard	n.a.	n.a	Lease from district / customary in 1970 for 99 years
Designated state land	yes	Possible when parceled	Yes with endorsement alkalo and chief	677	0.489	alienated customary land
Leasehold grants (by State)	yes	Yes – individual plots	Yes with consent minister	n.a.	n.a.	22,756 leases issued – conflict overlap with customary land
Sublease and tenancies	Yes	yes	Yes with consent land lord			
Deemed leasehold	yes	no	Yes w/ consent district and physical planning clearance	677 (incl leaseholds)	0,489	Kombo north – can be converted in formal leasehold

Legally, in the Gambia all land is public land. This include all state land (Banjul and KMA) and designated state land (Kombo North, Kombo South and Kombo Central) that is not yet recorded or registered to third parties; forest, wildlife parks, and reserves; land held by public institutions (including SSHFC GT Board, i.e. TDA, GPA, AMRC, etc.); and all customary lands not yet registered or recorded to communities, as these are vested in the District Authority to be held by them for the benefit of the communities.

Customary land covers the majority of the land – some 5,084 km² – with an estimated population of 792,317. Such lands are administered under district authorities and local chiefs in the regions, as explained in the next section. It is estimated that freehold land covers 537.7 km² (10%) and affects some 453,640 inhabitants. Freehold areas include residential urban areas, also in the regions (designated state land), acquired public land, as well as forest parks, wildlife parks, nature reserves, and the Tourism Development Area (TDA).

Comprehensive data on leaseholds is not available, and the area cannot be estimated because leaseholds do not form a consistent block of land. Forms of leasehold include subleases and tenancies, licenses, land mortgages, and deemed leaseholds, or 99-year leases of state land (as explained in the next section).

1.3.2.2 History and current status of land policies

The borders of the Gambia were demarcated between 1891 and 1905, pursuant to the Anglo-French Convention of 1889. The area was originally divided into areas referred to as the colony and the protectorate, which were administered separately. The dichotomous approach to land administration – with freehold and leasehold on one hand, and customary on the other – reflects the distinct land policies governing the colony and the protectorate, respectively. However, in practice the two systems overlap and interact in complicated ways.

In the colony, land was vested in the British Crown, from which the state could grant freehold or leasehold grants. In 1945, the Lands Act converted colonial land into state land and prohibited the creation of freeholds without the consent of the House of Representatives (a prohibition that remains under current law). From then on, the state only granted leaseholds, although the freehold grants issued in Banjul prior to 1945 remained secure.

The practical implications of these policies differed between Banjul and KMA. Since Banjul had no record of human settlement prior to its acquisition by the British, there was little conflict over its status and allocation. By contrast, the rest of the colony consisted of ceded lands (notably Kombo Saint Mary, ceded by the King of Kombo in 1840), on which a significant number of villages were already located. These communities continued to occupy their lands as traditional owners, making customary allocations of the land. As a result, two systems of land ownership operated in practice. Conflicts arise particularly when the State granted such lands to third parties.

Then in 1991, the State Lands Act replaced the Lands Act that had regulated land management in Banjul and Kombo Saint Mary (formerly the colony). This Act introduced the deemed leasehold as a recognized land title and empowered the Ministry of Lands (MoL) to designate any area in the regions as state land. Upon this designation, all occupiers of the land in question were deemed to hold a 99-year lease from the state. In 1994, Kombo North, South, and Central were designated as state lands and their residents deemed to hold leases. Because of the significant increase in land values in Greater Banjul area in particular, there has been an unprecedented increase in the sale of land prompting Government to freeze

transactions in some areas (especially coastal areas) from time to time and even remove Alkalos.

In contrast to the colony, the protectorate was divided into five administrative divisions, each under the jurisdiction of a commissioner (now governor). The Lands (Provinces) Act of 1946 vested all land with the district authorities, called *seyfo*, administered land in accordance with customary law for the benefit of the indigenous communities. The *seyfo* had the authority to appoint an *alkalo*, or village head, for villages and towns within the district. Today, this basic administrative structure remains in place, with few modifications, under the Local Government Act of 2003. The Lands (Provinces) Act, which later became the Lands (Regions) Act, remains in operation in the country.¹

The Lands (Provinces) Act also introduced leasehold. Leases could be granted by district authorities only with the endorsement of the Provincial Commissioner and the approval of the MoL, now known as the Ministry of Lands and Regional Government (MLRG). This provision became a vehicle for the alienation and registration of customary land.

Although, the Independence Act of 1964 fused the colony and the protectorate under one administration land governance systems are still very different. Issues are arising in particularly with respect to the adaptation of customary tenure, the regularization of deemed leaseholds and land use planning more in general. The Gambian Constitution of 1997 called for the establishment of a land commission, and in 2007 the Land Commission Act provided for a commission tasked with advising on land administration policy and ensuring compliance and transparency in land allocation. To date, however, the commission has not been established.

1.3.2.3 Land management institutions

The main institution for land administration and management is the MLRG, which is the institution responsible for the administration of the land Acts and therefore the development of land policy. The ministry includes both the Department of Land and Surveys (DLS) and the Department of Physical Planning and Housing (DPPH). The DLS is responsible for national survey control systems and mapping, while the DPPH is involved in land use planning and development control. Other national ministries maintain responsibility for certain categories of land. For example, the Ministry of Agriculture reviews leases of agricultural land, while the Ministry of Forestry and the Environment oversees forest resources in the country.

Customary land is administered by the *seyfo* and *alkalo*, as noted above, while district tribunals preside over dispute resolution. The regional governor maintains the power of review over district tribunal decisions.

Resources available to land agencies are inadequate to train or retain qualified personnel or to acquire appropriate equipment and vehicles for key functions like surveying, mapping and planning. Information on land allocations and sale is not within the public domain and not publicly accessible.

¹ Freudenberg, "Tenure and Natural Resources," p. 11.

1.4 Assessment of Land Governance in the Gambia

1.4.1 Legal and institutional framework

1.4.1.1 Continuum of rights

Recognition of a Continuum of Rights						
LGI	#	Indicator	A	B	C	D
1	i	Land tenure rights recognition in rural areas	■			
1	ii (a)	Land tenure rights recognition in urban areas (Banjul and regions)	■			
1	ii (b)	Land tenure rights recognition in urban areas (KMA)		■		
1	iii	Rural group rights recognition			■	
1	iv	Urban group rights recognition in informal areas			■	
1	v	Opportunities for tenure individualization			■	

Country performance on the legal recognition of both urban and rural rights is high because the Gambia has had a legal framework for land rights recognition in place since 1945. No legal distinction has been made between urban populations and the rural population with respect to land rights.

Most rural land falls under customary tenure, and thus rural land rights are recognized to the extent that they are covered by customary law. The study noted that in some places, community ownership is giving way to family ownership, and in the Kombos in particular, customary land is regularly alienated. Still, clarifications of customary law are needed, including how it might be reformed to meet the current economic needs and realities of communities.

Rights in Banjul are fully registered either as freehold or as registered leasehold grants from the state and are therefore legally recognized. Likewise, the rights of urban communities in the regions have been recognized by the Lands (Regions) Act as beneficial owners under customary law. By contrast, rights in KMA are recognized for those who have formal leases from the state, but not for those who lack such leases but regard themselves as customary owners.

Groups must apply for formal registration in order to receive legal recognition, regardless of whether the group is located in a rural or urban area. Thus while group land rights may be recognized at the local level, this does not automatically translate into legal ownership. Many groups have not registered or formalized the ownership of land in their custody or use.

The law provides opportunities for tenure individualization through the leasing process or the obtaining of a Certificate of Occupancy. It is also possible to individualize land under customary law by obtaining a lease from the district authority under the Land (Regions) Act. How tenure might be individualized under customary law itself is not addressed, even though the transfer of land from communal/family ownership is a routine occurrence.

1.4.1.2 Enforcement of rights

Enforcement of Rights						
LGI	#	Indicator	A	B	C	D
2	i	Surveying/mapping and registration of claims on communal or indigenous land				
2	ii	Registration of individually held properties in rural areas				
2	iii (a)	Registration of individually held properties in urban areas (Banjul)				
2	iii (b)	Registration of individually held properties in urban areas (rest of country)				
2	iv	Women's rights are recognized in practice by the formal system (urban/rural)				
2	v	Condominium regime that provides for appropriate management of common property				
2	vi	Compensation due to land use changes				

As a result, there is geographical variation in the extent of land surveying and registration, depending on the predominant form of tenure found in each area of the country. Since freehold titles predominate in the City of Banjul, all properties are formally registered. In KMA, approximately 57% of properties are registered. In the regions, the vast majority of land is held under customary tenure, which cannot be registered. Land parcels are only mapped when someone applies for individual leasehold on communal land. Most rural land holders do not formalize their titles, except when they need to use the land as collateral or for official/business purposes. The LGAF investigation concluded that less than 10% of customary land boundaries have been surveyed and demarcated, around 10% of rural land is leased, and only 7.4% of properties in the regions were leased and registered.

The formal law is completely silent on women land rights. While this does not appear to pose a problem with regard to acquired public land and land in Banjul and KMA (where land is owned by and administered directly by the State), it is a major obstacle with respect to Regions land. The constitution recognizes customary practices as an exception to the definition of discrimination, posing an obstacle to the legal equality of women and reinforcing customary practices that deny women ownership and control over land.

The law does not recognize common property under condominium/apartment regimes, although the concept of common property is consistent with communal arrangements under the extended family system.

While under the Physical Planning and Development Control Act the Minister has discretion to authorize the payment of compensation for land use change in accordance with the Land Acquisition and Compensation Act, the law is not clear on the payment of compensation for land use change.

1.4.1.3 Mechanisms for recognition of rights

Mechanisms for Recognition of Rights						
LGI	#	Indicator	A	B	C	D
3	i	Use of non-documentary forms of evidence to recognize rights	■			
3	ii	Formal recognition of long-term, unchallenged possession				■
3	iii	First-time registration on demand is not restricted by inability to pay formal fees				■
3	iv	First-time registration does not entail significant informal fees				■
3	v	Formalization of residential housing is feasible and affordable			■	
3	vi	Efficient and transparent process to formally recognize long-term unchallenged possession		■		

Due to the prevalence of the customary land tenure system, recognition of non-documentary forms of evidence in the formal court system is high. Non-documentary forms of evidence can be used alone to obtain full recognition of claims to property when others forms of evidence are not available.

Legislation does not exist to formally recognize long-term unchallenged possession; however, an administrative process does exist for state lands and deemed lease areas. The procedure ordinarily is clear and practical, but because it is not regulated, it is subject to a high level of discretionary action. There is no possibility of formalizing the occupation of private land. Disputes regarding private land are settled by the court system.

Registration processes for regional lands are not prescribed. In urban areas, while formal fees for first time registration of property are generally low, the cost of first-time sporadic registration for a typical urban property may exceed 5% of the value if the property was acquired by purchase before the application for formalization. Registration may also involve discretionary payments to lawyers, unlicensed surveyors or planners (who are mostly hired from DPPH), and *alkalos* and district chiefs, which may be higher than formal fees. In addition, officers in the DLS/DPPH may have to be “tipped” to expedite the process.

The formalization of urban housing involves securing land titles on the one hand and registering housing units in unplanned areas on the other. Plots from unplanned areas can generally be formalized except if there are conflicting claims over ownership, boundaries, and so forth. However, the requirements for leaseholds are less transparent and typically require the intervention of “experts,” for which payment is required.

1.4.1.4 Restrictions on rights

Restrictions on Rights						
LGI	#	Indicator	A	B	C	D
4	i (a)	Restrictions on urban land ownership	■			
4	i (b)	Restrictions on urban land use and transferability				■
4	ii	Restrictions on rural land use, ownership, and transferability				■

Restrictions on land ownership are provided under both the Land Regions Act and the State Land Act, and the LGAF panel deemed them to be justified in light of the Gambia’s limited land resources. Still, LGAF participants considered other restrictions cumbersome and unjustified, particularly those on transferability and mortgages that require ministerial consent. Restrictions relating to rural land use are largely nonexistent, and the few that do exist are weakly enforced.

Ownership restrictions are typically imposed where the land falls within reserve areas and where land is preserved for public use, as well as in some cases where the use contradicts what is recommended in the master plan. Periodically, leases to specified areas may be under “embargo” while the government deliberates on possible future development options. Information on these areas is often not publicly disseminated.

1.4.1.5 Clarity of institutional mandates

Clarity of Mandates						
LGI	#	Indicator	A	B	C	D
5	i	Separation of policy formulation, implementation, arbitration roles				
5	ii	Differentiated mandates across institutions				
5	iii	Differentiated responsibilities across levels of government				
5	iv	Information sharing across institutions				

Land issues have not been approached in an integrated way. For instance, the Agricultural and Natural Resource policy does not address land issues. Moreover, overlaps between land agencies have not been addressed or harmonized, and the differing mandates of district authorities and *alkalos* with respect to land are not sufficiently spelt out.

Likewise, the division of the MLRG into the DLS and DPPH has never been reviewed. The DLS is wholly responsible for the administration of the State Lands Act, leading to an overconcentration of authority. The department lacks independent oversight, as the Land Commission has not been established. This concentration of roles has given rise to allegations of abuse and the appointment of Commissions of Inquiry to investigate land issues over the years, the last of which was in 2012.

Information on land is not systematically collected or maintained. Consequently, land use data is not easily and routinely available to the MLRG/DPPH and to other government agencies. There is no policy for sharing information on land rights with interested institutions, including NGOs and the private sector.

1.4.1.6 Equity and nondiscrimination

Equity and Non-Discrimination in the Decision-Making Process						
LGI	#	Indicator	A	B	C	D
6	i	Clear land policy developed in a participatory manner				
6	ii	Meaningful incorporation of equity goals				
6	iii	Cost of implementing policy is estimated, matched with benefits, and adequately resourced				
6	iv	Regular public reports indicating progress in policy implementation				

There is no record of public participation in the legislative processes relating to the enactment of any land related laws. Most people are unaware of the contents of these laws and policies. Similarly, even to the extent that a land policy can be inferred from existing legislation, there is no evidence of programme budgeting. Capacity is also very weak in the main land agencies, and most have very few professionals. Likewise, there is no systematic monitoring of policy implementation. Land officials occasionally submit monitoring briefs to their lines of authority based on sporadic field visits, but these reports are not made public.

1.4.2 Land use planning, taxation, and management

1.4.2.1 Transparency of restrictions

Transparency of Land Use						
LGI	#	Indicator	A	B	C	D
7	i	Urban land use plans and changes to these are based on public input				■
7	ii	Rural land use plans and changes to these are based on public input	■	■	■	■
7	iii	Public capture of benefits arising from changes in permitted land use				■
7	iv	Speed of land use change	■	■	■	■

Country performance in this thematic area is generally weak. This is primarily because there has not been any land use plan produced since 1985. Capacity has been lost overtime, and the institutional infrastructure for planning has not been given much attention. Moreover, land use planning and management is a multi-sectoral exercise: it requires an integrated and interdisciplinary approach that should include the public and private sectors, civil society, and community leaders. This has so far been absent in the consideration of land use issues in the country.

As discussed in 4.2.2, the most recent master plans expired in 2000, and there is no record of public input in their original development. Today, planning capacity is nonexistent, and the capacity of the DPPH to track development on the ground is weak. With very little planning actually occurring, there has been little opportunity for public participation, making transparency a moot issue.

1.4.2.2 Efficiency in the planning process

Efficiency of Land Use Planning						
LGI	#	Indicator	A	B	C	D
8	i	Process for planned urban development in the largest city			■	
8	ii	Process for planned urban development in the next 4 largest cities			■	
8	iii	Ability of urban planning to cope with urban growth				■
8	iv	Plot size adherence	■			
8	v	Use plans for specific land classes (forest, pastures, etc.) are in line with use				■

Land use planning has mostly been limited to urban planning. The first comprehensive plans were made in 1984 with the creation of the GBA master plan and three growth centre plans to provide guidance on land use in the face of rapid urbanization and population growth; however, these plans expired in 2000 and have yet to be revised. Plan implementation has not been successful to the extent that urban sprawl is a vivid occurrence. There is little capacity either to produce current plans or to utilize such plans to control the urban development process.

Institutional mandates for land use planning are not clearly defined between city/municipal councils and national agencies. Urban expansion is unplanned, and urban services are sometimes provided after evolution of settlements, generally after they undergo some densification. Urban planning has no capacity to cope with growth, in the face of rapid rural migration to the GBA/Greater Banjul Metropolitan area. The resulting unplanned areas are illegal, strictly speaking, since they lack development permits; however, the LGAF panel distinguished between these unplanned areas and “typical” notions of informal/illegal areas.

Plot size adherence in unplanned areas is low and existing requirements for residential plot sizes are met in less than 50% of plots in unplanned areas. By contrast, existing requirements for residential plot sizes in planned areas are met in at least 90% of plots.

While there are substantial and apparent deviations from existing plans for forests, wetlands, reserves and parks, green belts and buffer zones, there is insufficient data to substantiate the magnitude of deviation from plans in these rural land classes except for forestry. The National Forest Assessment found significant loss of forest cover from 44% in 1981 to 37% in 2010, with the loss of mangrove cover accounting for 73% of this loss.

1.4.2.3 Speed and predictability

Speed and Predictability						
LGI	#	Indicator	A	B	C	D
9	i (a)	Requirements for building permits are affordable/transparent (modern construction)				
9	i (b)	Requirements for building permits are affordable/transparent (traditional structures)				
9	ii	Time to get building permit				

Speed and predictability in the current planning process is good. The processes for acquiring a building permit for a residential dwelling is efficient and takes between 2-4 weeks. At D5 per square metre and D15 in application fees,² it is also affordable. A medium size unit of 150m² would cost about D750.³ The rate does not, however, distinguish between simple traditional structures and more complex structures. The cost may be somewhat high for traditional structures. The requirements for building permits are justified and affordable, but not clearly disseminated or consistently enforced. However, for most people, even for owners of modern villas in expensive neighbourhoods, development permits are not viewed as a critical requirement due to the perceived absence of penalties for non-compliance.

1.4.2.4 Transparency of valuations

Transparency of Valuation						
LGI	#	Indicator	A	B	C	D
10	i	Clear process of property valuation				
10	ii	Public availability of valuation rolls				

Valuation processes are based on the cost per square metre of the structures on the land, rather than its market value.⁴ The LGAF panel noted that this is a distortion in the valuation system, since the market value of a property is to a large extent determined by its location. Thus some owners of high-value properties pay significantly less tax than they would under a market-based valuation process. Additionally, the valuation roll is five years out-of-date, having been last conducted in 2003 to apply through 2008. The roll is not publicly accessible, and property owners are generally only aware that their properties have been valued when the tax collector shows up at their doors. Similarly, people are reluctant to allow valuers into their homes to conduct valuation exercises as they do not understand the valuation and rating process.

² Approximately 15 US cents and 46 US cents, respectively, as of July 2013.

³ Approximately 23 USD, as of July 2013.

⁴ Where the value of the property is less than D300,000, the area councils apply a fixed rate property tax of D100 to D500.

1.4.2.5 Tax collection efficiency

Tax collection efficiency						
LGI	#	Indicator	A	B	C	D
11	i	Property tax exemptions justified				
11	ii	Completeness of tax roll				
11	iii	Assessed property taxes are collected				
11	iv	Taxes higher than cost of collection				

Religious, health, educational institutions, and properties used for social amenities are exempted from property taxes. This was found to be justified and consistently applied. However, the application of capital gains tax is less transparent and consistent. The unit rate applied to capital gains tax was generally found to have no relation to the transaction price. The rate of tax collection is very low. For 2012, 77% of tax revenues (approximately D60 million) in KMA and 76.9% (approximately D46.4 million) in WCR were uncollected. This was attributed to a high rate per poundage, poorly paid and unmotivated staff, weak enforcement capacity, tax evasion, and corrupt practices. The cost of collecting taxes is 8% for the Kanifing Municipal Council and 14% for the West Coast Region, which is considered to be low. This is largely because the staff is unskilled, with low salaries.

1.4.3 Management of Public Land

1.4.3.1 Identification of public land

Identification of Public Land						
LGI	#	Indicator	A	B	C	D
12	i	Public land ownership is justified and implemented at the appropriate level of government				
12	ii	Complete recording of publicly held land				
12	iii	Assignment of management responsibility for public land				
12	iv	Resources available to comply with responsibilities				
12	v	Inventory of public land is accessible to the public				
12	vi	Key information on land concessions is accessible to the public				

Formally, all land in the Gambia is public land. Direct ownership of public land by the State as well as its custodianship of customary land was found to be justified and in the public interest provided it is prudently and sustainably managed.

State land has not been inventoried. Most lands cannot be identified on the ground although some are mapped. Its management is fragmented between central and local authorities and different sectors. The management of public land has primarily been the responsibility of the MLRG. Customary land is directly vested in the district authorities, but a structure for the management of lands under the direct custody of district authorities is missing and district authorities seem to be involved only for the purpose of leasing or other formal transactions.

1.4.3.2 Justification of expropriation

Incidence of Expropriation						
LGI	#	Indicator	A	B	C	D
13	i	Transfer of expropriated land to private interests				
13	ii	Speed of use of expropriated land				

In the past 3 years, only two expropriations occurred, one in Allatentu and the other for the Banjul Port Expansion Project. Country performance in this area is good. In general, expropriations are carried out in the public interest, and it is uncommon for the government to expropriate land for pure private use. However, expropriations for the purpose of creating residential layouts do occur, in which case the majority of beneficiaries are private individuals. This is part of a policy to make housing available and affordable. Expropriated land is also typically put to its destined use immediately.

1.4.3.3 Transparency of expropriation procedures

Transparency of Expropriation Procedures						
LGI	#	Indicator	A	B	C	D
14	i	Compensation for expropriation of ownership	■			
14	ii	Compensation for expropriation of all rights			■	
14	iii	Promptness of compensation				■
14	iv	Independent and accessible avenues for appeal against expropriation			■	
14	v	Appealing expropriation is time-bounded				■

Compensation is paid for expropriation of registered land i.e. leasehold and freeholds under the Land Acquisition and Compensation Act in cash and, where appropriate, in kind by relocation of residential owners. Compensation for unregistered land is limited to improvements/structures on the land and usufructuary rights in the case of land under customary tenure. There are no clear guidelines on how the compensation for usufructuary rights should be done, resulting in a high level of discretionary application of the rules. For farmers the compensation may be limited to the loss of income in one farming season.

Less than 50% of claimants receive compensation within a year. Expropriation exercises do not include arbitration mechanisms to which persons affected may refer disputes. The great majority of persons affected by expropriation are illiterate farmers, whose awareness of avenues for redress is limited. High court proceedings are expensive and generally unaffordable to most Gambians, and moreover take years to complete.

One example of good practice in terms of fairness and transparency of compensation, which should become the norm, is the case of the 34 properties at Half-Die in Banjul, which were expropriated for the port expansion. A task force of different institutions and property owners was setup to implement the process and to inform the property owners of their rights of appeal in an arbitration process. An independent consultant was hired to carry out the determination of value and to conduct negotiation for compensation. Compensation was promptly paid to more than 90% of expropriated owners. The few owners who were dissatisfied were heard by a panel in an arbitration exercise.

1.4.3.4 Allocation of public land

Transparent Processes for Divestiture						
LGI	#	Indicator	A	B	C	D
15	i	Openness of public land transactions				■
15	ii	Collection of payments for public leases	■			
15	iii	Modalities of lease/sale of public land		■		

Traditionally, the Ministry of Lands had the power to issue leasehold grants of public land under the State Lands Act of 1991 and its forerunner, the Lands (Banjul & KSM) Act. Within the past decade, however, a new mechanism has arisen that allows the government to cede

public land at market prices in order to generate revenue. Officially, the sale of land by the Land Sales Committee (LSC) is by public auction. However, the 2011 Commission of Inquiry into Land Allocation (CILA) found that there was poor documentation, the process was not approved by the minister, no records of maps and valuations existed, and the process was not transparent. Some plots were not in fact advertised, and some members of the committee sold plots to themselves at “give-away prices.”

In general, all agreed payments for the sale or lease of public land have to be made before the title is transferred to the buyer.

1.4.4 Public provision of land information

1.4.4.1 Completeness

Completeness of Registry Information						
LGI	#	Indicator	A	B	C	D
16	i	Mapping of registry records	■			
16	ii	Relevant private encumbrances			■	
16	iii	Relevant public restrictions				■
16	iv (a)	Searchability of the registry / org with information on land rights (Banjul)	■			
16	iv (b)	Searchability of the registry / org with information on land rights (rest of country)				■
16	v	Accessibility of registry records		■		
16	vi (a)	Timely response to requests (land/deed registry)	■			
16	vi (b)	Timely response to requests (cadastre)				■

More than 90% of records for privately held land registered in the registry are readily identifiable in maps in the registry or cadastre. The system provides for all original registered deeds/leases to be accompanied by a cadastral map/plan prepared by the DLS. Original copies are kept by DLS and, for Region land, by the governor’s office.

Relevant private encumbrances – i.e. mortgages, pledges, and subleases – are not always recorded. This has been attributed to high stamp duty fees (20% of annual rent) and the fact that registration is voluntary. Public encumbrances – e.g. the re-entry of leases, change of use, compulsory acquisitions, and relocations – are not required to be registered by any law and may not be recorded at all.

Both the registry and cadastre are not automated, and access can be a serious challenge. The records in the Land/Deeds Registry are searchable by parcel for Banjul only because a register of town lots exists. For the rest of the country, the records are not searchable by name of owner or by parcel. They are searchable only by deed Serial Registration Number (SR No.). Without the SR No., it is virtually impossible to find the records of a property in the registry.

Generally copies of documents can be obtained from Registry within a week by the right holder or lawyers. Such copies are not usually given to third parties “as a precautionary measure.” Searching for a document from the cadastre can take longer, and it is not unusual to be told that a file or document cannot be located.

1.4.4.2 Reliability of Registry Records

Reliability of Registry Records						
LGI	#	Indicator	A	B	C	D
17	i	Registry focus on client satisfaction				
17	ii	Cadastral/registry info up-to-date				

The generation of revenue is the primary consideration of most government services. A customer service culture is not the norm. The registry and cadastre have therefore not developed service standards or a system to receive feedback from users. Office conditions are also not encouraging for clients.

The pace of physical development in the field is much faster than the process of updating these cadastral plans by way of consistent and systematic map revision campaigns by the DLS. A system of systematic updating the registry and cadastre is absent. Both are only updated in the process of preparing leases or registering documents.

1.4.4.3 Cost-effectiveness, accessibility, and sustainability

Cost Effectiveness, Accessibility, and Sustainability						
LGI	#	Indicator	A	B	C	D
18	i	Cost of registering a property transfer				
18	ii	Financial sustainability of registry				
18	iii	Capital investment in the system to record rights				

The cost of registering a property transfer is high - above 5% of the transaction value: there is a minimum 5% capital gains tax for an individual seller (and 10% for companies), a fixed stamp duty cost of 5% payable by the buyer, lawyer's fees (discretionary), and registration fees of D1000. Other fees may be payable to intermediaries and land agents. The cost of maintaining the Land/Deeds registry is currently less than 10% of revenue (with an estimated personnel cost of D112,440 compared to an estimated D1,623,000 of revenue in 2012). There is further potential for generating revenue from unregistered transactions and for the registry to be financially self-sufficient. There is little or no capital investment. Monies generated are paid into the Consolidated Revenue Fund, from which budgetary allocation is made to the Attorney General's Chambers and the Ministry of Justice for the registry.

1.4.4.4 Transparency of service costs

Transparency of Service Costs						
LGI	#	Indicator	A	B	C	D
19	i	Schedule of fees for services is public				
19	ii	Informal payments discouraged				

A schedule of fees is available for all services in the registry and cadastre, but this is not published in an accessible medium. The last publication of fees for the registry by legal notice was done in 1972. Moreover, the land sector operates mostly informally. The processes before final registration are cumbersome, bureaucratic, and opaque and encourage informality to grow. While illegal staff behavior is not condoned, there are no mechanisms in place to check it actively.

1.4.5 Dispute resolution and conflict management

1.4.5.1 Assignment of Responsibility for Dispute Resolution

Assignment of Responsibility for Dispute Resolution						
LGI	#	Indicator	A	B	C	D
20	i	Accessibility of conflict resolution mechanisms	■			
20	ii	Informal or community based dispute resolution			■	
20	iii	Forum shopping		■		
20	iv	Possibility of appeals			■	

The Gambia has a tripartite legal system founded on the received English law, Sharia, and customary law. Customary law is administered by district tribunals, while Sharia law is administered both by *cadi* courts and by districts tribunals for personal law matters of Muslims.

The country has a mature formal dispute resolution system. First-instance courts that deal with land cases include the district tribunals (unlimited jurisdiction on land disputes), magistrate's courts (jurisdiction limited to possession/ejection), *cadi* courts (Sharia jurisdiction on inheritance and succession), and the High Court (unlimited jurisdiction). Rent tribunals also deal with landlord and tenant disputes. In addition, there is the Alternative Dispute Resolution Secretariat (ADRS), which has offices in Banjul, Farafenni, and Basse. There are also informal and community systems of alternative dispute resolution, including committees of elders and other mechanisms set up by different ethnic groups.

Physical access to dispute resolution mechanisms is high. District tribunals are present in all districts in the country and highly accessible to local communities. However, concerns have been consistently raised about their composition, independence, and impartiality. The *cadi* court system has been extended to 2 out of the 5 Regions – Basse and Kerewan – and this presents an opportunity to transfer Sharia jurisdiction from district tribunals to them. The High Court handles a high proportion of first-instance land cases. Access to the high court is limited because they are only present in GBA, Brikama, and Basse, and affordability is a major challenge.

There is some overlap of jurisdiction - both the High Court and district tribunals have original jurisdiction over land disputes. At the same time the High Court also has appellate jurisdiction over district tribunals, but none over *cadi* courts. The *cadi* courts and district tribunals have overlapping jurisdiction over inheritance disputes. Some magistrate's courts have also been assuming jurisdiction over land disputes because of the ambiguous wording in the Subordinate Court Civil Proceedings Act. However, disputes cannot generally be pursued simultaneously in several courts.

1.4.5.2 Pending conflict level

Low Level of Pending Conflicts						
LGI	#	Indicator	A	B	C	D
21	i	Conflict resolution in the formal legal system			■	
21	ii	Speed of conflict resolution in the formal system				■
21	iii	Long-standing conflicts (unresolved cases older than 5 years)				■

The level of pending land disputes in the district tribunals is low, but the average for all courts is high compared to other types of cases, at 42.7% in 2012. The average time for

resolving land disputes cases is 30 days in the district tribunals, but 8 months to 4 years in the High Court. Less than 50% of land disputes are resolved under one year.

1.4.6 Forestry

Commitments to Sustainability and Climate Change Mitigation						
FGI	#	Indicator	A	B	C	D
1	i	Country signature and ratification of international conventions				
1	ii	Incentives to promote climate change mitigation through forestry				

The Gambia is a party to the five major international conventions that are directly relevant to the rational and sustainable management and utilization of forest resources. All of these conventions have been integrated in forest, wildlife, and water subsector policies and streamlined into national action plans, although implementation remains a challenge.

Despite Government's endorsement of the Framework Convention on Climate Change, relevant incentives such as payment of environmental services to promote forestry activities to mitigate climate change are seemingly absent and awareness remains limited among the private sector and local communities.

Recognition of Public Goods Aspects and Promotion of Sustainable Use						
FGI	#	Indicator	A	B	C	D
2	i	Public good aspects of forests recognized by law and protected				
2	ii	Forest management plans and budgets address the main drivers of deforestation and degradation				

Biodiversity in the Gambia faces serious threats, including the loss and fragmentation of natural habitats due to deforestation, wetland drainage, infrastructural development, overgrazing, and poor farming practices, as well as human population pressure and poverty. Still, numerous pieces of legislation recognize the public goods aspects of forests, including the Forest Act of 1998, the Forest Policy of 1995-2005, and the Biodiversity Policy of 2000 - 2010. The Biodiversity Act has been revised but is yet to be enacted.

National, international, and community-based organizations are actively involved in the restoration and rehabilitation of degraded forest lands, with the participation of affected rural communities. However, the sector is constrained by the allocation of funds for the implementation of planned activities in addressing the drivers of deforestation and desertification, which are mainly bush fires and uncontrolled illegal tree felling.

Supporting Private Sector Sustainable Investment						
FGI	#	Indicator	A	B	C	D
3	i	Commitment to forest certification and chain-of-custody systems to promote sustainable harvesting				
3	ii	Commitment to SMEs as a way to promote competition, income generation, and productive rural employment				

Neither the Department of Forestry, nor communities, nor private operators are registered with individuals or groups accredited to certify the management systems applied in the various forest categories. Since a high percentage of timber consumed in the Gambia comes from the troubled region of Casamance, a chain-of-custody system would be rather impossible to apply in the country. The legal framework is silent on the certification of forest products as a control or monitoring mechanism.

The Government actively supports the development of small to medium-sized forest sector businesses that use forest resources sustainably through the Market Analysis and Development (MA&D) approach. MA&D allows local people to identify products/services and develop markets for them to boost community revenue, while also encouraging them to protect forest resources. The scheme is revenue-sharing, with a net benefit of 85% to the communities (60% for village development and 40% to reinvest in forests).

Livelihood of Forest-Dependent Communities						
FGI	#	Indicator	A	B	C	D
4	i	Legal recognition of traditional and indigenous rights to forest resources				
4	ii	Sharing of income and benefits from public forests with local communities legally provided for and implemented				

The legal recognition of indigenous and traditional rights and access to forest resources is high. Forest regulations provide for forest access and use in the context of a Community Forest Management Agreement, and the Forest Policies of 1995 & 2010 specifically call for community undertakings and private forestry.

Forest Land Use, Tenure, Conversion						
FGI	#	Indicator	A	B	C	D
5	i	Boundaries of the countries forest estate, the classification into various uses, and ownership are clearly defined and demarcated				
5	ii	In rural areas, forest land use plans and changes in these plans are based on public input				

Forest boundaries are generally clearly surveyed and demarcated for most categories of forest lands and ownership – forest parks, community forests, and private forests. Encroachment into forest lands and the maintenance of boundary pillars and sign boards are major challenges.

There has been significant progress in promoting sustainable forest resource management through the participation of certain stakeholders, such as local communities and the private sector. Still, there is a need for policy dialogues and increased transparency at the local community level in developing land use plans.

Controlling Illegal Logging and Forest Crimes						
FGI	#	Indicator	A	B	C	D
6	i	Approach to controlling forest crimes, including illegal logging and corruption				
6	ii	Inter- and intra-agency efforts and multi-stakeholder collaboration to combat forest crimes, and awareness of judges and prosecutors				

There is negligible coordination inside and across agencies to combat forest crime. Judges and prosecutors are not adequately knowledgeable about the effects of forest offences. The level of comprehension of forest staff of existing policies, laws, and regulations for combating forest crimes is also questionable.

1.5 Policy Priorities

The following are the key policy implications that LGAF expert panels derived for further consideration by relevant government authorities.

Given the current absence of a land policy, a clearly articulated and integrated national land policy needs to be developed as a top priority. This policy should include proposals on shelter delivery and on strengthening women's land rights, along with implementing legislation. A first step towards policy development would be the establishment of a National Land Commission in accordance with the 2007 Act. With respect to land administration, the weak legislative framework for mapping, titling, street naming, and registration needs to be addressed, and the Survey Act of 1991 should be reviewed to ease up what is perhaps one of the most time-consuming aspects of the leasing process: the preparation of cadastral maps. The legislative framework should be reviewed with a view to addressing the need for all encumbrances to be registered, to ensure that interests in all registered land are recorded and apparent. Institutional procedures guiding the recording of charges should be clearer and more consistent.

Likewise, a legislative review of all land acts as well as their implementation needs to be undertaken. Overlaps and gaps have to be addressed through legal reform and the putting in place of comprehensive regulatory mechanisms to support processes and procedures. Equally, sector legislation needs to be reviewed and reformed. In addition, reflection is needed on approaches for customary law codification and reform to enhance the robustness of customary law and align it with national objectives for rural development and poverty reduction. The Local Governments Act should be reviewed to redefine the role of traditional rulers in the management of land, in particular the *alkalos*. The State Lands Act should be reviewed, as the provision whereby land can be designated state land is the source of many conflicts.

An institutional framework for integrated and sustained land use planning capacity needs to be built, given the weaknesses in planning at the moment. Except for forestry, state land is not being managed. Vacant lands without private ownership should be comprehensively planned, including public amenities.

Moreover, mechanisms for the coordination and sharing of information between the land agencies could help fill in the gaps in the current maps and master plan, and should be encouraged in the short term. Equally, the requirements for building permits (surveying, planning, and demarcation) can be used to update future master plans. However, since data on current land use nationwide across all sectors is lacking, new data must be collated through a nationwide exercise. This exercise should include all subsectors and should result in the production of up-to-date topographic land use maps, including available state land. Land use procedures (for example, a manual of procedure) and processes that are transparent, appropriate, and participatory should be put into place. In particular, the absorption of land by the government for any purpose, as well as the granting of leases, must follow specific guidelines, which need to be laid out, and must be done transparently. In addition, such records should be made available to the public. To improve capacity, a comprehensive staff audit, recruitment, and training are required. Improved revenue generation, user fees, and donor support are also necessary.

There should be a degree of transparency involved in the allocation or sale of public lands, particularly if the allocation or sale is conducted by public institutions. The sale of public lands should rest in the hands of an independent land agency, and the central government should be discouraged from conducting such sales. There should be guidelines for the sale of public land for the sake of consistency. All land agency sales should be advertised and conducted by way of tender. Records of public land sales should be inventoried and displayed

at the respective land agency. Unfettered access should be available by members of the public to information on all allocations and or sales of public land.

The government should set up a policy review panel to look into all aspects of public land sales, with a view toward creating the appropriate environment for shelter delivery via the creation of residential layouts and the sale of land to people. The government land sales policy for residential use should not be revenue motivated, but intended to create an environment for an effective ‘shelter delivery’ system which reflects the aspirations of the people.

Policies must be developed and strategies put in place for controlling the widespread practice of individuals acquiring vast tracks of land from customary owners for speculative purposes. The practice will generate future scarcity and may force the government to expropriate land for public interest at significant costs.

Compensation should be given in a consistent and uniform manner. In the interest of fairness and transparency, the formulation of a set of regulations that can be uniformly applied for expropriated lands, whether registered or unregistered, is required. All valuations for expropriations should be done by private consultants. There should be a statutory timeline for the payment of compensation and penalties awarded for delay. Prompt compensation for expropriated land engenders confidence in land governance, especially when such expropriations affect the most vulnerable sectors of society. The process of compensation ought to be first resolved before being put to the required use; otherwise, unnecessary conflict is created.

The full mapping and demarcation of all lands and an efficient system for registration of land rights should be pursued and established. Likewise, the formalization of the land and housing sectors needs to be pursued. Additionally, there is a need for the comprehensive and accurate updating of cadastral maps. Moreover, an efficient property valuation system, including a system of identification and street naming, needs to be established, supported by an effective strategy for outsourcing selected components of the valuation and collection systems to enhance effectiveness and efficiency. A robust and modern registration system is required. This implies the creation of a digitized and automated land registration system that has a database that is accessible to all stakeholders, and that would have built into it sufficient safeguards for the protection and upkeep of land records. Stamp duties should be revised downwards, since the capital gains tax – which is a minimum of 5% for an individual and 10% for a company – has to be paid by the seller. At the same time, quality and service standards should be improved, and cost-effective pricing of services should be devised in order to ensure sustainability. In order to accomplish this, capacity building on key skills should be undertaken and a framework for outsourcing cadastral support services should be developed.

A legislative review is necessary to remove jurisdictional overlaps among first instance courts. The numerous decisions on land should be compiled and collated to form a compendium of cases to guide the courts on the applicable land law, and judges should have capacity in land matters and land law. Although many forums for dispute resolution exist in the Gambia, the low level of awareness of land conflict resolution mechanisms implies the need for public sensitization. The 39 district tribunals are the court of first instance for a majority of the people, and customary law is what applies to land in the regions. Thus, the jurisdiction and composition of the tribunals should be reviewed, and the perceived lack of independence of district tribunal members needs to be addressed. They should be constituted by independent persons of undoubted integrity in the community who are knowledgeable in

customary law. Likewise, district tribunals should be fully brought under the administrative supervision of the judiciary and their members appointed by the Judicial Service Commission. The governors should not have any review jurisdiction over tribunal decisions. To improve the effectiveness of the ADR system, discussion is needed on whether the *seyfolu* and *alkalos* should be incorporated into the ADR system and how to enhance adherence to ADR decisions reached after mediation. Finally, a system of appeals from rent tribunal decisions needs to be established.

The effective management of forest lands will require an action plan for the implementation of the Forest Policy 2010-2019 and the Wildlife Policy and Bill 2013-2022, as well as improved human and institutional capacity. Moreover, there is a need to encourage gender mainstreaming in forest management and to promote the creation of public-private partnerships for sustainable forest conservation.

1.6 Conclusion

The LGAF process in the Gambia served to highlight areas of strength and weakness in the land management systems and practices of the country. Overall, land rights have solid legal recognition, including the rights of communities to forest resources. Similarly, the country has a number of formal and informal mechanisms for dispute resolution that are accessible to local populations. Yet critical gaps remain in other aspects of land governance, particularly with respect to the absence of a unified national land policy and a severe lack of planning capacity and weaknesses in land administration. The LGAF process involved the broad and active participation of a wide range of stakeholders from within and outside government and from the central to the local level. This demonstrates a growing commitment to start addressing land issues in order to ensure the prudent and sustainable management of Gambia's limited land resources, which are central to poverty reduction, national food security, and sustainable urban development.

2. CONSOLIDATED SCORECARD

For the definition of each score, please refer to:

http://siteresources.worldbank.org/INTLGA/Resources/The_Framework_only.pdf

LGI-Dim	Thematic Area 1 – Legal and Institutional Framework	Score				
		A	B	C	D	
Recognition of Rights						
1	i	Land tenure rights recognition (rural)				
1	ii(A)	Land tenure rights recognition (urban) Banjul and Regions				
1	ii(B)	Land tenure rights recognition (urban) KMA				
1	iii	Rural group rights recognition				
1	iv	Urban group rights recognition in informal areas				
1	v	Opportunities for tenure individualization				
Enforcement of Rights						
2	i	Surveying/mapping and registration of claims on communal or indigenous land				
2	ii	Registration of individually held properties in rural areas				
2	iii(A)	Registration of individually held properties in urban areas (Banjul)				
2	iii(B)	Registration of individually held properties in urban areas (rest of country)				
2	iv	Women’s rights are recognized in practice by the formal system (urban/rural)				
2	v	Condominium regime that provides for appropriate management of common property				
2	vi	Compensation due to land use changes				
Mechanisms for Recognition						
3	i	Use of non-documentary forms of evidence to recognize rights				
3	ii	Formal recognition of long-term, unchallenged possession				
3	iii	First-time registration on demand is not restricted by inability to pay formal fees				
3	iv	First-time registration does not entail significant informal fees				
3	v	Formalization of residential housing is feasible and affordable				
3	vi	Efficient and transparent process to formally recognize long-term unchallenged possession				
Restrictions on Rights						
4	i(A)	Restrictions regarding urban land use, ownership and transferability (ownership)				
4	i(B)	Restrictions regarding urban land use, ownership and transferability(transfers and change of use)				
4	ii	Restrictions regarding rural land use, ownership and transferability				
Clarity of Mandates						
5	i	Separation of institutional roles				
5	ii	Institutional overlap				
5	iii	Administrative overlap				
5	iv	Information sharing				
Equity and Non-Discrimination						
6	i	Clear land policy developed in a participatory manner				
6	ii	Meaningful incorporation of equity goals				
6	iii	Policy for implementation is costed, matched with the benefits and is adequately resourced				
6	iv	Regular and public reports indicating progress in policy implementation				

LGI-Dim		Thematic Area 2-Land Use Planning Management &Taxation				
Transparency of Land Use						
7	i	In urban areas, land use plans and changes to these are based on public input				Red
7	ii	In rural areas, land use plans and changes to these are based on public input				
7	iii	Public capture of benefits arising from changes in permitted land use				Red
7	iv	Speed of land use change				
Efficiency of Land Use Planning						
8	I	Process for planned urban development in the largest city			Yellow	
8	ii	Process for planned urban development in the 4 largest cities (exc. largest)			Yellow	
8	iii	Ability of urban planning to cope with urban growth				Red
8	iv	Plot size adherence	Green			
8	v	Use plans for specific land classes (forest, pastures etc) are in line with use				Red
Speed and Predictability						
9	i(A)	Applications for building permits for residential dwellings are affordable and processed in a non-discretionary manner.		Yellow		
9	i(B)	Applications for building permits for residential dwellings are affordable and processed in a non-discretionary manner.			Yellow	
9	ii	Time required to obtain a building permit for a residential dwelling	Green			
Transparency of Valuation						
10	i	Clear process of property valuation				Red
10	ii	Public availability of valuation rolls				Red
Tax Collection Efficiency						
11	i	Exemptions from property taxes are justified	Green			
11	ii	Property holders liable to pay property tax are listed on the tax roll				Red
11	iii	Assessed property taxes are collected				Red
11	iv	Property taxes correspondence to costs of collection	Green			

LGI-Dim		Thematic Area 3- Public Land Management				
Identification of Public Land						
12	i	Public land ownership is justified and implemented at the appropriate level of government			Yellow	
12	ii	Complete recording of publicly held land			Yellow	
12	iii	Assignment of management responsibility for public land				Red
12	iv	Resources available to comply with responsibilities				Red
12	v	Inventory of public land is accessible to the public				
12	vi	Key information on land concessions is accessible to the public.				
Incidence of Expropriation						
13	i	Transfer of expropriated land to private interests	Green			
13	ii	Speed of use of expropriated land	Green			
Transparency of Procedures						
14	i	Compensation for expropriation of ownership	Green			
14	ii	Compensation for expropriation of all rights			Yellow	
14	iii	Promptness of compensation				Red
14	iv	Independent and accessible avenues for appeal against expropriation			Yellow	
14	v	Appealing expropriation is time-bounded				Red

Transparent Processes						
15	i	Openness of public land transactions				Red
15	ii	Collection of payments for public leases	Green			
15	iii	Modalities of lease or sale of public land		Yellow		

LGI-Dim		Thematic Area 4 – Public Provision of Land Information				
Completeness of Registry						
16	i	Mapping of registry records	Green			
16	ii	Economically relevant private encumbrances			Orange	
16	iii	Economically relevant public restrictions or charges				Red
16	iv(A)	Searchability of the registry (or organization with information on land rights) Banjul city	Green			
16	iv(B)	Searchability of the registry (or organization with information on land rights) Rest of the country				Red
16	v	Accessibility of records in the registry (or organization with information on land rights)		Yellow		
16	vi(A)	Timely response to a request for access to records in the registry (or organization with information on land rights)		Yellow		
16	vi(B)	Timely response to a request for access to records in the registry (or organization with information on land rights)				Red
Reliability of Records						
17	i	Focus on customer satisfaction in the registry				Red
17	ii	Registry/ cadastre information is up-to-date				Red
Cost Effective and Sustainable						
18	i	Cost of registering a property transfer				Red
18	ii	Financial sustainability of the registry	Green			
18	iii	Capital investment				Red
Transparency						
19	i	Schedule of fees is available publicly		Yellow		
19	ii	Informal payments discouraged				Red
LGI-Dim		Thematic Area 5 – Dispute Resolution and Conflict Management				
Assignment of Responsibility						
20	i	Accessibility of conflict resolution mechanisms	Green			
20	ii	Informal or community based dispute resolution			Orange	
20	iii	Forum shopping		Yellow		
20	iv	Possibility of appeals			Orange	
Low Level of Pending Conflicts						
21	i	Conflict resolution in the formal legal system			Orange	
21	ii	Speed of conflict resolution in the formal system				Red
21	iii	Long-standing conflicts (unresolved cases older than 5 year)				Red

FGI-Dim	Forestry Module				
FGI 1 (i)	Country signature and ratification of international conventions	Green			
FGI 1 (ii)	Implementation of incentives to promote climate change mitigation through forestry				Red
FGI 2 (i)	Public good aspects of forests recognized by law and protected	Green			
FGI 2 (ii)	Forest management plans and budgets address the main drivers of deforestation and degradation		Yellow		
FGI 3 (i)	Country`s commitment to forest certification and chain-of-custody systems to promote sustainability harvesting of timber and non-timber forest products			Orange	
FGI 3 (ii)	Country`s commitment to SMEs as a way to promote completion, income generation and productive rural employment	Green			
FGI 4 (i)	Recognition of traditional and indigenous rights to forest resources by law			Orange	
FGI 4 (ii)	Sharing of benefits or income from public forests with local communities by law and its implementation			Orange	
FGI 5 (i)	Boundaries of the countries forest estate and the classification into various uses and ownership are clearly defined and demarcated		Yellow	Orange	
FGI 5 (ii)	In rural areas, forest land use plans and changes in these plans are based on public input			Orange	Red
FGI 6 (i)	Country`s approach to controlling forest crimes, including illegal logging and corruption			Orange	
FGI 6 (ii)	Inter and intra agency efforts and multi-stakeholder collaboration to combat forest crimes, and awareness of judges and prosecutors			Orange	Red

3. INTRODUCTION

The Government of the Gambia has acknowledged that a prudent and sustainable management of its limited land resources is an essential precondition to poverty reduction and national food security. Pillar 4 of the three year National Poverty Alleviation Strategy - Programme for Accelerated Growth and Employment (PAGE) 2012-2015 identifies land use planning and management as one of the strategies for strengthening governance. It also identifies the need for land tenure reform. The Agriculture and Natural Resources Policy (ANR) policy also identifies the improved and sustainable management and use of land, water and shared resources (including rangelands, forests, fisheries, parks and wildlife) as one of its primary aims. A critical step towards the realization of any of these national strategic objectives would be an evaluation of the land governance environment to determine where the country stands.

The LGAF provides an innovative diagnostic tool to evaluate the land governance environment at country level in five key thematic areas benchmarked on international best practice: (i) Rights recognition and enforcement; (ii) Land use planning, land management, and taxation; (iii) Management of public land; (iv) Public provision of land information; and (v) Dispute resolution and conflict management. A sixth optional module – forestry - was chosen as a priority area for The Gambia.

The LGAF aligns with the AU Framework and Guidelines on Land Policy in Africa adopted by the Heads of State in July 2009 and the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forest in the context of national food security endorsed by the Committee on World Food Security in 2012 and facilitates the implementation of regional and international commitments. The results of the study present a rare opportunity and platform to Governments for engagement with all stakeholders and development partners on the design of meaningful strategies for intervention in the land sector.

This Report presents the outcome of the LGAF study in the Gambia. It is in six parts, and each part is divided into sections. Part 1 explains the LGAF process. This includes an inception and preparatory phase and adaptation of the LGAF to local circumstances, the expert investigation processes, preparation of background data and briefing documents for the panel workshops, and the panel workshops. Part 2 provides background information. It traces the evolution of land tenure in The Gambia, gives an overview of the land administration system, the current tenure situation and status of land use policies and planning. It also provides an institutional map of land agencies their mandates and relationships. Part 3 is the highlight of the LGAF process. It presents the results of the expert assessment of the 92 LGI dimensions and the scores in respect of each thematic area and outlines substantive findings of the study according to thematic area. The consolidated scorecard is presented in part 5 together with a summary of the findings, policy analysis, key recommendations, and proposals for the dissemination of the findings and recommendations. The conclusions, of the study and a plan of action, methodological lessons and data gaps and areas for further examination are contained in Part 6.

4. METHODOLOGY

4.1 Adapting the LGAF to the Country Situation

The LGAF process in The Gambia commenced on the 5th November 2012 and was completed in May 2013.

The instrument was adapted to the local context before application. A few LGAF terms had to be amended or their definitions adapted. The terms that were adapted and reasons are set out in Annex I. The land governance indicators and dimensions were found to be well conceived and extremely relevant to local circumstances. A few dimensions could not be assessed: LGI-7(ii) and (v) due to the absence of current land use plans; LGI- 8(v) because data on current land use was inadequate, and LGI-12(v) and (vi) because a public land inventory is not available.

The LGAF process was driven by national experts in three different stages: (i) investigation and collection of data carried out by selected expert investigators; (ii) an assessment carried out by 8 panel workshops covering different governance areas based on the outcome of the investigations and personal professional expertise; and (iii) a technical validation workshop which reviewed and validated the assessments made by the expert investigators and panel workshops.

4.2 Government Engagement

Government engagement into the process was facilitated by the World Bank which introduced the LGAF study to key Ministries and departments including Finance and Economic Affairs, Agriculture and Justice. The Country Coordinator deepened the engagement and enlisted the support of Permanent Secretaries and Directors to facilitate the gathering of data and/or enable the participation of key public officials in the process. The Permanent Secretary MLRG⁵ was particularly helpful in facilitating the collection of data from Regional offices and the Departments under the Ministry and for also suggesting public sector participants for the panel sessions. The following public institutions were engaged and assisted and/or participated in the process:

- Ministry of Regional Administration, Lands and Traditional Rulers
- Ministry of Agriculture
- Department of Lands and Surveys
- Department of Physical Planning and Housing
- Department of Forestry
- Department of Wildlife
- National Environment Agency
- Area Councils and Regional Governors offices
- The Judiciary including District tribunals

The Department of Fisheries was not contacted. The expert panel on Rural Land Use noted this and pointed out its relevance. This was remedied in the validation process.

⁵ Changed from Ministry of Regional Administration, Lands and Traditional Rulers in May 2013

4.3 Collection of Background Data and Panel Workshops

Four expert investigators were selected who, together with the Country Coordinator's office, gathered background information and data required to assess most of the dimensions. A list of the expert investigators and profiles is set out in Annex IIA. All expert reports were finalized and approved between January and March 2013. The reports covered 61 dimensions. (A table showing the LGI dimensions assigned to the expert investigators is set out in Annex IIB).

Eight panel workshops were organized in one day sessions. Dimensions were assigned to panels as recommended in the LGAF Manual (see annex IIC)

In line with the requirements in the LGAF Manual panel members were selected from private sector, public sector and civil society. It was difficult to find researchers for most of the panels. There is no research institution engaged in research on land matters. However, the land tenure panel was enriched by the participation of two consultants who had just concluded a study on Land Tenure/Women's Access to Land (Omar Sonko & Jainaba Bah-Sambou) and the participation of Justice B.V. Mahoney who had in 2012 chaired a Commission of Enquiry on Land Allocation in 2011. The list of panel members and their profile is set out in Annex IID.

The LGAF process was completed in May 2013 with a technical validation workshop which reviewed and validated the assessments made by the expert investigators and panel workshops. A range of institutions participated in this workshop, including:

- Ministry of Finance
- Ministry of Lands and Regional Governance
- Ministry of Justice
- Ministry of Agriculture
- Department of Lands and Surveys
- Department of Physical Planning and Housing
- Department of Forestry
- Department of Parks and Wildlife Management
- Registrar General Department
- Gambia Tourism Authority
- University of the Gambia

5. CONTEXT

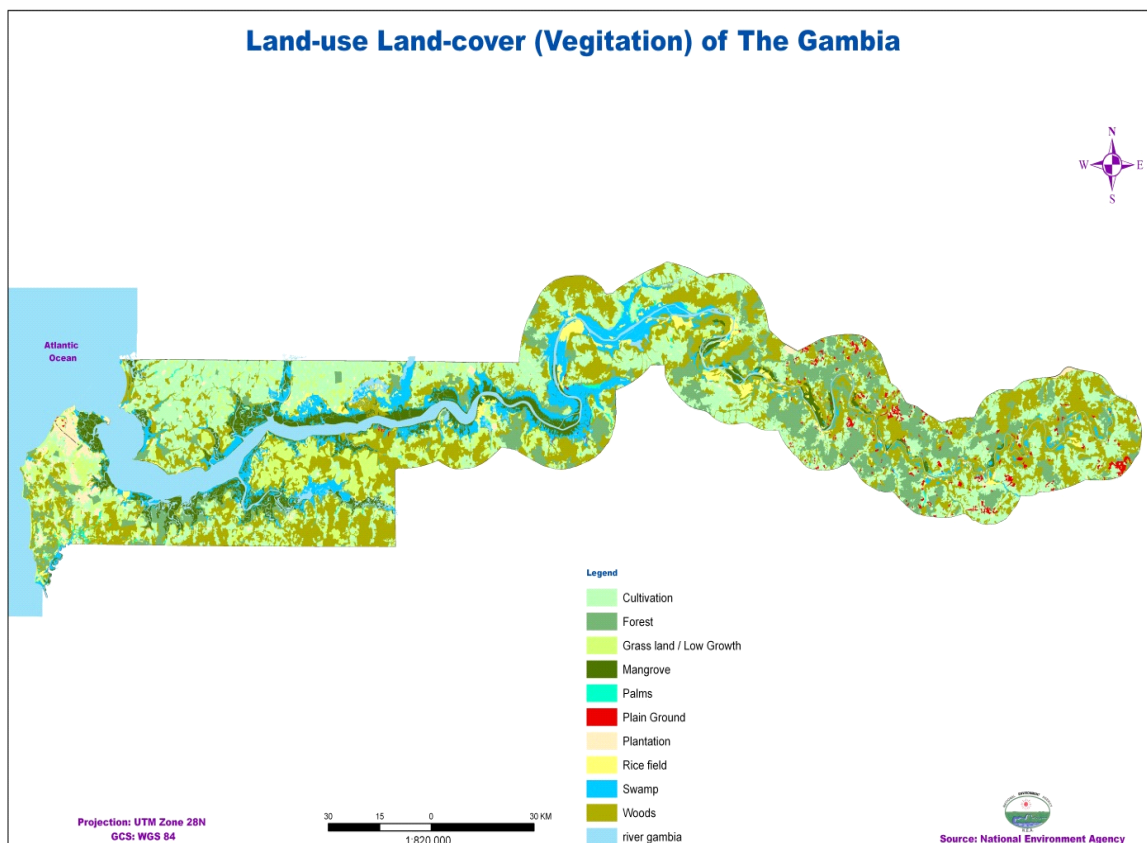
5.1 Geographical Description



The Gambia is the 6th smallest country in Africa with a land mass of approximately 10,690km² of which 5,580km² is arable. The Gambia lies almost entirely in the Sudano-Sahelian belt, surrounded by the Republic of Senegal on all sides except the Atlantic Ocean. The width of the country varies from 25 to 50 Km and is bisected by the River Gambia forming the North and South banks. Banjul, the administrative center and capital, is situated on an island at the estuary of the River Gambia.

The country's Sudano-Sahelian climate is characterized by a short rainy season from June to October. Mean annual rainfall varies from 900 mm in the South West to about 500 mm in the North East. Like the rest of the sub-region, mean annual rainfall suffered drastic reductions over the past 30 years. Temperatures vary from 14° C to 40° C with mean temperatures ranging from 25°C to 28° C and generally higher in the eastern part of the country.

The National Environment Agency⁶ land use Map developed in 2003, (updated in 2010) in Figure 3 below gives an indication of current use of land in the country.



5.2 Historical Evolution

The territory that comprises The Gambia because of its small size has often been described as “two strips of land on either side of the river Gambia”. Its borders, which are all shared with Senegal, were demarcated between 1891 to 1905 as defined by the Anglo-French Convention of 1889. Prior to the demarcation the British crown colony of Gambia comprised a few scattered settlements along the river. St Mary’s Island (which became Bathurst then renamed Banjul in April 1973) was purchased in 1816 from the King of Kombo MacCarthy Island (now Janjanbureh) 241 kilometers up river) was acquired in 1823. A tract of land on the North Bank of the river 1 mile (1.6 kilometers) wide and 23 miles (58km²) long was ceded by the king of Niimi in 1826.⁷ British Kombo (which became Kombo Saint Mary, an area of 25 square miles 40 km²) was ceded by the King of Kombo in 1840. Albreda, a trading post on the north bank was exchanged by France in 1857. These settlements were regarded as the Colony and administered separately from the additional territory acquired under the 1889 Anglo-French Convention and referred to as the Protectorate.⁸ Kombo Saint Mary and all other territories except St Mary’s Island was placed under the protectorate system of government under the First Protectorate Ordinance 1902⁹ until 1946 when it was transferred back to the colony for administrative purposes.

5.3 Key Social and Economic Indicators

Its land, forests and water are its main resources and agriculture is one of the main drivers of growth contributing 30% to Gross Domestic Product (GDP) with forestry contributing approximately 2%¹⁰. In addition, the GNI per capita is US\$610.

The population of The Gambia has been growing rapidly over the last three decades, and more than doubled in the twenty years between 1973 and 1993. The current population figures as projected by GBOS shows that in 2012 the Gambia’s population is projected at 1,732, 244 and an annual growth rate of about 3%.

Urbanization has continued to increase rapidly and by 2010 a majority of Gambians lived in urban areas: 50.9% live in urban areas and 49.1% in rural areas¹¹. The life expectancy for males is 56% while that for females is 59%. The infant mortality rate (per 1,000 live births) is 84 while maternal mortality rate (per 100,000 live births) is 730. The population distributions and growth rates, density, ethnic composition by Local Government Areas (LGA), and population densities are indicated in the tables below. Tables showing Population distribution and Density by LGA and distribution by ethnic groups between 1993 to 2003 are set out in Annex III.

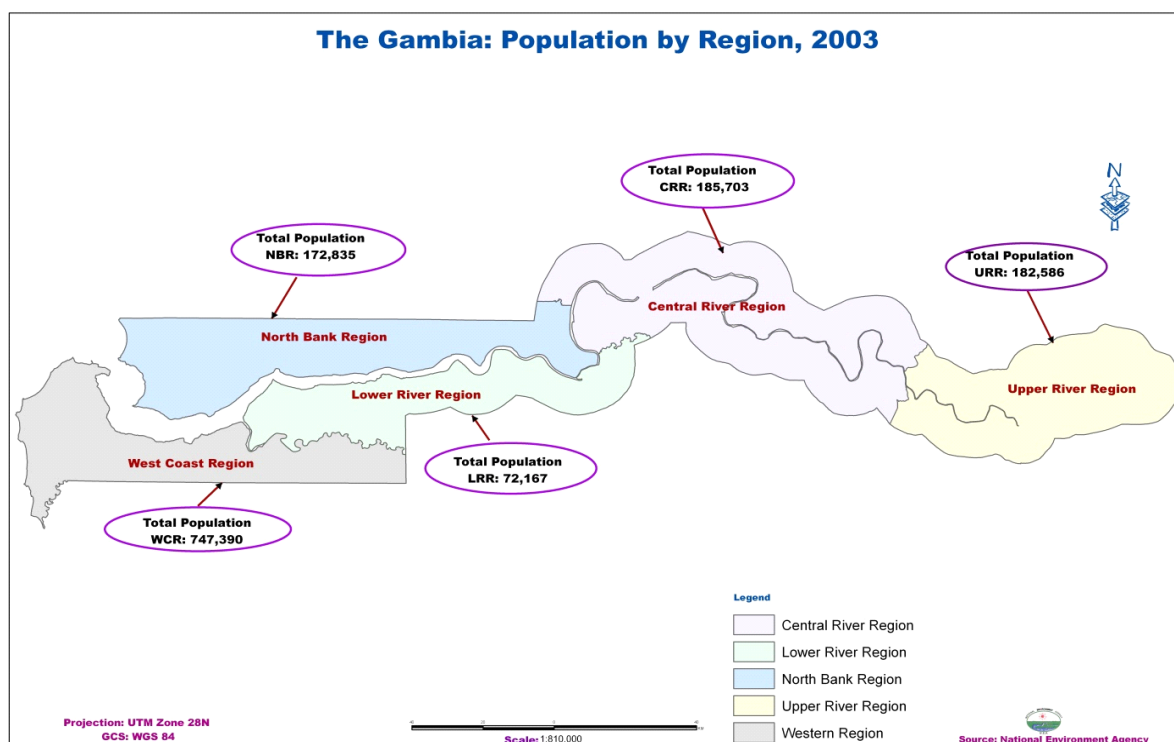
⁷Became commonly known as the Ceded Mile.

Ian Brownlie African Boundaries: A Legal and Diplomatic Encyclopedia (London - C Hurst, 1979).

⁹ Protectorate Ordinance No.7 of 1902

¹⁰Gambia National Agricultural Investment Plan (GNAIP) 2011 - 2015

¹¹ GBOS 2010 Integrated household survey



Source: National Environmental Agency (NEA)

According to the Integrated Household Survey Income and Expenditure Poverty Assessment – 2010 poverty is a rural phenomenon¹² and the rural poor depend on the land resource base for their survival. Poverty eradication is the major challenge despite the fact that there were reductions in poverty for those living on less than \$1 per day from 58% in 2003 to 36.4%, and for those living on less than \$1.25 to 48.4%. The incidence of poverty incidence (the distribution of the poor) is lower in Banjul and Kanifing which are entirely urban settlements compared to the other Local Government Areas.

Urban areas have a much lower poverty rate (32.7%) compared to rural areas (73.9%).. Household heads employed in the agricultural and fishing sector having higher poverty rates (79.0% & 68.8%) respectively compared to other household heads employed in the other sectors.

County Basic Fact (Year: 2011)

Population, total (millions)	1,776,103
Population growth (annual %)	3%
Surface area (km ²) thousands)	10,689 km ²
Life expectancy at birth, total (years)	58
Literacy rate, youth female (% of females ages 15-24)	62
Prevalence of HIV, total (% of population ages 15-49) (2009)	2
GDP (Current US\$) (billions)	\$1.109
GNI per capita, Atlas method (current US\$)	US\$610
Foreign direct investment, net inflows (% of GDP)	3%
Time required to start a business (days)	27 days

¹² 2008 GBOS Poverty Assessment- 68% of the rural population live on the equivalent of less than \$1.25 a day.

5.4 Administrative Structure

The Protectorate was divided into 3 administrative areas – the North Bank, South Bank and Kombo by 1895. In 1906 the administrative boundaries were reorganized to create five Provinces - North Bank, MacCarthy Island, South Bank, Upper River, and Kombo-Foni, each administered by a travelling Commissioner. The Colony was under the direct administrative jurisdiction of the Governor General. The Provinces Ordinance of 1935 further divided the Provinces into divisions and districts.

By the Independence Act, 1964 of the United Kingdom Statutes, *“the territories which immediately before the appointed day (the 18th February, 1965) are comprised whether in the Colony of The Gambia or in the Protectorate of The Gambia shall together form part of her Majesty’s dominions under the name of The Gambia; and on and after that day Her Majesty’s Government of the United Kingdom shall have no responsibility for the government of those territories.”* Thus were the two territories (colony and protectorate) consolidated. The political distinction between the colony and the protectorate was accordingly abolished but its legacy remained particularly as it related to the land tenure system.

The Provinces Proclamation Order, 1968 (L.N.45 of 1968) made under the Provinces Ordinances, converted the Provinces into five administrative divisions with delineated boundaries under the overall jurisdiction of Commissioners. Each Division was further divided into several districts under the jurisdiction of Head chiefs (Seyfo)¹³ who were vested with the authority to appoint Headmen (Alkalo) (subject to the approval of the Commissioner) for villages and towns in their districts.

The subsequent Local Government Act of 2003 replaced the Provinces Act, and further consolidated the local government structure and brought Banjul and Kanifing Municipality under the same regulatory framework. Otherwise, the administrative structure has basically remained the same since 1906 save that the Seyfolu are now appointed by the President in consultation with the MoLRG¹⁴ and the Alkalolu appointed by the Minister. By a further amendment in 2007 the Divisions were renamed Regions and the Commissioners re-designated Governors. Western Division was renamed West Coast Region. As shown in Table 1 below, the 7 administrative jurisdictions have been retained, comprising the capital City of Banjul, the Municipality of Kanifing, and the 5 Regions. The districts have been increased to 38; WCR – 9, LRR – 6, CRR – 11, URR – 7 and NBR – 6, i.e. an additional 3 to Upper River Region and 1 to CRR (see also Annex 8).

5.5 Political System

The Gambia obtained self-government status in 1964, independence in 1965 and full republican status in 1970 as a constitutional democracy. Following a military coup in 1994 and the suspension of the Constitution, and a two year period of military rule by decree the country was returned to constitutional rule in 1997 with the enactment of a new Constitution. The Constitution provides for the election of a President and a National Assembly every 5 years, and a decentralized system of local government administration which according to Section 193 is to be “based on a system of democratically elected councils with a high degree of local autonomy”. Section 193(4) of the Constitution enjoins local government authorities to cooperate with the central government in adopting a policy of decentralization.

¹³Seyfo (singular) Seyfolu (plural) and Alkalo singular, Alkalolu (plural) are from the Mandinka language.

¹⁴ Minister of Lands and Regional government since May 2013

The Constitution does not specifically make provision for land matters although it provides for the establishment of a land commission whose composition functions and powers shall be prescribed by an Act of the National Assembly. The Lands Commission Act was enacted 10 years later in 2007 to advise the MOL on policy matters on land administration, ensure strict adherence to those policies and transparency in land allocations, investigate land disputes, assess land premiums and rent, and monitor land registration. The Commission is yet to be established.

The principle of separation of powers is enshrined in the Constitution, with executive authority vested in the President, legislative power in the National Assembly and judicial authority in the Courts. The court system comprises the superior courts of record (high court, court of appeal and Supreme Court) and a subordinate court system comprising magistrate's courts and specialized tribunals. The legal system is tripartite, based on:

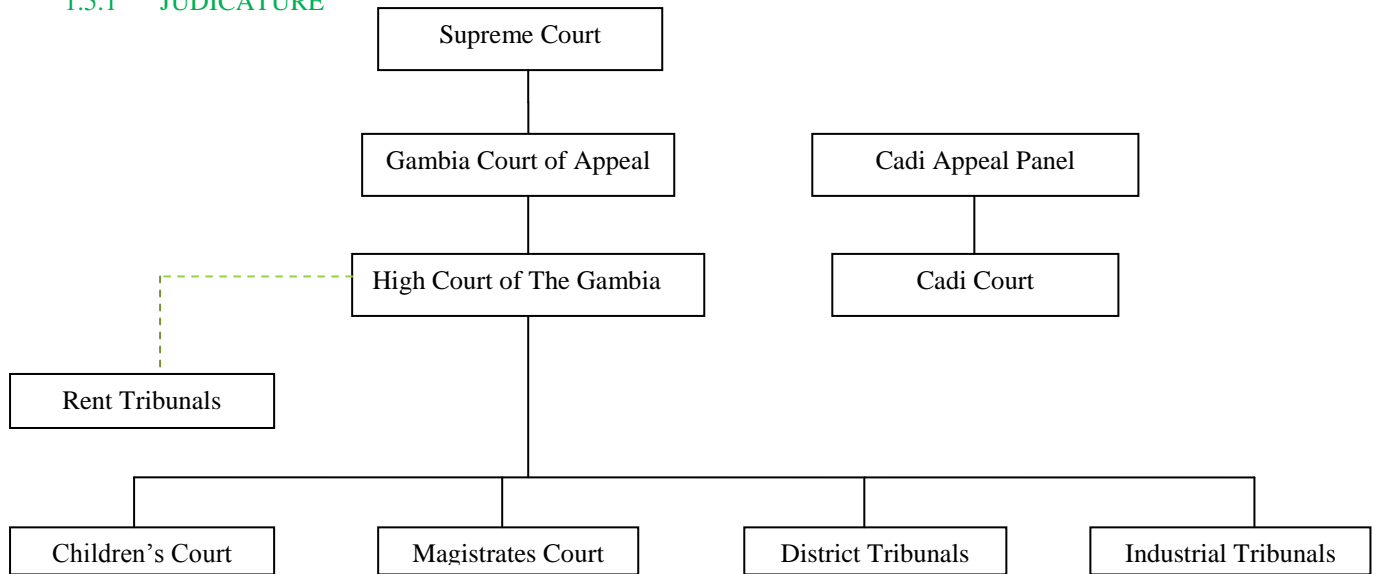
- statute law and English common law;
- Shariah (Islamic law) limited to family and inheritance law; and
- Customary law.

Islamic law is administered by *cadi* courts, and customary law by district tribunals established in each district and presided over by the district chief. While the magistrate's courts may deal with trespass to land and possession, only the high court and district tribunals have original jurisdiction to deal with land disputes. The jurisdiction of the district tribunal is limited to land held under customary law. They also have concurrent jurisdiction with the *Cadi* Courts to administer Islamic law in their areas. This jurisdiction extends to inheritance and succession.

Appeals lie from the district tribunals and magistrate courts to the high court. Appeals lie from the high court to the court of appeal and from the latter to the Supreme Court, which is the apex and final court. Appeals lie from the *Cadi* Courts to a *Cadi* Appeals Panel as final Court of Appeal. This is somewhat anomalous as appeals on Islamic law decisions made by a district tribunal can potentially be appealed to the Supreme Court whereas *cadi* court decisions are subject to only one tier.

There is no right of appeal from the rent tribunals to the High Court but by section 133 of the Constitution, the High Court has supervisory jurisdiction over them.

1.5.1 JUDICATURE



5.6 Land Tenure System

5.6.1 Historical Context

Three tenure types exist in The Gambia. These are:

- Freehold
- Leasehold
- Customary

Land tenure in The Gambia is based on a dual system – statutory and customary. The statutory system governs the freehold and leasehold titles both of which are based on English law, a legacy of British Colonial rule, while the customary tenure evolved from the traditions and practices of the indigenous communities. This dichotomous approach is reflected in the two main statutes on land – the Land (Banjul and Kombo Saint Mary) Act and the Lands Provinces Act, which applied for decades. The former Act applied to the Colony, which, as stated above, comprised the Island of Banjul and Cape Saint Mary, and the latter to the Protectorate, comprising the five administrative divisions (referred to above).

As indicated supra, the territory which comprised the British colony of The Gambia was either purchased (City of Banjul) or ceded to it. The Colonial government regarded colonial territory as vesting in the State absolutely. There was little conflict over the status of Banjul which was regarded as absolutely owned by the Crown, there being no record of human settlement before it was acquired. The ceded territories, (mainly Kombo Saint Mary) were, however, on different footing for a significant number of villages were already located in the area and these communities continued to occupy such lands as traditional owners.

5.6.2 Freehold Title

The freehold title is an absolute title based on the English fee simple estates in possession. The land comprising colonial territory can be regarded as the only Freehold tenure in Gambia in that the radical title in the land vested in the State by acquisition. Subsequently, freehold grants were made by the British Crown of colonial land mostly to settlers in the City of

Banjul. A substantial part of grants in Banjul, and some parcels reportedly¹⁵ in the Island of Jangjangburreh (CRR) (formerly George Town) and Cape Point, Kombo Saint Mary were freehold grants. The Public Lands Grants and Disposition, Ordinance 1902 and the Public Lands Acquisition Ordinance, 1901 were the only legislation relating to land until 1945 when the Lands (Banjul and Kombo Saint Mary) Act replaced both statutes, and the Lands (Provinces) Act was enacted for the Provinces.

The Lands (Banjul and Kombo Saint Mary) Act 1945 defined State Lands as: “all lands which belong to the State by virtue of any treaty, cession, convention or agreement, and all lands which have been or may hereafter be acquired by or on behalf of the State for any public purpose or otherwise howsoever.” The Act prohibited the Minister from creating any further fee simple estate without the consent of the House of Representatives. This is without prejudice to the freehold interests already in existence. Thus consistent with the Colonial Government’s position, the State regarded all land in the Colonial territories as vested in the State absolutely. Occupied land that was not held under a lease from the State was by section 50 of the Act deemed to be held on yearly tenancies from the State and such tenants given the opportunity of applying to lease the land from the State. By section 52 the penalty for failure to apply was re-possession by action.

Notwithstanding the ceding of lands to the Crown however, indigenous communities in the Kombo Saint Mary, in particular,¹⁶ regarded the title which they held as no different from the title held by communities in the Provinces and akin to a freehold title which, subject to the payment of rates for residential dwellings can be transmitted without restrictions and even up to now is referred to as ‘freehold’ in many quarters. As stated in the Physical Development Plan for the GBA, unless therefore a Government layout was specifically created, all such land was freely dealt with by the Alkalo or families/clans. Intermittently, in the early eighties, (which witnessed one of the fastest phases in Urban development), the Government was in constant conflict with occupiers and village Alkalo’s over the unplanned allocation of public land.

In order to assert or reinforce its authority over all such land, in 1980 the Lands (Banjul and Kombo Saint Mary) Act was amended¹⁷ and the State unilaterally terminated all yearly tenancies and allowed a six month window of opportunity to all those who occupied land in Kombo Saint Mary to either apply for a grant before July, 1980 or become squatters who could be ejected at any time at their own expenses. This led to more friction between the Government on the one hand and the Alkalo or local communities together in new urban settlements like Kololi on the other hand, some of whom were forcibly ejected from their lands. As part of the land administration reforms commencing from 1984, in 1991, the Lands Banjul and Kombo Saint Mary Act was repealed and replaced by the State Lands Act.

The State Lands Act re-asserted the State’s dominium and removed all doubts about land ownership in Banjul and Kombo Saint Mary. It declared that, “*All land in the City of Banjul and Kanifing Municipality, excluding such land as is held in fee simple and subject to any grant which has been or may hereafter be made, shall vest in the State absolutely*”.¹⁸

With the objective of creating an environment for unitizing land, the State Lands Act also conferred on the Minister the power to designate any Region Land to be State Land, and upon such declaration, “All land in the area shall, excluding such land as is held in fee simple, vest

¹⁵ The records of such freehold titles cannot be located.

¹⁶ Probably because the pressure on the land in that area is highest

¹⁷ Act No. 14 of 1980

¹⁸ Section 4 State Lands Act.

in and be administered by the State for the use and common benefit, direct or indirect of the community in which the land is situated”. This provision implies that upon such declaration the State becomes a trustee of such land instead of the district authority in whom custody and control was hitherto vested.

5.6.3 Leasehold

The lease hold title has been in existence since colonial times and was the most common title granted by the colonial government over freehold land. It was also introduced in the Protectorate. District authorities were conferred with the authority to make leasehold grants but only with the approval of the Minister. This system, although not stated, suggested that the tenure vested in the district authorities as trustees of the communities is akin to a freehold absolute title. Applications for leasehold grants from the district authorities were, and are still, processed through the Commissioners’ (Governors) offices. All grants of leasehold title over land in Banjul and Kombo Saint Mary/KMA were, are still, made directly by the Minister of local Government on behalf of the State.

5.6.4 Deemed Lease

In an attempt to resolve the uncertainty which had hitherto surrounded ownership of land in Banjul and Kombo Saint Mary and communities in the newly declared State Lands, and to encourage the creation of unitary titles, the State Lands Act also created the ‘deemed lease’ as a legal title. All persons in the lawful occupation of land in designated State land areas were declared to be ‘deemed lessees’ of the State for 99 years. All subsisting leasehold grants were also extended to 99 years. Section 7 of the Act provided that deemed lessees may apply for a title deed on the payment of prescribed fees which may be refused if the intended use conflicted with an approved plan. It also provided that the Minister may set a period within which all deemed lessees may apply for a lease. The State land Regulations prescribes a procedure for deemed lessees to apply for a lease. Since 1991 Kombo North, South and Central (WCR) have been designated State Land. It is also proposed to designate 500 meters on either side of the River Gambia State Land.

5.6.5 Customary Tenure

The Lands (Regions) Act vests all land in the Regions in the authorities for the districts in which the land is situate to be held and administered for the use and common benefit, direct or indirect of all the communities concerned. It also held that “the occupation and use of Provinces lands by indigenes shall be governed and regulated by customary laws obtaining in the localities in which such land is situated.” Non-indigenes may be given rights of occupancy of not more than 3 years. Leases can only be issued by the district authority with the Consent of the Minister. The statutory time limit of a lease to a non-indigene is 50 years.

Apart from lands in the Regions most indigenous traditional land owners in State land areas consider themselves to be customary owners of such lands. The treatment of transactions on such land is no different from that in the Regions. A certificate of occupancy or lease may be applied for and obtained for both types of lands.

5.6.6 Forest Parks, Wild Life Reserves and Land Acquired for Public Purposes

Forest Parks and Wild Life Parks and reserves are designated by statutory instrument under the relevant legislation¹⁹. Once declared they vest in the State. Land acquired for public purposes under the Land Acquisition and Compensation Act also vests in the State.

The power of the MOL to create forest parks in the Regions was retained by the Lands Regions Act.

5.6.7 Area and Population by Tenure Type

No tenure mapping has been undertaken by any land agency nor has any population data been collected on land tenure types. The DLS has confirmed that the only data it keeps on land ownership are copies of leases issued by the State. A hard copy file is created for each leaseholder and the lease when approved, is entered in a ledger/quire book kept as a register. The office does not keep data on tenor types or on population distribution per tenor type. The only record of customary ownerships is a certificate of occupancy submitted with an application for a lease. This would be kept in the lease file. The MLRG also keeps copies of duplicate files but because of a fire outbreak sometime in 2001 a great number of the records kept by them were destroyed. DLS indicated that data on the number of leasehold properties has to be extracted from the lease files in their possession.

Data²⁰ provided from the each local government Area Office on existing tenure types is summarized in Table 2.1 below. The figures indicate that the number of leasehold properties may be less than 20%.

A summary of the findings per LGA is provided as figure 2.1 below:

Extent of land tenure type per LGA

	LOCAL GOVERNMENT AREAS						
	BANJUL	KMA	WCR	LLR	CRR	NBR	URR
No. of compounds/properties	3971	33479	106,156	7364		16,883	14,061
No. of leasehold properties	961	N/A ²¹	9,074	127		1,070	477
No. of (English) Freehold	3010	N/A	N/A			N/A	N/A

The figures provided by the Area councils are inconsistent with the figures given by the Land Registry in the AGC. However both figures indicate that with the exception of Banjul and KMA, registered leasehold titles are less than 5 % of recorded property.

Land Registry - Records

	Banjul	KMA	WCR	LRR	CRR	NBR	URR
Freehold	2204	N/A	N/A	N/A	N/A	N/A	N/A
Leasehold	3822 (1964-1983)	19,240	2687 (1954-2012)	246 (1954-2012)	323 (1954-2012)	839 (1954-2012)	399 (1954-2012)

¹⁹ Forest Act Cap.61:01
Biodiversity and wild life Act (Cap.62.01)

²⁰ Data was compiled with assistance from the Governors in each region with the exception of CRR. No data was received from them.

²¹ Not available

6. TENURE TYPOLOGY

The table below provides an over view of the tenure situation by type/category and sub-category.

Table 3.7: Typology of Tenure Situations		
Tenure Category		– FREEHOLD ²²
Estimated Area & Population Area ²³ : 537.7 km ² Population ²⁴ : 453,640	Legal recognition and characteristics Legal recognition: Section 4 State Lands, Act; • English Common law ²⁵ Registration/recording: (i) Land Registry maintained by the RG of the AGC (ii) BMRR (iii) MLRG Transferability: Freely transferable by freehold owner by conveyance without restriction. Lesser interests in the form of leases for a term of years may be granted	Overlaps with other tenure forms & potential issues Being an absolute title a freehold title permits the grant of lesser interest i.e. a leasehold interest by the holder of the freehold title. No overlaps or potential issues exist for a private owner of a freehold title in Banjul (which is accepted as owned by the State). All freehold title is created through grants from the State prior to 1946. Banjul was unoccupied at the time it was purchased by the British Crown. All settlers thus occupied the land at Crown pleasure. No further freehold estates can be created without the permission of the NA. The ceding of Kanifing (Kombo Saint Mary) by the King of Kombo in 1840 did not extinguish the customary interests then in existence. Thus communities which regarded themselves as traditional owners of the land continued to occupy and make customary allocations of the land notwithstanding the superior title of the State. As a result 2 systems of land ownership continued to exist in practice.
Tenure Category		- Freehold sub-category - Designated State Land
Estimated Area & Population ²⁶ Area: 677 km ² Population: 489,808	Legal recognition and characteristics Legal recognition: • Section 5 State Lands, Act; Designation of State Lands Order, 1994 Registration/recording: • Surveyed and mapped by the DLS. • Registered when layouts are created or individual grants are made.	Overlaps with other tenure forms & potential issues Designated land is vested in the State to administer for the benefit of the communities. The State is therefore legal Trustee. Major conflict situations arise when the State makes grants of such land to third parties over customary rights. Section 5(2) of the State Lands Act excludes the application of the Lands (Regions) Act to designated State land but in practice the district authorities continue to administer such lands and the Alkalo's continue to exercise their traditional authority over the land. The procedure for transferring un-leased land still requires the endorsement of both the Alkalo and Chief before the transfer is recorded in the Area Council rates book

²² The Land areas for all LGA's were obtained from Atlas of 2003 Population and Housing GBOS Census.

²³ Area includes Banjul – 12 km² 76 km². Janjanbureh – 11.265 km²

²⁴ Population 2012– BJJ 28,361, KMA 421,758, JB 3,491, AB N/A

²⁵(Note: *Records found to be incomplete as records not computerized and some registers too faded to be decipherable*) *Records of freehold grants are stated to have been destroyed by fire in 2001 (No records have been found for freehold property for Kanifing Municipality, Jangjangbure and Albreda although Anecdotal evidence indicates that they exist. An extensive search has to be carried out or else an ownership survey to confirm this.*

²⁶Comprising Kombo North, Kombo South and Kombo Central

		<p>notwithstanding the designation of these areas as State Land to be administered by the State.</p> <p>Because of the significant increase in land values in Greater Banjul area in particular, there has been an unprecedented increase in the sale of land in these areas thus prompting Government to freeze transactions in some areas (especially coastal areas) from time to time and even remove Alkalos.</p>
Tenure Category - Freehold sub-category - (i) Forest Parks		
Estimated Area & Population	Legal recognition and characteristics	Overlaps with other tenure forms & potential issues
Area: 380 km	<p>Legal Recognition: Section 6 of the Land Regions Act Section 39 of the Forests Act.</p> <p>Registration/Recording: Demarcated by law and Mapped. Maps listed in the Land (Regions) Act and kept by the DOF</p>	<p>These are created out of customary land by statute. The community management approach to forests has somewhat lessened conflict over forest land</p>
Tenure category - Freehold sub-category - (ii) Wildlife Parks/Nature Reserves		
Estimated Area & Population	Legal recognition and characteristics	Overlaps with other tenure forms & potential issues
Area: 51,240 ha ²⁷ (4.27%)	<p>Recognition: Section 14 of the Biodiversity and Wildlife Act</p> <p>Registration/Recording: Surveyed and Mapped. Maps kept by the Director of Parks and Wildlife Management, Department of Parks and Wildlife Management.</p>	<p>These were created out of customary land by statute.</p>
Tenure Category - Freehold sub category - (iii) Acquired public land		
Estimated Area & Population	Legal recognition and characteristics	Overlaps with other tenure forms & potential issues
<p>Area: N/A</p> <p>Population: N/A</p> <p>Housing Estate:</p> <p>Area:</p> <p>Ports:</p> <p>Area:</p>	<p>Legal Recognition: Section 2 and 3 of Land Acquisition and Compensation Act</p> <p>Registration/Recording: Land acquired by the MLRG. Recorded by MLRG, DLS and RG. These include residential layouts and land acquired for use by statutory bodies, public corporations and for public and Government facility</p> <p>Transferability: Transferable if connected to residential land</p>	<p>Land acquired is, by section 3 of the Act designated as State Land notwithstanding the previous tenure under which it is held.</p> <p>Such land is expected to be acquired in accordance with the procedure set out in the Act. Pursuant to this procedure, land has been acquired over the past 10 years and transferred and granted to SSHFC, GPA and other public entities or for other public purposes to create estates for housing.</p> <p>Some land owners have challenged this acquisition both on the legitimacy of the process and the low level of compensation.</p>

²⁷ Management and Effective Assessment of Protected Areas in The Gambia – World Wildlife Fund (WWF) 2011

Tenure Category - Freehold sub category - (iii) Tourism Development Area (TDA)		
Estimated Area & Population	Legal recognition and characteristics	Overlaps with other tenure forms & potential issues
²⁸ Area Population: N/A Sparsely populated, mostly hotels except old coastal settlements in Kombo North and South.	Legal Recognition: Section 45-47 of The Gambia Tourism Board Act, 2011. Leased by the State from the District Authorities of Kombo North, Kombo South and Lower Niumi (NBR) in 1970 lease documents cannot be traced. Section 45 and 46 of the Act provides that all areas designated TDA shall be deemed to be leased to the Board. Section 47 states that the term shall be unlimited. Registration/Recording: DLS Transferability: Transferable by state allocation through the GTBoard	The lease of the TDA has been subject of significant friction between the State and traditional land owners who regard the State's control of the TDA as overriding their rights in what is regarded as highly valuable land Although not found, the general consensus is that the lease was granted for 99 years from 1970 or thereabout. Therefore the unlimited term granted to the Tourism Development Board by statute is akin to a freehold title and conflicts with the customary rights of the district authorities as lessor. A lease cannot be of unlimited duration.
Tenure Category - CUSTOMARY		
Estimated Area & Population	Legal recognition and characteristics	Overlaps with other tenure forms & potential issues

²⁸Coastal stretch from the North Bank to the border with Cassamance, Senegal measuring 500m from high water mark for tourism development purposes, and some inland areas and any area designated as TDA.

<p>²⁹Area:9,084 km² Population: 792,317</p>	<p>Legal recognition: Section 5 Lands (Regions) Act</p> <p>Transferability: Beneficial interest in customary land is vested in the family/clan and can only be transferred with the consent of the Clan head/elders. Land held under customary tenure is usually readily granted to migrant strangers for residential purposes only. Otherwise, any transfer is subject to the approval of the District authority and must be endorsed by the Alkalo. Leases may be created by the district authority</p>	<p>There is an overlap between customary tenure and leasehold in designated state land areas that were under the jurisdiction of the District authorities and subject to customary rights. While the concept of the deemed lessee in State Lands (Banjul and Kanifing) in principle resulted in an upgrade in tenure, from a tenancy from year to year to a 99 year lease, it is not clear whether the customary owner in designated State lands was upgraded or down- graded.</p> <p>Currently customary land in designated State land areas may be converted to leasehold on the basis of a certificate of occupancy issued and signed by the head of the family/clan, the Alkalo, the District Authority and the Minister. From the data available in the districts it does not appear that customary owners are availing themselves of this opportunity. It is noted that Banks do not generally accept customary land as proof of title for collateralization as it is not considered to be a secure title document.</p> <p>KMC records indicate that 33479 rate paying compounds exist in the area. The Registrar General's register of leases indicate a total of 19240.</p> <p>In the Western Region where land values are high the sale of land by clan heads without informing the family is a major concern leading to some clans distributing and partitioning the land among the families as a preventive measure. This has led to the indiscriminate sale of land, rapid development of unplanned settlements, loss of farmland and forest cover in some Regions</p>
	<p>Under Regulation 18 State Lands Regulations</p> <p>Registration/ recording: Un-surveyed and unmapped. Issued by the District authorities with the approval of Alkalo and the issuance of physical planning land use clearance by the Department of Physical Planning.</p> <p>Recorded by the Area Council in its Rates Register. No formal filing system and all Area councils have indicated an inability to determine the area in respect of certificates of occupancy have been issued.</p> <p>Transferability: Transferable with the endorsement of the Alkalo, approval of District Authority and Department of Physical Planning issued</p>	<p>The certificate of occupancy is the documentary title given to confirm the alienation of customary land.</p> <p>It confers a right to use the land for an undetermined time and like the customary title from which it derives, is regarded locally as akin to a freehold.</p> <p>The certificate of occupancy has not gained recognition as a reliable document of title and it is not seen as a credible alternative to a lease.</p>
Tenure Category - LEASEHOLD- Leasehold grants		
Estimated Area & Population	Legal recognition and characteristics	Overlaps with other tenure forms & potential issues

²⁹Covers 5 Regions – excluding state land

<p>Area: Population: cannot be determined</p>	<p>Legal recognition:</p> <ul style="list-style-type: none"> • Section 11A State Lands Act • Section 7 Land (Regions) Act <p>Regulation 3 of the State Land Regulations Limits grants of leaseholds to planned areas only.</p> <p>Registration/recording: Individually surveyed, mapped and registered in the deeds registry of the RG. The Land registry of the DLS keeps a file for each lease. The Governor’s Offices keep a copy. According to RG’s records 27,556 leases have been issued against a total of 177943 recorded properties paying rates in 5 out of 6 LGAs³⁰.</p> <p>Transferability: Transferable with the consent of the Minister. For land in the Regions the consent of the District authority must be obtained.</p>	<p>A leasehold is a term of years granted by the holder of a freehold title, or by lessee to another for a lesser term.</p> <p>The most common leasehold tenure is that granted by the State. State grants can be based on the creation of government layouts which are surveyed and mapped or on the application of a deemed lessee or a customary owner.</p> <p>Overlaps and most conflicts occur in the latter allocations because of conflicting claims by a person who claims customary title against another who holds a State grant.</p> <p>The courts in a number of cases have held that a lease is not necessarily superior to a customary title over the same land. That when a lease over land subject to customary law is challenged, the leaseholder must show that they had a valid possessory title on the basis of which the lease was granted. In <i>Cham v Barrow [1994] GRpg121</i> ‘The plaintiff was claiming title to land by right of inheritance which he had proved, whereas the defendant was claiming on the basis of the lease, without having proved the root of his title to the land. The evidence indicated that the plaintiff had a traditional usufructuary right, and a lease could not override such a right, or could only take effect subject to it.’</p> <p>Unfortunately the courts have not held consistently to this position for in the case of <i>Ousman Secka v Denise Jallow (2002-2008)</i> GLR 69 at 74-79 the Gambia Court of Appeal held that a customary title is only an equitable title³¹ and a lease is needed to perfect it.</p> <p>Leaseholds are classified by use. The broad categories of permitted land use are residential, institutional, industrial, agricultural and commercial. The proposed use determines the terms and conditions and covenants to be included in the lease. The RG’s system of registration in Lands/Deeds Registry does not segregate the data according to lease type.</p>
Tenure Category - LEASEHOLD sub category - Sublease³² and tenancies		
	<p>Legal recognition and characteristics</p> <p>Legal recognition: State Lands Act Land (Regions) Act</p> <p>Registration/ recording: Land Registry of the DLS Deeds Registry of the RG</p> <p>Transferability: Transferable with consent of the lessee/landlord</p>	<p>Overlaps with other tenure forms & potential issues</p> <p>A sublease can be created by a lessee for term of years lesser than the lessee holds. It may be created without consent unless the superior lease states otherwise. All State grants may only be subleased with the consent of the lessor.</p> <p>There should be no overlap with other tenure forms. A tenancy for less than three years does not have to be by deed and (although not in the law) by common law principles is not regarded as a sublease.</p>

³⁰ The figures for CRR were not obtained.

³¹ An equitable title is an informal title recognized by the rules of equity but which could be overridden by a formal legal title (e.g. a lease) unless the lessee had notice of the prior equitable interest.

³² A tenancy may be granted by a lessee of property for a shorter period

		<p>Apart from the sublease of leased land, or statutory licenses, secondary rights which may be created over land (e.g. the purchase of an apartment) are not regulated. Where this arises, common law principles apply.</p>
Tenure Category - LEASEHOLD sub category - License		
	Legal recognition and characteristics	Overlaps with other tenure forms & potential issues
	<p>Legal recognition: By statute or agreement</p> <p>Registration/recording: Does not require recording unless stated by law.</p> <p>Transferability: transferable subject to the consent of the grantor</p>	<p>A license is a right to use land for some economic benefit within a limited term.</p> <p>Most common are concessions over mining rights, petroleum exploration rights and tourism related activities e.g. beach bars</p>
Tenure Category - LEASEHOLD sub category - Land Mortgages		
	Legal recognition and characteristics	Overlaps with other tenure forms & potential issues
	<p>Legal recognition: By statute</p> <p>Registration/recording: Mortgages register of the RG</p> <p>Transferability: - Mortgages Transferable without consent of the mortgagor/borrower Act</p>	<p>Leasehold properties cannot be mortgaged without the prior approval of the MOL. The application for consent has to be processed through DLS.</p> <p>Only Freehold property is generally accepted by financial institutions as collateral because of the absence of a secure registration system for customary land.</p>
Tenure Category - LEASEHOLD sub category - Deemed leaseholds		
Estimated Area & Population	Legal recognition and characteristics	Overlaps with other tenure forms & potential issues
<p>Area: 677 km² (Kombo North, Kombo South and Kombo Central)</p> <p>This figure includes leaseholds.</p> <p>Population: 489,808</p>	<p>Legal Recognition:</p> <ul style="list-style-type: none"> • Section 5 State Lands Act; • Designation of State lands Order <p>Registration and recording: Informal, not surveyed or mapped. Owner may be recorded with the district authority for rates purposes as customary owner.</p> <p>Transferability: Transferable with the consent of the district authority and Physical Planning Clearance.</p>	<p>Deemed leasehold can be converted to a formal leasehold title for a term of 99 years for Gambians and 21 years for non- Gambians by application to the MLRG.</p> <p>A non-Gambian is a deemed lessee only if the land is not within 1.5 km of the high water mark in an area designated by the Minister or is not more than 2,500 square meters of land in any one city town or village within an area designated by the Minister.</p> <p>A non-Gambian cannot assign or sub-lease such land, (See section 11(5) of the State Land Act). A person who violates this section becomes a tenant at will of the State who may re-possess the land at any time without payment of compensation (section 11A).</p> <p>The only registration available for a deemed lessee is similar to the customary title, if no grant is sought from the Minister, at best a certificate of occupancy can be acquired.</p> <p>There is no systematic attempt to formalize this tenure despite the recognition that it is a serious obstacle to the expansion of the credit market and, in the GBA, the main source of all land disputes.</p>

6.1 Institutional Map

S/N	Institutions (Central and decentralized authorities)	Type of land Resources	Responsibility/ Mandate	Separation of policies and functions	Overlap with other Institutions
1	MLRG Staff (Land related): Professionals 2 Technician: 4	All land types	Development of Policy and legislation. Land administration and public land management. Local government Administration. (Governor's offices Area Council District authorities Alkalo) Regulation of surveyors. Land Acquisition and compensation.	Some separation of policies and functions exists. re-organization of Ministry in 1989. Decentralized Local government structure. Independent mechanisms for policy advice, formulation and implementation absent.	Overlap Ministry for forestry on creation of forest parks ³³ reserves and community forests. Overlap with Judiciary on the District Tribunal matters. ³⁴ Policy guidelines on land administration not clear. Nothing binding relationship with other land Agencies – (Agriculture, Forestry, Wildlife, NEA Fisheries)
A	DLS Units: Surveying Mapping, Lands and Valuation, 1 Regional Office –Brikama (WCR) Staff (Land related): Professionally qualified: 1 Technicians: 56		Formulation of policy and advice. Surveying and land administration; National survey control systems; Demarcation and of layouts; Allocation of land; Administering land leases; Land valuation& assessment of land premium and rent; Resolution of disputes. Compulsory acquisition and compensation.	Taken over the authority previously vested in Land Allocation Board since 2007. Separation of functions and policies lacking.	Overlap with mandate of Lands Commission on dispute resolution, land allocation. Regulation 32 of State Lands Regulations also conflicts with Land Commission Act on the Assessment of rent and premium.
B	DPPH Units: Physical Planning Development Control Housing Regional Offices: Brikama, Farafenni, Basse Growth Centres		Formulation of national and regional physical planning policy. Preparation of Development plans. Review lease applications for compliance with land use. Development/building control. Building permits. Control and preserving of reserves and green belts.	.	Vertical overlap with regional planning offices and areas councils. No clear demarcation of authority

³³Section 6 of Lands Regions Act –Minister may declare any region land forest park on the recommendation of a district authority. Section 39 and 58 of the Forestry Act vest authority on the Minister of Environment and Forestry to designate forest parks and

³⁴Chief Justice responsible for Judicature. Other judicial officers appointed by Judicial Service Commission or by its recommendation except president of district tribunals, who are the district chiefs.

	<p><u>Staff (Land related):</u> Professionally qualified: 4 Technicians: 22</p>	Formulation of Housing policy and research on low cost housing.	
C	<p>Local Government Councils</p> <p><u>Staff (Land related):</u> Assisted by staff in the Regional Physical Planning office on land matters</p> <p>Separation of policies and functions exist. Policy determined at ministerial level.</p>	<p>Exercise all decentralized powers relating to land within the jurisdiction except State leases and Freeholds including: physical planning; environment; management of forest resources. Community development. Approving the granting of leases by district authorities; rating; of compound owners. collection of property taxes</p>	No policy instrument clearly spelling out powers of council, district authorities and alkalolu with regard to land in relation to each other
D	<p>District Authorities</p> <p><u>Staff (Land related):</u> Varies: Minimum: 10 Chief: 1 Panel Members: 4 Badge messenger: 4-7 Scribe: 1</p>	<p>Land administration within District except if designated State land. Enforcement of all laws in district. Approval of all land transactions³⁵ including assignments and mortgages. Granting leases with ministerial approval. Collection of revenue for councils.</p>	<p>By section 22 of the Lands (Regions) Act, leases granted by the District Authorities remain under their jurisdiction. Local Government</p>
E	<p>Regional Governor Mayor (Banjul & Kanifing)</p> <p><u>Staff (Land related):</u> 7 per Administrative Area</p>	<p>Represent Government in the Regions. Monitor activities of local authorities (including council and district authorities). Process lease applications; Custody of regional leases. Review decisions of district tribunals.</p>	<p>Role conflict between executive and judicial powers.</p> <p>Review of decisions of the District Tribunals by Governors is a legacy of colonial administration.</p>
F	<p>Chief</p> <p><u>Staff (Land related):</u></p>	<p>Preside over district tribunal. Preside over district authority</p>	<p>Role conflict as chairman of the district authority and president of the district tribunals</p>

³⁵No freehold has been located in the districts yet. Transactions on freeholds where such tenure exists, does not require approval.

	38 Chiefs 1 per District Uses District authority staff.		Government representative in district.	
G	Alkalo <u>Staff (Land related):</u> 1 per village Depends on volunteers		Village law enforcement; custodian of traditions and customs; rate collection, endorse land transactions for customary land, repository of land ownership, candidate for membership of District Authority and District Tribunal	All transactions on customary land e.g. sale/transfer of land, applications for certificate of occupancy have to be endorsed by the Alkalo. The District Authority is constituted by the Chief of the District and 4 Alkalos The powers exercised by the Alkalo in relation to land is not prescribed by any law.
H	Lands Commission <u>Staff (Land related):</u> None. Not yet operational	All lands	Statutory: Advise on land administration policy; Investigate land disputes and occupation; Assessment of land rent and premium; Monitor registration of properties; Inspect property registers; International boundaries	Overlap with DLS on the assessment of land rent and premium and land dispute.
1.	District Tribunals <u>Staff (Land related):</u> 5 tribunal members 1 scribe	Land within district except leaseholds	Dispute resolution	Overlap with jurisdiction of High court. Both have original jurisdiction to try land disputes. Appeals lie from the tribunal to the High court .
2.	Ministry of Agriculture <u>Staff (Land related):</u> Separation of policies exist	Agricultural land	Policy development,; extension services development of range lands; land use and cropping systems; research; administration of agriculture related legislation; Review of agric. leases	No overlaps with any other land agency have been discovered. This may be because there is really no land policy other than can be inferred from the Land Acts. Leases are merely reviewed and comments made, approval lies with MOL. The process is administrative.
A	Department of Agricultural Services 9 technical units including Soil and Water Management		Sustainable Agricultural Land Development	

	<u>Staff (Land related):</u> 5 (Soil management)			
B	National Agriculture Research Institute		Agricultural research and development	
3.	Ministry of Forestry and the Environment– Forestry Department <u>Staff (Land related):</u> Separation of policies and functions exist	Forest Parks	Development of environment and forest policy; Administration of Forestry Act; Biodiversity& Wildlife; create forest & wildlife parks and reserves; de-reserve parks International cooperation. declaration of water or wind erosion areas	MRALTL power to designate forest parks
A	Department of Forestry Regional forestry officers <u>Staff (Land related):</u> Professionals- 4 Technical: 24	Forest lands	Management of forests, protection of forest resources, regulation & monitoring community & private forests. National forest assessment and inventory, preparation of 10 year action plans, Resolution of disputes	No clear policy for conversion of forest lands to agricultural land.
B	National Environment Management Council <u>Staff (Land related):</u> The President and 6 Ministers		Make Policy for the Environment Agency. National environment policy coordination. Promote renewable energy. Supervise National environment agency. Integration of environment considerations in planning.	
C	National Environment Agency (NEA)		Implement policy. Develop strategy. Formulate legislative proposals; Promote public	

			awareness. Environment audits Environment Monitoring.	
D	Department of Wildlife Services (DWS) - Wildlife committee - Site management committees for each park <u>Staff (Land related):</u> Professionals 3 & 3 in training. Technical: 68		Statutory: Biodiversity & Wildlife Act. Biodiversity and wildlife management plans. Monitoring and evaluation; Preparation of national policy. Management of protected areas Land-use management & conservation.	Overlap with Department of Physical Planning. Section 89 of the Biodiversity and Wildlife Act vests Wildlife Committee with developing and implementing regulations for land-use management compatible with the conservation of biodiversity and wildlife. The Physical Planning and Development Control Act vest the power to make development plans for any area in the physical planning board. The 2 Acts have not been linked or related.
4.	Ministry of Petroleum	All land types	Issue of petroleum exploration related licenses and permits	
5	RGD, AGC&MOJ <u>Staff (Land related):</u> 1 lawyer 2 Clerks Separation of functions exist	Leasehold and Freeholds	Lands, Mortgages and Charges Registries	
6.	Ministry of Finance LSC	Leasehold	Act as chair and convenes Land Sales Committee to sell public land	Overlaps with AMRC & SSHFC on sale of public land.
7.	AMRC	Statutory body All land types	Buy sell and deal in real property. Reassignment and recovery of Government assets	Overlap with SSHFC sale of public land and Land Sales Committee
8.	SSHFC³⁶	Residential Estates	Finance housing development projects on lands acquired and allocated by Government Development and management of housing estates	Overlap with MLRG on the creation of residential estates.

³⁶(Still part of the Social Security and Housing Finance Corporation until Legislation passed splitting them becomes effective)

9.	Private Sector actors			
10.	Home Finance Company Ltd	Residential housing	Provision of long term housing mortgages	Jointly owned by the Social Security and Housing Finance Corporation and a local bank
	Staff (Land related): N/A			
11.	Surveyors & Land valuers	All land types	<ul style="list-style-type: none"> ▪ Surveying ▪ Mapping ▪ Valuation of properties. 	The Surveys Act provides for the licensing of surveyors. Never implemented. No standards are enforced because of lack of capacity in the Department of Lands and Surveys.
12.	Lawyers 140 lawyers 69 in private practice.	All land types	<ul style="list-style-type: none"> ▪ Preparing deeds of conveyance and assignment, mortgages and other transaction documents relating to land ▪ Litigation ▪ Mediation ▪ advisory services 	No overlap exists. Only lawyers permitted to endorse land transactions.
13.	Land agents	All private lands	Commission agents for sale and land rentals	Unregulated.
14.	Land developers and estate agents Over 40 in No.	All private lands	Real estate development & marketing Creation of residential estates	Unregulated
15.	Non- governmental pressure groups including NGO's and CBOs	All land types	Advocate for equitable management of land resources. Women's access to land	Unregulated

6.2 Urban Planning

Land use planning has its genesis in town planning and the first town and country plan was made in the colonial era for the city of Banjul when it was surveyed and mapped and the streets named. From independence in 1965 until 1984 most of the planning was limited to the creation of layouts for residential and industrial uses – the Fajaras, Kanifing and the Atlantic Coast were mapped. 1984 marked the beginning of a more comprehensive planning phase with the creation of the GBA and 3 growth centers.

The GBA covers:

City of Banjul

Kombo Saint Mary (KMA since 2003)

Kombo North (WCR)

A strip of Kombo South measuring 3 to 5 KMA (WCR) and in all totals some 284 square KMA.

The Physical Development Plan for GBA and the 3 growth centers were originally prepared under the Physical Planning Act 1984. They were formulated to address the unplanned and “fast growing urbanization process” which had taken place in the preceding 20 years without guidance or control “causing more and more haphazard land allocation, scattered urban sprawl into valuable agricultural land, depletion of forests, strains of water resources and a deterioration of those urban areas now struggling with problems of overcrowding.”³⁷

The objectives of the Physical Development Plan for the GBA were two-fold:

- (1) To develop GBA as a functional region with complementary rural and urban areas. This was to be achieved through restrictive policies (negative planning) with respect to land use changes.

GBA Proposed Future Land Use Size and Type

Land Use Type	Hectares	%
Urban Residential	3288	9.8
Mixed Use	256	0.7
Semi-Urban Residential	1396	4.2
Village	852	2.5
Hotel	45	0.13
Business and Commercial	25	0.06
Industrial	190	0.6
Institutional	301	1.0
Military	63	0.18
Parks and Recreation	603	1.8
Cemetery	63	0.18
Transportation and Communication	617	1.8
Dumping Site	16	0.05
Agriculture	11129	33.2
Water and Swamp	5952	17.8
Shrub	2859	8.5
Forest	5652	17.0
Quarry	15	0.05
Beaches	126	0.4
Special	21	0.06
Total	33469	

Source: Physical Development Plan for Greater Banjul Area 1984/1985 – page 54 table7

³⁷ Page 2 of the Physical Development Plan for the Greater Banjul Area

(2) In view of projected population growth to 2000, land was to be identified for basic needs and housing, infrastructural facilities and work places both in existing settlements and new areas. This was to be achieved by a deliberate urbanization attempt to concentrate settlements for better service provision, restricting the sizes of residential plots, (see Table 1.8) identifying new settlements on strategic locations with better access to existing facilities and preferably on least fertile land. Figure 2 reflects 1985 – 2000 Land Use Plan for GBA.

The stated Guidelines were:³⁸

- Preserve existing Farmland
- Densify those areas which are already deprived of any areas used for farming
- Develop and protect green belts
- Reforestation by public institutions and/or private individuals or groups
- Protect and develop open woodlands and forested areas
- Identify and protect boreholes areas
- Preserve the coastline for nature reserves and recreational uses and protect coastal strips endangered by erosion (around Mile 1, Fajara cliffs and Bijilo Forest Park)

6.3 Three Growth Centres of Brikama, Farafenni and Basse

Similarly, the physical development plans for the 3 growth centres stemmed from the stated need to contain “rapid development as well as to provide guidance on land use. The growth centres are defined as settlements that enjoy a functional relationship with their hinterland because of the variety of services they offer. The specific criteria applied for identifying regional growth centres include:

- Commercial importance
- Institutional importance
- Majority of population should be non-agricultural in occupation
- Population 5000 or more
- Population density should be high
- Some basic infrastructure exists.³⁹

6.4 The Tourism Development Area (TDA)

The TDA was created in 1970 by leases Nos. P14/1997 and P18/1970 and encompasses an area approximately 800 meters⁴⁰ from the high water mark from Kololi Point⁴¹ to the Allahein River (Kartong). The area was leased to the State under the Land (Province) Act by the Kombo North and Kombo South Districts for a period of 99⁴² for Tourism Development purposes.

In 2006, under an African Development Bank (ADB) funded project, the Ministry for Tourism and Culture⁴³, proposed to establish additional areas throughout the country each with a differentiated and themed product based on future market demand.

³⁸ Physical Development Plan for GBA

³⁹ 1993 Census

⁴⁰ It was less in some areas because of already existing settlements

⁴¹ Senegambia Beach Hotel

⁴² This can only be ascertained from the lease documents when found

⁴³ Then Department of State for Tourism and Culture

6.5 Forestry

The Forest Act, 1998 defines a forest as a land area with at least 10% tree cover, naturally grown or planted, or 50% or more shrub and tree regeneration cover and includes government forest parks, community forests and protected forest irrespective of their tree and shrub cover. Section 9 provides that forests of The Gambia shall cover a minimum of 30% of total land area. Using the FAO Classification agreed upon under the Forest Resources Assessment (FRA) Programme (which defines forest as land area of at least half a hectare comprised of at least 10% forest cover). The National Forest Assessment Report 2010, in comparing forest inventories for the periods 1981/82, 1997/1998 and 2009/2010 indicate a significant loss of forest cover: 97,000 ha i.e. from 505,300 ha (44% of all land area) in 1981/1982 to 423,000 ha (37%). The loss of mangrove cover accounts for 73% of this loss from 67,000 ha in 1981/1982 to 35,700 ha. Tree density per hectare declined from 124 per hectare in 1981/1982 to 106 per hectare in 1997/1998 to 42 per hectare in 2008/2009.

This significant loss of forest cover has been generally attributed to pressure from agricultural expansion, bushfires, drought, settlement encroachment and road construction.

6.6 Current situation

The Land Use Policies and Plans developed and approved over the period 1984-1989 culminated in the 1991 Physical Planning and Development Control Act. The Act established a national Planning Board and Planning Authorities for Banjul and Kanifing, and for each Region, responsible for the formulation of the draft plans - National, Regional and local plans. Section 8 of the Act provides that the draft plans shall provide guidelines for spatial development and effective use of land to ensure a well-balanced environment and good living conditions. Development Standards were also adopted for open land, industrial and Institutional usage.

Subsequently, and by the 1995 Land Use Regulations, Draft Plans Regulations, and Development Control Regulations were promulgated pursuant to the Act. The Land Use regulations provided a schedule of land uses, classes and land use zones for the purposes of draft development plans and development control. The Draft Plans Regulations provide for the form, content and guidelines to be applied, in the development of draft plans, while the Development Control Regulations regulated the procedure and guidelines for the issue of development permits, the approval of building plans, and construction standards.

No other plans have however been developed since 1989. The Planning Board and Planning authorities have not been operational in recent years.

The land use data available is severely out dated and limited in scope. The Greater Banjul Area (GBA) and the 3 urban growth centres of Brikama (WCR), Farafeni (NBR) and Basse (URR) remain the only land use plans.

7. SUBSTANTIVE FINDINGS

For the definition of each score, please refer to:

http://siteresources.worldbank.org/INTLGA/Resources/The_Framework_only.pdf

7.1 Thematic Area 1: Legal and Institutional Framework

7.1.1 RECOGNITION OF A CONTINUUM OF RIGHTS

LGI-Dim	Thematic Area 1 – Legal and Institutional Framework		Score			
			A	B	C	D
Recognition of Rights						
1	i	Land tenure rights recognition (rural)				
1	ii(A)	Land tenure rights recognition (urban) Banjul and Regions				
1	ii(B)	Land tenure rights recognition (urban) KMA				
1	iii	Rural group rights recognition				
1	iv	Urban group rights recognition in informal areas				
1	v	Opportunities for tenure individualization				

Land tenure rights recognition in rural areas

Historically⁴⁴, there has been a dual approach to land rights in The Gambia, with separate laws applying to what was considered colonial territory and now primarily comprises Banjul and KMA on the one hand, and the Protectorate, now comprising the Regions, on the other.

The rural areas of The Gambia are situated exclusively in the Regions. The Land (Regions) Act⁴⁵ broadly recognizes the land rights of all communities in the Regions through section 4 and 5 and vests all such land in the District Authorities to be held by them for the use and common benefit, direct or indirect of the communities in which the land is situate.

All land in the rural areas is also recognized to be held under customary tenure except (a) where the land is converted to a leasehold, in which case the terms of the lease are governed by statute, or (b) where the area in which the land is situate is designated State Land under section 5 of the State Lands Act⁴⁶, in which case the Land Regions Act ceases to apply and the designated land becomes vested in the State to “be administered by the State for the use and common benefit, direct or indirect of the community in which the land is situated.”

While this broad recognition of land rights in the Regions give the country an ‘A’ score in respect of legal recognition of rural land rights, the current situation raises some fundamental governance concerns that need to be addressed.

- The extension of the State Land to designated areas in the Regions extends the dual approach to land tenure without in any way attempting to reconcile the land rights of the people who are affected. So that the areas designated State Land are deemed to be leaseholds whereas undesignated areas continue to be customary land.
- There is very little discussion or sensitization on the impact of the designation which does not appear to be understood. For the responsible land agencies the area falls

⁴⁴ See Background data

⁴⁵ The Act was first enacted in 1945 but was amended in. 1948, 1951,1963 and 1991

⁴⁶ The Act was enacted in 1991 and amended in 2008

under the control of the State. On the other hand, landowners do not appreciate any difference in the rights previously held before such designation. In reality, the involuntary and wholesale conversion of customary land in designated State land areas to leasehold, create proprietary and contractual rights that have not been sufficiently spelt out in the Act. For instance, the covenants and conditions of a deemed lease have never been determined. Section 7(2) (d) provides that a deemed lessee shall be “subject to the appropriate conditions and covenants set out in the regulations.” No such ‘conditions and covenants’ are contained in the regulations. The term of the residential deemed lease is stated to be 99 years for Gambians and 21 years for non-Gambians, but for agricultural and industrial leases, the term is to be determined by the MOL in collaboration with the Minister responsible for Agriculture and Minister responsible for industries, respectively (see section 5(9), (10), and (11)). These terms have not been determined since the Act was enacted in 1991.

- There is also some conflict of perception on the effect of section 7 on pre-existing rights. By extending the Act to designated provincial land there is a perception that it is a conversion of regional land held under customary tenure to freehold land vested in the State. This perception is prevalent in official circles. The conflicting view is that the State merely becomes a trustee of such land for the benefit of the communities and therefore the leases issued by the MOL must be assumed to issue as trustee and at the end of the term the legal title would revert to the trustee but the beneficial interest to the communities. This latter view more likely represents the legal policy intention of the law.
- Any policies underpinning the introduction of the deemed lease by the State Lands Act as a proprietary estate appear to have been well and truly abandoned as there has not been any consistent attempts to implement the provisions of the State Land Act, whose main objective is the systematic conversion of deemed leases to effective leasehold titles from the State.
- The Land Regions Act remains a colonial Act with little substantive change since 1968. Some of its provisions have become meaningless or have been overtaken by other and more appropriate legislation or otherwise not relevant to current circumstances e.g. the definition and sections relating to non- indigenes, and provisions relating to the protection of forests and trees. The Act does not in any way reflect the current dynamics at play in the land sector in the Regions; nor is it consistent with the ANR policies and strategies which promote the commercialization of land. Regulations have not been made for the implementation of the provisions of the Land Regions Act. All processes under the Act have been entirely administrative including the processes for the registration of rights. There is also not a prescribed legal or administrative process for the registration of customary rights, as conceived by customary law. The only existing process for the recording (not registration) of rights is the local area council rates receipt or a certificate of occupancy obtained from the district authority, area councils and DPPH.

Nevertheless the consensus of the experts is that all land rights in the rural areas are recognized to the extent that customary law recognizes those rights.

The general application of customary law also raises some issues.

- Customary law is too informal. It is based on traditional practices which are not written so that heavy reliance is put on traditional leaders like the Alkalo/chief some of whom may have little knowledge of relevant principles of customary law.
- Customary law is heavily reliant on the maintenance of traditional support structures that have eroded overtime. Traditional leaders can be appointed outside traditional families and may have more tenuous connections to the community.
- Without a permanent record, customary law principles suffer with the death of depositories of traditional memories.
- The traditional demarcation of land between communities/families is by various land marks including trees, shrubs and physical features many of which are obliterated with the disappearance of forest cover and other climatic change resulting in frequent boundary disputes.
- The vesting of provincial land in district authorities has made it possible for leases of rural land to be granted without the consent of traditional owners.
- The designation of certain areas of the Provinces/Regions i.e. Kombo North, South and Central (which includes rural areas) as State Land has also created anomalies in that the tenure of traditional owners are changed to leasehold without their knowledge, concurrence or understanding as to the consequence of such designation. The 2011 Commission of Inquiry into Land Allocation (CILA) revealed significant abuse of authority by public officers⁴⁷ because of such designations.
- The independence of district tribunals presided over by the chief of the district and mostly Alkalos who are land owners is often put into question. The combined roles (adjudicatory and executive) vested in the same person also gives rise to constitutional questions on the separation of powers.

Land tenure rights recognition in urban areas

By the 2010 Integrated Household Survey⁴⁸ a majority of people live in the urban areas (50.9%). Of these one half live in Banjul and Kanifing Municipality (KMA) (49.5) which is freehold State land; and 30.75% live in Brikama, Kombo Central WCR (the largest urban growth centre in the Regions) which is now designated State land (see tenure typology).

No distinction has been made between urban populations and the rural population as regards rights to land. Urban populations in the Regions are subject to the Land (Regions) Act and Urban populations located on State land are subject to the State Lands Act. The statutes do not make any distinction between urban and rural.

Rights in Banjul are fully registered either as freehold or registered leasehold grants from the State and are therefore legally recognized.

As has been stated in the analysis to LGI 1 (i), rights of communities in the Region, including urban communities, have been recognized by the Lands (Regions) Act as beneficial owners under customary law. Rights of urban populations within designated State land areas are also fully recognized as deemed leaseholders

⁴⁷ The 2010/2011 Commission of Inquiry into Land allocation was headed by Justice Mahoney a member of this panel.

⁴⁸ GBOS

The Score is ‘A’ for Banjul and other urban areas that fall under the Regions with reservation for the Regions because there is no demarcation, and limited awareness of the general public in the Regions of the tenure implications of existing law, including public officers.

Occupiers of land in KMA who do not hold a freehold or leasehold grant are not similarly treated by the State Lands Act. Rights in KMA are recognized for those who have formal leases from the State. Those who do not have leases but have possession are not similarly recognized by the State Land’s Act. The Act addresses existing leaseholders by extending their term to 99 years but is silent on the majority of “occupiers” who have no lease and who regard themselves as customary owners. It merely provides in section 11A that the DLS shall process applications for grants of State Land.

It is estimated that the lacuna in the State Lands Act affects approx. 31.98%⁴⁹ of the Urban population. It must also be noted that in practical terms affected persons do not seem to suffer any disadvantages since they appear to be treated in the same manner as deemed leaseholders.

This situation resulted in a score of ‘D’ for KMA.

Group rights recognition

The term “Group” in the Gambian context, is an economic and/or social group that works towards a mutually accepted objective with rules and regulations governing group activities.

Group forms that are recognized by law are:

- Companies including not-for-profit companies – Companies Act (Cap.95:01)
- Friendly societies or clubs – under the Friendly Societies Act – defined as a number of persons formed for the purpose of raising by voluntary subscriptions of the members with or without donation a fund for specified social objects
- NGOs being not-for-profit companies that are further registered as NGOs with the NGO Affairs Agency.
- CBOs are community groups recognized as working with different communities in rural areas.
- Cooperatives registered under the Cooperative societies Act (Cap.50:02).

Rural group rights are not formerly recognized. For a group to be legally recognized there is a requirement for formal registration. Group ownership rights over land may exist and be recognized at local level but this does not give them legal ownership. Many rural groups have not registered or formalized their ownership of land in their custody or use. Over thousands of women groups (mostly farmers) exist throughout the country seeking to formalize rights over lands they farm as a group⁵⁰ (on the advice of sponsors/donors). The practice has developed whereby women groups seek formal recognition of their lands by signing agreements with land owners recognized by the Alkalo, Chief and Governor as giving them title.

⁴⁹This is computed using the urban population figures (80%) 49.9% of whom live in Banjul and KM (GBOS) and relating this to the number of registered (25,266 registered⁴⁹) as against the unrecorded in KMA unrecorded⁴⁹, assuming that the population was evenly distributed among compounds regardless of locality.

⁵⁰Source - NAWFA.

No groups are referred to in any of the statutes that recognize rights to land. The only distinction made by statute is between Indigenes and non-indigenes, Gambians and non-Gambians, a distinction that applies to both individuals and groups. On the other hand, there is nothing preventing a group from applying for land either under customary law or for a leasehold interest, as both customary law and English law (which applies to freeholds and leaseholds) permit group ownership of land. It is acknowledged that there may not be sufficient awareness of these possibilities by groups.

Group rights are therefore not recognized but recognition can be acquired.

Urban groups are not treated any differently from rural groups. The definition of ‘group’ adopted for LGI-1(iv) was extended to this dimension. The same analysis and recommendations are adopted and the same score applied.

Opportunities for tenure individualization

The law provides opportunities for tenure individualization through the leasing process or the obtaining of a Certificate of Occupancy. It is also possible to individualize land under customary law. Part of the objectives of the introduction of the State Lands Act, 1991 was to introduce a unitary title system in designated areas⁵¹.

Land held under customary tenure may be individualized with the approval of customary owners by:

- (a) obtaining an individual title to customary land – ***the procedure is not specified;***
- (b) converting customary title to an individual leasehold title under the Land Regions Act – ***the enabling provision is in the Act but the leasing procedure is not clearly specified.***
- (c) obtaining a lease over deemed leasehold title under section 7 of the State Lands Act. - ***The procedure and cost are outlined in the State Land Regulations.***

Converting communal/family ownership to individual ownership - Procedure informal

Affordability is a major concern. It takes years to lease property and the procedure to be followed is not clear. An applicant has to move to and fro from the Alkalo, District Authority, Governor’s Office and Central Government. The cost involved in the process is also not specified. Monies are paid to the Alkalo, District Authority, Local Physical Planning Office in the Districts etc. There are many informal fees to be paid that are not prescribed anywhere or regulated including sums to be paid to the Alkalo or Chief.

The procedure is also cumbersome and lacks transparency. Those who do not understand the procedure are open to abuse. There are too many actors involved including unqualified surveyors who are mostly public officers. The Surveys Act 1991 provides for the licensing of surveyors but the Act has not been implemented. The Act also provides for the setting up of a Surveyors board, but no such board has been set up. A group of surveyors had been selected to carry out the duties of a surveyor’s board but never functioned. The general perception is that the process is not affordable. It is intimidating and a major disincentive to leasing. Generally landowners, occupiers or persons in possession of land are content to record their interest at area council and pay rates but will not seek to formerly register unless they have reason to seek a lease.

⁵¹ See the long title of the Act which provides that “an Act to amend the law relating to administration of land in The Gambia to introduce a unitary title system in designated areas and to make provision for connected matters.”

Despite the above concerns and challenges, it was agreed by the experts that the law does provide opportunities for tenure individualization, but the process is unclear and the fees uncertain and unaffordable.

Recommendations

(i) A comprehensive review of the land Acts and their implementation and impact should be carried out with a view to developing a coherent land policy and laws that addresses the current challenges and needs rural and urban population in accordance with subsisting rights. The review should address the following issues:

- the need for the codification or restatement of customary law principles, to avoid their discretionary application.
- that groups who have an economic interest over land should be able to acquire recognition without undue difficulty. The introduction of simplified procedures for the formal registration of rural groups so that they can be fully recognized and rights acquired by them can be secured through perpetual succession.
- the status of occupiers of land in Kanifing Municipality who do not hold a lease should be regularized. This affects the greater majority of the people in that area.
- The current system of designating state land under the State Lands Act which lacks transparency.
- Land legislation should be supported by comprehensive subsidiary legislation to ensure that the laws are fully implemented, including
 - Transparent procedures for fixing and publication of all the fees to be paid, and generally, removing the amount of discretionary authority involved should be adopted.
 - Regulations should be extended not only to the processes related to the issue of State grants, but the application for processes for Regional grants or registration of unregistered land.
 - Extensive sensitization and consultation of the general public should be undertaken in respect of existing land tenure rights, proposed reforms and the development of a land policy.

(ii) Pending such review:

- There is need for sensitization across the board including public officers about the purpose and of effects of the State Lands Act.
- All processes should be overhauled and streamlined.
- The regulatory mechanisms processes and procedures for the enforcement of the State Lands Act should also be reviewed.

(iii) The fact that lands are not mapped or demarcated and ownership properly identified is the source of most conflicts. All land should be mapped, demarcated/ownership identified and determined so that customary titles can be recorded to avoid conflicts caused by disputes over boundaries (individual, 'kabilo' and village ownership boundaries)

(iv) The dual role of district Sefolu as head of both District Authority and District Tribunal is a substantial role conflict having regard to the constitutional principles on the separation of powers. The two offices should be separated. The role of the district chiefs should be confined to alternative non adversarial dispute resolution systems and not formal adjudicatory processes. A separate structure for the District Tribunal under the Judiciary is recommended.

(v) All processes should be automated where possible.

LGI-Dim		Enforcement of Rights	Score			
			A	B	C	D
2	i	Surveying/mapping and registration of claims on communal or indigenous land				
2	ii	Registration of individually held properties in rural areas				
2	iii(A)	Registration of individually held properties in urban areas (Banjul)				
2	iii(B)	Registration of individually held properties in urban areas (rest of country)				
2	iv	Women's rights are recognized in practice by the formal system (urban/rural)				
2	v	Condominium regime that provides for appropriate management of common property				
2	vi	Compensation due to land use changes				

(vi) The Surveys Act should be implemented and only licensed surveyors should be allowed to carry out surveys as per the Act.

7.1.2 ENFORCEMENT OF RIGHTS

Surveying/mapping and registration of claims on communal or indigenous land

As already stated most communal land is not mapped. Only leaseholds are mapped. Less than 10% of all land in the rural areas (which are generally communally owned) are leased. The below table shows the number of lease properties in 4 out of 5 Regions.

	WCR	LLR	CRR	NBR	URR	NBR	URR
No. of compounds⁵²/properties	106,156	7364	-	16,883	14,061		
No. of leasehold properties	9,074	127	-	1,070	477		

The systematic demarcation, survey and registration of rights has never been a practice for communal lands, nor indeed for privately owned lands, the reason being that the Gambian system of registration is purely 'voluntary', unlike countries which practice a system of 'Compulsory registration of Title'. However, some communal gardens have been mapped and rights registered – mostly as precursor for acquiring a loan or for attracting some form of sponsorship that requires Land Title. This is reflected in the low level of registration of regional leases. In most cases communal lands are not mapped until a transaction takes place, which normally is in the form of a lease being issued. According to the AGC Registry only 70 leases were registered for the Regions in 2012.

⁵² Area council rates records 2012.

Most of the documentation for obtaining a lease is prepared by DLS including a cadastral plan which forms part of the lease. This document when signed is finally registered at the Deeds Registry of the AGC. Copies are kept at the Governor's office, MLRG, and the owner also keeps an original copy.

When areas under customary tenure are declared State Lands all land owners are considered 'deemed lessees of the State for 99 years. The MOL may stipulate a time frame within which formal titles should be applied for and issued to all deemed lessees within the area declared as State Land. However, this has not been done perhaps due to capacity constraints and reasons of practical necessity. So given the costs associated with the leasing process, owners would seek to acquire a Lease title only if, for example, there is a need to use the property as a collateral for a loan, otherwise the system continues to be voluntary.

Registration of individually held properties in rural areas

There is limited individual land in the rural areas because most land is communally or family owned. Individually held land in the rural areas is not generally formerly registered.

There is a distinction between the recording of land ownership by Area Councils for the purpose of property rates as opposed to registration at the AGC for tenure/title purposes. Recording for rates purposes is not a registration. Only the name of the rate payer and the location of the property are recorded. Such recording is not accompanied by a cadastral plan or map. There is no requirement for a plan to accompany area council recording of land owners. In fact it is the Alkalo who are responsible for recording the names of property owners and collecting their rates.

A distinction should also be made between lands that are the subject of a 'traditional' allocation by the Alkalo, or customary owner and those that are the subject of Government allocations (DLS/SSHFC). The latter category are in all cases formally Registered.

Under the Lands (Regions) Act, all land rights are recognized under customary ownership and individual land rights can be created. Such individual ownership would usually be recorded for rating purposes. Most land owners do not formalize their titles, except when they need to use the land as collateral or for official/business purposes that require proof of title, or in the case of land owners that are institutions or corporations, for their Assets Registers.

The process for registration of individually held lands in rural areas would typically follow the following process:

- the confirmation of ownership of the land by the relevant Alkalo;
- payment and issue of Planning Clearance by (DPPH);
- application for a Certificate of Occupancy from the district authority and municipal council – this process would require:
 - reverting back to the Alkalo for his stamp
 - applying to DPPH for another planning clearance,
 - submission of the application to the district authority for signature
 - submission to the area council for signature;
- submission of the application for a lease with the certificate of occupancy through

the DLS for Ministerial Approval.

- payment of statutory fees for a survey to commence the leasing process when ministerial approval is obtained
- survey and preparation of a cadastral plan to depict the dimensions and location peculiarities of the parcel to be leased
- purchase of Standard indenture forms for a provincial lease is then prepared according to whether the use will be agricultural, residential, industrial or institutional
- a lease for agricultural land may be sent to the Ministry of Agriculture for comments.
- draft lease document comprising the completed indenture form and cadastral plan is signed by members of the district authority, the Lessee, the Governor, the MOL
- lease is then finally registered at the AGC.

Almost all the processes are primarily concentrated at the Regional Governors Offices and in DLS Banjul. Each of the offices mentioned will be visited at least 2 times during this process. The registration process is usually longer if the land was first purchased before commencement of the process for registration.

The D rank was determined by comparing the figures of rated properties in four Regions (URR, NBR, LRR, and WCR with the number of registered/leased properties. The review showed that out of a total of approximately 144,464 properties only 10,748 (7.4%) was registered/leased.

The low proportion of registered rural lands may be attributable to the following factors:

- Absence of pressures on the available land resources, due to low population concentrations. The phenomenon of rural-urban migration (especially of the youth) noteworthy in this regard.
 - Absence of commercial agriculture means land is readily available in the rural areas and hence rural communities do not feel the necessity for land demarcation and registration.
 - Limited market for the buying and selling of land.
 - Stability of the existing customary land tenure system/or the absence of any felt need to register ownership
- Time consuming and complex processes for land registration that are not user friendly.

Registration of individually held properties in urban areas

There is only one national and/Deeds Registry (located at the AGC in Banjul) where all land rights and transactions on land are registered, whether urban or rural in various registers. The data is unorganized and not sorted by category. Many of the registers/volumes are in a bad state and not legible. However, a random review of the registers shows that the vast majority of registered land is to individuals.

In the City of Banjul where 'Freehold' Titles predominates as opposed to Leasehold Titles, all properties are formally registered in the Banjul Streets Register kept by the AGC Land Registry. The BCC also has a complete record of all land owners in Banjul⁵³.

⁵³ A significant number of properties are registered in the names of persons long dead. Many of the estates are not administered and the name on the original title may not be changed until there is a transaction on the land

For the rest of the country the assessment shows that less than 50% (21%) of individual held land in urban areas is also registered. This score is arrived at by comparing the number of leased properties in the 2 most populous urban areas KMA and West Coast Region with the number of rated properties. KMA as at end 2012 has 19,240⁵⁴ leases compared to the number of rated properties - 33479⁵⁵. This indicates that 57% of properties were registered. The number of registered properties in West Coast Region is 106 146 compared to the number of leases (9074) – 8.56%. The figure of registered properties for other urban areas is not available. However having regard to the total numbers of leasehold properties from all regions, that figure even if available would not affect the score.

Registered Urban Properties

	BANJUL	KMA	WCR	LLR	CRR	NBR
No. of compounds /properties	3971	33479	106,156			
No. of leasehold & freehold properties	961	19,240 ⁵⁶	9,074			

The issue of the majority of individually held lands in urban areas not being formally registered raises profound challenges to the implementation of the State lands Act. It appears that, after the declaration of Kombo North, South and Central as state lands, most property owners (now Deemed Lessees of the State by virtue of the Act), did not register their properties as expected to obtain title deeds.

A timeframe for compulsory registration of deemed lessees was never issued by the Ministry, as provided for by the State Lands Act and this might explain the lack of urgency or incentive by land owners to obtain lease titles. There is no record to show that the general public was notified of the designation or its implications.

Women's formal rights

Sukuta Women's Garden KN



According to the last census held in 2003, women constitute about 51% of the population. Population Estimates and Projections (2003-2020) show that this ratio has remained more or less constant and that in 2012 the female population increased to 892,072 compared to 843,749 - 51.4%. By 2010 the proportion of female headed households was 19.4%⁵⁷.

Women's rights in land are recognized by the formal system in both urban and rural areas. The statistics on the number of individual lands owned and registered to women is difficult to determine because the records at the Land Registry are not currently compiled according to gender. A review of the numbers of leases registered in the past 10 years from all local government areas suggest that less than 20% are registered to women. However, the trend in the past five years suggests a significant shift in favour of public land allocation to women. The

⁵⁴ Source AGC Registry

⁵⁵ GBOS

⁵⁶ Not available

⁵⁷ GBOS Integrated Household Survey Income and Expenditure -2010

SSHFC have indicated that 56% of all their plots nationwide are allocated to women. Similarly the DLS have indicated that 34% of the plots in the last government residential layout were allocated to women.

From a policy stand point the formal system of land allocation appears to be gender neutral. Allocation is purely based on qualifying criteria determined by the MOL and implemented by DLS. Both DLS and SSHFC have stated that there is no deliberate policy in favour of women and uniform criteria was applied in recent allocations. The broad criteria applied are: nationality, maturity (over 21), availability of the means to develop the land, not having benefited from previous Government land allocation, and number of dependents. This suggests that in the urban areas women's ownership of registered properties is on the increase due to a growing number of women with more disposable resources than in the regions, notwithstanding similar obstacles.

Changes in ownership patterns in rural areas concerning women are at a different dimension. In rural settings, it is the Women Kafos (groups) and not individual women who are increasingly seeking to register land for agricultural purposes (market gardens). Usually such land is leased to satisfy donor funding requirements. The land would be registered in the names of Kafos.⁵⁸ It was impossible to determine how many leases were issued to Kafos.

The experts were unanimous on the fact that gender inequities in land ownership continue to exist in both urban and rural areas as a function of ingrained traditional, religious and cultural practices particularly in the rural areas subject to customary law. Women rights in land are determined by existing land tenure laws, customary practices and inheritance laws. While the Constitution is not discriminatory per se against women as a gender, it nevertheless recognizes women's inheritance rights as granted under their personal law. This limits the rights of women to equality under the Islamic law of inheritance. Under Sharia inheritance law, females are entitled to half the portion of a male's share of the estate⁵⁹. This affects more than 90% of the population who are Muslim and subject to the Islamic law of inheritance.

Customary law or practice discriminates against women. This applies to the majority of land in The Gambia including the urban areas located in the Regions because customary tenure is the prevalent method of land ownership. Under customary tenure, land is regarded as communally owned by clans or families. Within this traditional context, the ownership of land by women is restricted. Women have access to the use of land for agricultural purpose generally but usually through their spouses or male relatives. Ownership however is a serious challenge.

Condominium regime

Apartment regimes other than tenancy arrangements are not common. In recent times however real estate companies have introduced the concept of apartment ownership. There is no law that recognizes or regulates common property under apartment systems other than general common law principles. Shared spaces in rented apartment complexes are subject to landlord/tenant agreements under general contract law. Arrangements for the management and maintenance of the properties are subject to the contractual arrangements between

⁵⁸ The information was obtained from interviews with DLS. The actual numbers of leases concerned could not be ascertained.

landlords and tenants and general legal principles. Traditionally independent family units in extended family compounds may build their own individual structures. The relationship between individual householders is not addressed by law. In the Regions this may be regulated by customary law.

Compensation due to land use changes

Process	Level of Compensation	Compensated rights	Implementation	Comments
Rural-urban conversion	2	3	3	Rural-urban conversions are the most common occurrences mainly due to the increasing need for housing. Including conversions for the creation of Government Layouts. As customary land, compensation is limited in most cases to user rights.
Establish reserved land	2	2	3	The establishment of reserved lands include cases such as the declaration of the TDA and State Lands. The process of compensation, of recognized rights and implementation are the same as rural-urban conversions.
Other (please specify:-----)	2	2	3	Changes of land use for specific Development Projects such as schools, Health facilities etc especially in rural areas. In some cases the conversion is based on the provision of land by the community as
Codes 1= Compensation paid in cash or in kind on the same or similar basis as compulsory acquisition	2=compensation paid in cash or in kind but at significantly lower level than compulsory acquisition; 3=little or no compensation paid.	1= All secondary rights recognized; 2= Some secondary rights recognized ; 3= No secondary rights recognize	1= Consistentl y implemented;	2= Implemented with some discretion; 3= Implemented in highly discretionary manner.

Specific land use changes are not identified in Legislation. However, section 22(2) of the Physical Planning and Development Control Act provides that where public interest so requires, the Minister may direct that a lawfully existing use be changed. Section 22(3) further provides that the Minister may direct that compensation be paid in accordance with the provisions of the Land Acquisition and compensation Act, 1991.

In areas that have an Approved Plan, changes in land use occur in two categories. The Minister responsible for the administration of the Act can make a Declaration in the gazette for the re-designation of any area from one use to another thereby affecting existing land uses. This re-designation is often from agricultural to other uses such as residential, industrial or commercial. Usually, the affected areas are small farms used for subsistence under customary tenure with only usufructuary rights. When an area in which these farmlands are located is re-designated under the Act resulting in the loss of rights to use the land, occupiers are compensated on the basis of the ‘loss of user rights’ on the premise that no exclusive rights of ownership exist. The method used to determine the consideration for the “loss of user rights” is not clearly defined in the legislation so that there is some level of discretion

and inconsistency in the process. Under the repealed Lands (Banjul & Kombo St Mary's) Act, (predecessor to the current State Lands Act, and the Land Acquisition and Compensation Act, 1991) compensation to a dispossessed farmer was calculated and paid per acre at a fixed statutory rate irrespective of the characteristics of the land. The rate per acre was also arbitrarily fixed. Even then the amounts compensated were below market prices.

From the period 2005 – 2010 allocations of land was made from 17 layouts created in State land or designated State land areas. Apart from 3 layouts, Kanifing, Katchikally, and Old Jeshwang, the layouts were created from customary owned lands previously agricultural in peri-urban areas. There are numerous complaints from land owners that they were not compensated. The CILA found that the procedures for change of land use under the Physical Planning and Development control Act and payment of compensation under the Land Acquisition and Compensation Act were ignored. Compensation paid was discretionary. On the other hand in the Port Acquisition project, the proper procedure was followed and compensations were paid.

In rural areas, demand for land necessitating the re-designation of large areas to other uses from agriculture is not very common. District Authorities in rural communities are eager to see development in their areas and willingly give up farmlands held under customary tenure without compensation so long as the destined use is for public purposes.

The second category of land use change that occurs is the case where an individual with exclusive possession of land wishes to change the use to suit changing circumstances of that land to some different use. In this case the issue of compensation does not arise as no other rights are adversely affected instead individuals wishing for such change in land use are required to pay a prescribed fee to the Planning Authority, and to also forfeit a portion of the land to the state if it was leased land.

Compensation is not paid for change of land use to forests and wildlife parks, protected areas, and sites of historic and cultural significance.

In practice therefore, different types of Land use changes do occur as and when required and compensation may be paid but not consistently. Where compensation is paid it does not enable the land owners have comparable assets to continue to maintain prior social and economic status.

Land use changes are the responsibility of the DPPH whilst the DLS is responsible for Land Acquisition and Compensation.

As regards compensation arrangement for loss of land rights, the only provision in the law is the Land (Acquisition and Compensation) Act, 1991⁶⁰. This makes provision for the compulsory acquisition of land by the State for public purposes.

The law is not clear on compensation when it comes to land use change as it is in compulsory acquisitions. Compensation for land use change is discretionary. There is no system put in place for compensation in respect of change of land use. There are no procedures guiding the process.

⁶⁰ Cap. 57:06

Recommendations

- (i) Title to land should be formalized for the whole country. It is important and desirable that all communal land is mapped and boundaries demarcated. This would lessen exploitation and abuse as well as land disputes. The source of most problems including abuses in the land tenure system is the fact that land generally is not mapped, demarcated, owners identified and registered. A system to ensure that this is carried out should be put in place as a matter of priority.
- (ii) As part of this system, a process of 'Land Adjudication' should be introduced whereby all land parcels will be identified and the rights therein recorded to evolve into a comprehensive Register of Titles. The benefits of Registration (Security of Tenure and ease of Conveyancing) can only be maximized by the existence of such comprehensive and up to date records.
- (iii) The system of land adjudication can be supervised by a Commission/Special Court instead of the formal court system. Such a court or Commission should not be bound by formal legal rules.
- (iv) There is need to sensitize the land owners in the rural areas on the benefits or rewards of land registration for security of tenure and ease of transactions in landed assets.
- (v) The mapping and demarcation of all land should be accompanied by the introduction of an appropriate Registration of Titles Act/system to guide the process of registration of all land titles.
- (vi) Policy changes should aim to simplify and shorten registration processes at both the approval and document preparation stage.
- (vii) To give effect to any such reform the Institutions responsible (DLS, DPPH, AGC) for awarding and registration of land rights need extensive strengthening in terms of human resources development, technological capability, operational logistics and mobility
- (viii) The land records ideally should be synchronized with the DLS Cadastre and the land records held at the Governors' offices.
- (ix) A Land Resources Information System (LRIS), which is comprehensive and up-to-date in content, and shared by all the institutions concerned with the management of land resources and the rights therein is crucial.
- (x) The Survey Act 1991 which would have enabled private Licensed Surveyors to take responsibility for the preparation of Lease plans should also be put into operation to reduce the pressure on the DLS. This Act has made provision for the appointment of a Survey Board, which would issue Licenses to duly qualified and certified Surveyors who could then prepare cadastral plans and other ownership documentation according to a defined uniform standard for leasing.

- (xi) The low ownership of land by women is a critical human rights issue that needs to be tackled. The government should set the national mood for country wide debate on women's property rights and create the necessary policy and legislative environment to address the protracted property issues for women.
- (xii) A policy should be adopted for the systematic replacement of informal systems of land ownership with a formal system with particular attention to women's rights issues.
- (xiii) A comprehensive revision of the compensation system for land use change, structures and laws is required. The law on compensation for compulsory acquisition of land should be clear. A uniform compensation process should be prescribed as a standard formula. The method of compensation should be transparent. Not only expropriation issues, but loss of land rights arising from change of land use should be clearly addressed.
- (xiv) The comprehensive legislative reform recommended should address the subject of apartment systems and provide for the regulation of common property in such systems including tenancy systems.

7.1.3 MECHANISMS FOR ENFORCEMENT OF RIGHTS

LGI-Dim		Mechanisms for Recognition	Score			
			A	B	C	D
3	i	Use of non-documentary forms of evidence to recognize rights				
3	ii	Formal recognition of long-term, unchallenged possession				
3	iii	First-time registration on demand is not restricted by inability to pay formal fees				
3	iv	First-time registration does not entail significant informal fees				
3	v	Formalization of residential housing is feasible and affordable				
3	vi	Efficient and transparent process to formally recognize long-term unchallenged possession				

Use of non-documentary forms of evidence to recognize rights

Non documentary forms of evidence are acceptable in court based on the Evidence Act, 1984⁶¹. Section 46 of the Evidence Act provides as follows: *'Where the title to or interest in family or communal land is in issue, oral evidence of family or communal tradition concerning such title or interest is relevant.'*

The decision of the Supreme Court of the Gambia in the case of Fatou Badjie v. Joseph Bassen [2002 – 2008] 2GLR page 115 reiterates the position that title to land may be proven by traditional evidence when other forms of evidence are unavailable. So non – documentary forms of evidence can be used alone to obtain full recognition of claims to property when others forms of evidence are not available.

In practice however cogent traditional evidence in proof of claims in the High Court is not always forthcoming and when available is sparse making it difficult for the courts to rely on

⁶¹ Cap. 6.06

such evidence. At the administrative level there is no bar to the acceptance of non-documentary forms of evidence if there is no other evidence available

Formal recognition of long-term, unchallenged possession

Legislation does not exist to formally recognize long term unchallenged possession. All land is either, vested in the District Authorities, communally/individually or State owned.

First-time registration on demand

Actions/documentation required and associated costs for formal registration:	Administrative Activity Cost	Judicial Costs/Taxes Incurred
1. Planning clearance, 2. Occupancy certificate, 3. Lease processing: survey, demarcation & registration 4. Capital gains tax (if property acquired)	Application fee: D 100 Surveys fee: D 125 Planning clearance fee: D 200 Occupancy certificate fee: D40	Stamp Duty fee: 5% of value Registration fee: D1,000 Searching fee: D200 Capital gains tax -5%-25% of land value

Two categories of urban areas can be identified:

- (i) Those that are the subject of an ‘official’ allocation within a Government demarcated layout. Allocations by way of sale by the SSHFC also fall under this category. This category of urban property is within a planned layout that would have made provision for public amenities in addition to providing for standard sized lots. The SSHFC layouts would in addition provide the basic infrastructure for water and electricity (serviced plots). Registration of parcels in this category is a much more straight forward process and invariably cost much less, because capital gains tax is not involved and also the Deed Plan (abstracted from the layout Plan obviates the need for additional field survey work).
- (j) Those that are to be found within the ‘old’ settlements, having been allocated by the sitting Alkalo at the material time. These lots are typically bigger in size, and the layout planning not done according to any specific physical planning standards. The leasing of properties in this category involves the whole process of preparing the ownership documentation, planning approvals, field survey and preparation of cadastral plans, ministerial approval before registration. First-time registration on demand of properties in this category may in some instances be restricted by inability to pay the formal fees

Cost and time of first time registration

The major factor that may have an impact on the time and cost of first time registration is perhaps the lack of adequate capacity within the institutions responsible for survey, demarcation, preparation of Lease document and registration. These tasks typically take a lot of time to perform. Cadastral plans covering the country are not comprehensive and up-to-date, nor are they computerized. The time requirements for the conduct of surveys are hence very long, coupled with limitations in the required resources of personnel and logistics.

The approval processes are also time-consuming as all the approving authorities are not centrally located may be but distributed over a very wide geographical area. These results in

lease files being physically transported to various places during the approval processes.

Where change of land use is involved, the cost is determined by the type of land use category and location. There is a formal fee of (D5000) for change of land use for residential, commercial and industrial land. However, for agricultural land section 23 of the State Lands Regulations states that 50% of the land area shall be forfeited to the State.

Property disputes during the registration process may be resolved by DLS. Where this fails, a resolution by the court would delay the process indefinitely and increase costs substantially by at least 10% or more.

The formal fees are made very high by what in effect is the high tax rate. 5% is paid for stamp taxes alone and another 5%-25% or more for capital gains tax if the property was first purchased before registration.

The leasing of property can involve a complicated process of ownership documentation, planning approvals, surveying and even capital gains tax and can take years. For first time registrants these are generally too high. The certificate of occupancy is a pre-condition for commencing the leasing process in all designated State land, urban or rural. As part of this process the Alkalo and district authority stamps are required as well as Capital gains tax clearance if the property was first acquired.

In the urban areas, the calculation of property values for the purpose of Capital gains taxation and stamp duty is supposed to be premised on empirical data collated from property transactions in the open market. An in-house guideline prepared by the DLS for Gambia Revenue Authority (GRA) guides the GRA in assessing capital gain tax. The use of such a guideline as a basis for assessment is questionable as the price of property is determined by many variables.

Capital gains tax rate is - individuals – 5% of the purchase price or 15% of the gain whichever is the higher and for companies and organisations, 10% of the purchase price or 25% of the gain whichever is the higher. It is a substantial tax whose actual calculation is to a large extent discretionary as the declared value of the property is usually not accepted. The DLS guidelines are viewed as an arbitrary based on as unrealistic property values. This makes room for ‘negotiation’ and a high degree of corruption.

Generally persons interested in leasing property would have first acquired same from a seller who may not be interested at all in registration and therefore not prepared to pay the Capital gains tax. Registration can be a significant burden to buyers/investors.

The cost charged for planning clearance, though not high (D200) ought not to be necessary if the land use plans were up to date.

The formal fees for first time registration are a major concern in the present situation where many of the regulations are not clear, processes not transparent, and general public awareness and understanding very low on approved procedures and practices.

In addition to formal fees, applicants are confronted with significant amounts of informal fees associated with registration. In most cases these fees can be higher than the formal fees. Associated informal fees include:

- Fees to intermediaries i.e. property agents can be up to 10% of transaction value. Property agents are neither registered nor licensed.
- Fees for preparation of location plans by unlicensed surveyors or planners (discretionary)
- Fees charged by Chiefs and Alkalos' (discretionary) but can be up to 10% of transaction value.
- Transport and other costs to follow up application and the conduct of field surveys for the preparation of cadastral plans.
- Professional fees to lawyers (if involved).

High informal fees are a significant disincentive to persons who would normally like to register their properties. The composition of the fees is itself not clear. Typically, payment to lawyers if involved), unlicensed surveyors or planners (who are mostly hired from DPPH), Alkalos and district chiefs, are discretionary and can be higher than the formal fees. In addition, officers in the DLS/DPPH may have to be “tipped” to expedite the process.

In most cases the level of informal fees paid out can be higher than the level of formal fees.

Formalization of residential housing

The prerequisite for formalizing housing is presented in the following table and is applicable to housing in unplanned areas:

Application Requirements	Development Permit Application	Development permit fees
<ul style="list-style-type: none"> • Possession of local land transfer certificate from Alkali (village Head); • Official Area Council land transfer certificate • Certificate of occupancy from Department of Lands and survey • Land use clearance from Department of Physical Planning and Housing • Lease document from Department of Lands and Surveys where applicable. 	<ul style="list-style-type: none"> • Submission of building plans to PPHD and payment of fees; • Submission of land title confirming ownership of plot. • Plans are scrutinized for conformity to building standards, • Plans are assessed and approval for development permit given 	<p>Fees vary depending on the size of the building.</p> <p>Residential - D5 per sq m.</p> <p>Commercial-D10 per sq meter Section 7(9) State Lands Act, 1991</p>

A distinction is made between processing land from an official government layout for leasing or a building permit, in such case the requirements in the matrix above do not apply and processing land on traditional tenure (e.g. unleased land at the village of Sinchu Alhagi) this process is explicitly indicated in the matrix above as land in unplanned urban areas.

Where housing is built without permission a stop notice is issued in the prescribed form 7 of the first schedule which is served on the person concerned to rectify the infringement within a specified time. Such person is required to immediately stop work and rectify the infringement within the period specified. The authorities will then check conformity with the standards set by the Act to achieve formalization of housing. Where standards are not conformed to, demolition will take place. The regulations also permit the granting of

provisional permits to developers if assurances are given that the development control requirements will be met later. There are no regional variations to these.

The “formalization” of urban housing involves securing land titles on the one hand and registering housing units in “unplanned” areas on the other. Land ownership in unplanned areas typically has a basis in (customary) law while informal areas are likely to have been illegally occupied in the first instance. Channels for formalizing land and housing units are:

Land: Three forms of land documents generally exist: the conveyance for freehold property, the lease for registered property outside Banjul City and the CoO. Of these the most commonly available is the CoO which is available at local DPPH offices and based on verification by traditional authorities (*Alkalo* and *sefola*); or “Leases” issued by central government and requiring the signature of the MOL among others. Leases offer greater security of tenure than CoO but the process is more centralized, and procedures involved are lengthy, cumbersome and more costly.

The leases for plots on formal or planned areas are easily obtained based on letters of allocation from DLS, SSHFC and others. Plots in unplanned areas are more difficult to process.

Housing: Residential units in both planned/formal and unplanned/informal areas can be formalized by securing a Development Permit (DP) from the DPP&H prior to commencement of the building process. DPs can also be issued after completion of construction or any time thereafter. Documentation to be submitted for a DP include proof of land ownership, technical drawings illustrating type of construction as well as designs that meet a variety of criteria based on public health considerations (ventilation, drainage, and so forth). Aside from DPs, other statutory requirements such as certificates of completion, occupancy, etc., are not enforced and the public is largely unaware of these.

The requirements for formalizing titles to plots are generally known and reasonable information is available to those that would enquire. Procedures for acquiring a CoO are quite accessible as persons and institutions involved are locally based (*Alkalo*, *seyfo*, local physical planning office). Information on acquiring leases are not as widely disseminated and typically assistance is required from DLS/DPPH personnel for which informal payment is required, in addition to statutory payments such as land rent, stamp duty, etc., if document is to be secured within a reasonable time frame.

Plots from unplanned areas can generally be formalized except if there are conflicting claims emanating from disputes over ownership, settlement boundaries and so forth. There are also a few settlements including the Kotu Quarry⁶² neighborhood and the Old Jeshwang – Airport corridor which are labeled illegal so that formalization is not possible. Justifications for Kotu Quarry include poor storm-water drainage and high propensity to flooding during the rains while the Old Jeshwang area has long been designated for future development of a highway to the airport. Periodically also, leases to identified areas may be under “embargo” while government deliberates on possible future development options. An example of this is the BatoKunku settlement in the Kombo North.

⁶² Kanifing Municipality

The score for this dimension is C. There is general knowledge of the processes required for formalizing land through a Certificate of Occupancy. Requirements for leaseholds, the most secure of the available forms of tenure, are less transparent and typically require the intervention of “experts” for which payment is required. Also, information on areas under embargo for one reason or another is not publicly disseminated. Rather, the information is spread through rumour and speculation, and better available to those that are well-connected. There is information inequity.

There are no significant penalties for not obtaining a DP as enforcement is very poor due to lack of institutional capacity. Thus, compliance is weak. Furthermore, while the actual fees paid for a DP is affordable to those intending to construct “modern” houses, the submission required in terms of technical documentation, plans, sections and so forth, make the process relatively expensive especially to those only desirous of a traditional house (mud blocks). Land use clearances are only issued from Banjul but development permits are issued from all regional offices.

Process to formally recognize long-term unchallenged possession

The formalization of possession in the Regions is not regulated but an administrative process exists. In deemed lease areas after a certificate of occupancy has been obtained the rest of the procedure is regulated by the State Lands Act and regulations. The procedure for obtaining a certificate of occupancy however is not regulated and therefore the services of an intermediary are usually required. The procedure ordinarily is clear and practical but because it is not regulated it is subject to a high level of discretionary action that affects its transparency.

Possession in (KMA) can only be formalized on proof of acquisition of a valid possessory title either by inheritance, purchase, or adverse possession. Otherwise there is no provision for squatters to formalize possession. There are no informal occupations of public lands recorded in the past year. However there are outstanding cases not yet resolved. Because of significant encroachment on the Tourism Development Area in the past years there is a total ban on issuing physical planning clearance or processing land transfers in that Area. The ban is not supported by any legal measures nor has it been published.

Other long standing occupations like the Kotu Quarry and New Jeshwang by-pass was not formalized because occupiers were relocated or forcibly removed.

Property rights are not demarcated generally and as indicated above there is no law on the registration of title to land.

There is no possibility of formalizing occupation of private land. Disputes regarding private land are settled by the court system. Formalization is generally based on proof of previous ownership. A person who occupies public land (state land) may be able to pay rates in respect of the land but may not be able to formalize same by obtaining CoO or a lease. For most people who occupy state lands, a rates receipt may be sufficient for most purposes. Otherwise there is no process whereby illegal occupation of public land (state land) can be formalized. It is also not clear that possession of land can be formalized without proof of ownership.

Recommendations

- (i) It is important that Legal Practitioners are sensitized on the law and procedural requirements and possibilities for establishing title through oral evidence. The

consistent application of land law principles is desirable. Training for lawyers and judicial officers on land laws and related principles should be made available through collaboration between the Bar Association and the Judiciary with capacity support.

- (ii) The procedures for the formalization of property ownership from unplanned holdings (urban or rural) need to be based on clear regulations instead of the rather opaque and unclear current situation. The procedures should be set out clearly and widely disseminated and consistently applied. One of the challenges is that procedures are not always followed for expediency reasons, and informal practices, over time, become crystallized as the norm. This can only be avoided when procedures are explicitly documented and disseminated.
- (iii) The steps involved in the registration processes should be streamlined and shortened. A formal step by step process with a time line is desirable for all registration processes. This should be regulated.
- (iv) Capital gains tax should not be charged on first time registration. This would encourage landowners to register their holding.
- (v) There should be an initiative in place for the planning of the whole country once and for all, to eliminate the need for clearance/planning fees on first time registrants. This should be followed by the systematic registration of all land titles because the current process for determining land title is cumbersome lengthy and insecure giving rise to exploitation by a few, and conflict.
- (vi) All fees should be formalized at all levels including fees paid to local authorities including the Alkalos and chiefs and the structure widely publicized. Alkalos and Chief's should not have the authority to arbitrarily charge fees for executing their duties as is the case in the current system.
- (vii) The fee structures once determined should be published and widely disseminated.
- (viii) Poor human resource capacity and low salaries contributes to the pervasive corruption in the system. This should be addressed. Staff should be trained and better remunerated to reduce the temptation on their part for corruption and malpractice.
- (ix) The culture of expectation of tips by paid government workers to execute their statutory functions must be eradicated.
- (x) There is little institutional capacity for urban planning and even lesser capacity for urban intervention. The most recent Land-Use Plans are about 30 years old. The key government agency, Department of Planning & Housing, is barely able to maintain records on developments currently "on-the-ground" let alone plan and direct such development.
- (xi) Absence of government motive for effective urban development planning combines with minimum capacity for actual planning interventions underlie shortcomings in the urban land-use planning domain. What is required are not

piecemeal interventions but complete institutional overhaul of the sector: Myriad activities required for proper urban planning and intervention should be identified through a comprehensive and wide-ranging study which should also define a matrix of the institutional configuration required for sustainable implementation of activities.

- (xii) Equally important, an effective monitoring and evaluation (M&E) mechanism that, *inter alia*, sets out clear targets for the various actors and participants and measures organizational effectiveness at achieving specified sectoral objectives should be designed.

Areas for intervention should include:

- Study and research
Implement a comprehensive urban planning and land-use study that identifies and assesses activities, actors, mechanisms, procedures, etc., in the urban development sector. Study should also serve as tool for educating government on the importance of urban development planning and the likely long-term repercussions of ignoring the activity.
- Institutional Analysis
Provide detailed analysis of institutions and actors currently active in the urban planning sector and identify strengths and weaknesses in current performances. Urban planning as an activity within the purview of central government is unlikely to be sustainable: salaries are too low and cannot attract/retain planners and other professionals. Alternative actors and mechanisms better suited to effect implementation of the various sectoral activities should be identified, including actors (other than central government) that may have relevant expertise; the University of The Gambia, Management Development Institute and private consultants should be considered.
Ensure institutional sustainability including human resources and financing; high staff retention rates is based on adequate remuneration (such as is the case with GAMWORKS⁶³) and operational and financial autonomy largely depend on the application of self-financing mechanisms (assess fees for land data and services).
- Specific Areas for Intervention
 - Specific areas to be covered by interventions 1 and 2 above include:
 - review current land-use planning procedures and revise to allow for public participation in the planning process;
 - improved dissemination of information related to securing land titles, transfers and land-use changes, and also the procedures for acquiring development permits for buildings;
 - facilitate process of “formalization” by locating planning technicians in local offices (most local authorities have established neighborhood offices for collection of land rent and other payments); technicians can advise on procedures for formalizing land and buildings and provide relevant forms;

⁶³ Gambia Agency for the Management of Public Works established as a World Bank Project in 1992

- collect land and land-use data in Greater Banjul Area (GBA) and regional towns; process, analyze and store data using such software as GIS; make available to other parties at a price that enables cost-recovery and therefore sustains activity;
- provide information on those areas where formalization of land/buildings is not possible, with reasons; disseminate widely;
- simplify technical requirements for development permits and improve equitable access by differentiating between more stringent standards and costly permits for modern structures and less onerous standards and lower costs for traditional buildings.
- Preparation of a comprehensive national plan (master plan) that is strictly followed with allowance for change of use.

7.1.4 RESTRICTIONS ON RIGHTS

LGI-Dim		Restrictions on Rights	Score			
			A	B	C	D
4	i (a)	Restrictions regarding urban land use, ownership and transferability				
4	i (b)	Restrictions regarding urban land use, ownership and transferability				
4	ii	Restrictions regarding rural land use, ownership and transferability				

Restrictions on urban land use, ownership, and transferability

The scarcity of land, as a resource calls for restriction on its ownership use and transferability. Land ownership restrictions are expected to be imposed where the land falls within reserve areas and where land is preserved for public use in for instance parks, Road networks, schools, markets, mosques and churches. Restrictions are also imposed on land use where the use contradicts what is recommended in the master plan. For example, provision for industrial use cannot be changed into residential without approval for a change of use. Restrictions are also imposed on plot sizes, and on transferability where ownership is not established through a lease document or certificate of ownership.

	Non Existent	Exist but not enforced	Exist and enforced	Brief description of restriction and comments
Restrictions on:				
Land Transaction				There is no restriction on transactions on existing freehold land.
Buying			✓	Assignments (buying and selling) mortgages and change of use, of leased land requires consent of the MOL. State Lands Regulations (section 22)
Selling				
Assignments	✓			State allocated land is required to be developed before it can be sold. (<i>Note: This restriction is hardly enforced since land is not always visited.</i>)
Conveyance				
Mortgages				
Use			✓	In the area of change of land use, restrictions are imposed. For any change of land use permission must be obtained from the MOL and fees payable. - 0 – 1 hectares – D9.50 per square meter - 1 – 2.5 hectares – 40% forfeited remaining D8.50 per square meter - 2.5 - 5.00 hectares – 45% forfeited, remaining D7.50 per

				square meter. - More than 5 hectares – 50% forfeited remaining D7.50 per square meter Section 22 State Land Regulations. 6 th Schedule State Land Regulations.
Land ownership lease hold freehold customary tenure			✓	Deemed leases are limited to 99 year leases for residential land. The term of years for agricultural or industrial land is at the discretion of MOL in collaboration with MOA or MOI (respectively) Section 7(9) State Lands Act, 1991 A foreigner cannot be a deemed lessee (therefore cannot own) more than 50 x 50 sq. meters for leaseholds and cannot exceed 21 years lease term within 1.5 kilometres of the high water mark. Section 7(11) State Lands Act, 1991
			✓	A foreigner who owns land within the 1.5 kilometers of the High water mark or which is more than 50x50 metres is a tenant at will and may be dispossessed at any time. (Section 7(11) State Lands Act, 1991.
			✓	Freehold title cannot be created without the Approval of the Nationally Assembly. Section
		✓		Customary land cannot be occupied by a non-indigene without the approval of the Governor or a memorandum of writing Section 7 of the Lands (Regions) Act (57:03).
			✓	A lease to a non- indigene of customary land cannot exceed 50 years and is not renewable.
				8) Restrictions on customary tenure are otherwise in accordance with customary law; where ownership is not established, there are restrictions on ownership.
Ownership type Individual Group/community			✓	Except for such restrictions that may apply under customary law the restrictions of ownership apply to individuals and groups. A group cannot hold land unless it organized under a law that allows it to hold land. The land may be put in the name of trustees.
Size of holding			✓	The standard size of residential plot varies between 250 to 1000 m2. Agricultural leases a required to be a minimum of 1000 hectares
Price	✓			Price is determined by market forces. There are no restrictions
Rent		✓		The Rent Tribunal (Establishment) Act, 2010 provides that the tribunal shall determine standard rents for properties and landlords apply to the tribunal for the purpose. Equally the tenant may also apply to the tribunal for the determination of rent.
Other				

In practice these restrictions are applied through the scrutinisation of applications by the above named agencies. There are regional variations on this scrutinisation process in that in GBA and regional growth centres it is the DPPH and DLS that are responsible.

Enforcement is a major challenge and there is limited proactive effort to enforce restrictions and ensure compliance, mostly due to a lack of capacity on the part of the public agencies concerned to implement the regulations. Also some restrictions are outdated e.g. non-indigenes are defined as not indigenous to the Provinces. This definition is no longer of any relevance.

Restrictions relating to ownership by non-Gambians have no supporting regulations and therefore are only enforced on a case by case basis i.e. as affected cases come before the authorities as a result of a pending transaction which might require approval.

Ownership of leased land is relatively secure, for a term of 99 years and automatically renewable. There are restrictions such as on the size of residential land in urban areas but these are fairly easy to bypass for example, by taking out 2 separate leases for land above 1,000m². Other restrictions focus on limiting the size of land owned by non-Gambians and the period of tenure.⁶⁴

Processes involving transfers, mortgaging, etc., of leased land require the consent of the Minister of Lands as well as capital gains tax and other statutory payments. Transfers involving Certificate of Occupancy require signature of village and district chiefs and payment of capital gains tax, as well.

There is some enforcement of restrictions however discretionary, which rules out Options B & C. Restrictions relating to “ownership” are generally justified and affordable and are geared towards ensuring reasonable distribution of land. However, the requirement for personal endorsement of the A4Minister of Lands for titles, transfers and mortgages leads to administrative bottlenecks resulting in a cumbersome process for issuance of lease titles and delays commercial transactions.

Change of land use, from agriculture to residential incurs a fee based on land size as well as forfeiture of up to 50 per cent of land area. This relatively harsh policy is aimed at penalizing “land speculators” as explained in footnote 20. It also ensures that the benefits of increased land value which largely derives from the extension of urban services funded by government rather than from improvements to land by owner, trickle through to communities, and to government as investor. Government policies however, do not discriminate between land speculators and real estate agencies that have a legitimate and critical role in improving the supply of urban housing.

Restrictions relating to “transfers” and “change of use” are perceived as more onerous and the justification is less apparent as no linkage is observed between the transfer fees imposed and the benefits that accrue to local communities.

Restrictions on rural land use, ownership, and transferability

There is generally no land use plans for rural areas except for the creation of forest and wildlife parks and reserves. The 1985-2000 land use plans are limited to growth centres in the Regions.

In the rural areas, land is owned by kabilos/families and usually left in customary tenure. People are poorly sensitized on the importance of leasing and consequently most rural people just limit themselves to obtaining an area council (local government) rates receipt. Land transactions are therefore limited.

Recent experience has shown that land formerly owned by Kabilos has now been fragmented to household ownership in most communities. Although some communities still maintain the old system of Kabilo ownership, this is on the decline. Household ownership could be regarded as an improvement over Kabilo ownership. Family ownership is an

⁶⁴ Restriction is aimed at curbing the cheap acquisition of peri-urban land from customary owners, holding for a few years, and reselling at exorbitant prices after urban infrastructure have been extended to these areas. Practice involved Gambian and non-Gambians alike.

obstacle/disincentive to development as family members are usually reluctant to invest in family property. Moreover family property cannot be used as collateral for individual loans.

Existing regulations on land transactions where they exist are generally weakly enforced. This is mainly attributed to weak financial, human and material resources capacity and under motivated staff. The leasing process for rural land is cumbersome and often marred with inherent corruption, and information is not always disseminated.

It was noted that the only form of regulation that exists for rural lands is customary law.

Restrictions do not apply on the size of holdings in the rural areas. There are no restrictions on price as well. Restrictions on rent by the Rent tribunals have not yet been applied to the rural areas. Aquaculture, grazing land and tracts for livestock which was not addressed in the expert investigation are vital areas that should be further investigated in terms of land use patterns. Aquaculture in particular is gaining momentum now in the Gambia's farming system.

The expert panel⁶⁵ was of the view that none of the descriptions in the scoring boxes reflected the Gambian context. Regulations which exist are for the most part justified on the basis of overall public interest but are weakly enforced. The matrix under the score box is restrictive. A new column added – “Exist but weakly enforced”. Some of the reasons for the weak enforcement included: Lack of capacity and motivation, cumbersome procedures, inadequate logistics support, weakness in the leasing procedure, Corruption, and poor information dissemination.

The technical validation workshop however scored this dimension ‘D’.

Recommendations

- As part of the comprehensive study recommended under for LGI-3, develop a consistent set of regulations for each category of land-use;
- Set-out transparent procedures for land acquisition and transfer; set-out a framework for approving change of land-use;
- Circulate all such regulations and procedures in mass media and through official and non-official publications.
- Ensure the “change of land-use” process is open to public participation and input.
- Review in detail the step-by-step procedures for leasing, mortgage and transfer of land and other related processes. Approvals should be automatically granted when clearly set-out conditions are fulfilled to eliminate discretionary decision-making and remove sources of administrative bottlenecks.
- Ensure government policies distinguish between land speculators and legitimate real estate developers who have a role in expanding the supply of urban housing;
- Eliminate speculation by imposing and enforcing deadlines for developing land (non-compliance to result in automatic forfeiture); and

⁶⁵ The expert investigator scored this dimension..reason being that.

- Introduce policies that ensure gains from changes to land-use are shared between government (through fees) and local communities (through provision of social amenities and infrastructure).
- For the efficient running of the system, more resources are needed for capacity building, better coordination, and motivation of staff.

7.1.5 CLARITY OF MANDATES AND PRACTICE

LGI-Dim		Clarity of Mandates	Score			
			A	B	C	D
5	i	Separation of institutional roles				
5	ii	Institutional overlap				
5	iii	Administrative overlap				
5	iv	Information sharing				

Separation of policy formulation, implementation, arbitration roles

The organizational structures introduced in 1989 for Ministry of Local Government and Lands including DLS and DPPH is still what is in effect.

There has not been any review of the 1989-1991 land policies implemented by the land legislation introduced in 1991. Because of the dissolution of the Land Administration Board the functions which were reserved to the Board are performed by DLS in addition to its main functions as determined in 1989. These are mostly technical in nature and advisory.

Until the land Commission is operational the DLS is basically responsible for the functions of that body including advising the MOL on policy formulation, allocation and grant of land, land acquisition and compensation, and land dispute settlement. All the powers of the MOL as the lessor of State land are exercised through the DLS.

This concentration of roles in the DLS has given rise to allegations of abuse and the appointment of Commissions of Inquiry to investigate land issues over the years, the last of which was in 2012. The findings of the CILA remarks on this concentration of responsibility in DLS and recommends that: *“the Administration of the State Lands Act should be removed from the sole responsibility of the DLS and placed under a Board or Committee to encourage transparency.”*

The DLS also ought not to have any powers to resolve disputes or complaints against itself. These ought to be independently investigated and determined. The Role of the Alkalo, the Governor and Area Councils should be more clearly articulated.

The power conferred on the Governor to review decisions of District Tribunal undermines their independence and the rule of law.

The absence of a holistic national land policy was highlighted by the panel. An ANR policy was adopted in 2009, but it does not address land issues. The resulting policy gap is a major concern. The ANR sector – agriculture, forestry, environment, fisheries and water resources have all developed individual policies that have not been harmonized. Overlap in policy has not been addressed. There is weak coordination on the sharing of resources and technical capacities.

Differentiated mandates across institutions

There is no significant horizontal overlap of responsibilities across agencies. Land related responsibilities to the extent that they have been articulated, are generally clear with minor overlap in the law between Forestry and Ministry of Regional Administration on the creation of forest parks. Since the provision in the Lands (Regions) was enacted in 1952, it may well be that its continued existence is an oversight when the Forest Act was enacted in 1998.

Agriculture and other land agencies are the subject of comprehensive legislation, some quite recent. There is no land policy document except what can be inferred from legislation. The Report on the Re-organisation of the Technical Departments of the Ministry of Local Government and Lands is an internal document that is unknown outside MLRG.

Overlap between Agriculture and Forestry was noted. The finding of the forest assessments which associates the need for farm land as one of the sources of deforestation was pertinent. Mechanism for discussing these issues is lacking.

An overlap between NEA and GTA with respect to the Coast project funded by the WTO was pointed out. NEA is responsible for the execution of the project and GTA for management and implementation. This has caused some confusion among the beneficiaries and other local people affected by the project as to the Agency in charge and responsible for addressing problems on the ground.

An overlap occurs with respect to community forests in the TDA. It is not clear whether Tourism or Forestry is responsible and no policy guidance on the issue is available.

Sand mining on the beaches- the area falls under the jurisdiction of GTBoard yet the Geology department has jurisdiction over mining activities and NEA for environmental issues. Who is responsible for addressing attendant issues? There is no policy guide on this

A comprehensive land policy covering the responsibilities of the two key agencies – MLRG and Agriculture is lacking.

A clearly articulated land policy that serves as a platform and point of reference for the development of sector policies on land is crucial

The panel of experts was generally of the view that there are more than a few problems as such the score given was “C”.⁶⁶

Differentiated responsibilities across levels of government

The Local Government Act defines the role of local authorities while the Land (Regions) Act is also clear on the powers of the district authority over region land. The Act does not however articulate any clear policy on land administrations. There is a significant overlap between the role of the Alkalo in State Land areas and that of the MOL in the allocation of land that has not been regulated.

Overlaps occur in relation to dispute resolution mechanisms as the District Authorities and High Court have concurrent jurisdictions. There is administrative overlap between the DPPH

⁶⁶ The expert investigators assessment was “B”.

and the area councils in the rural areas. There are too many charges on land transactions, some payable to DPPH and others to councils.

Many people in the rural areas don't know the differences between the two institutions and their specific role. Corruption is high on both sides. There is little public sensitization on the different functions of these offices and the laws are not clear, awareness is therefore low - one of the reasons why people do not register their properties in the rural areas. Land transactions are limited because tenure rights are not clear, the process is cumbersome.

Information sharing across institutions

Information on land is not systematically collected or maintained. Consequently, land-use data is not easily and routinely available to the MLRG/DPPH itself for its own use nor to other government agencies such as NAWEC⁶⁷, GAMTEL⁶⁸, SSHFC, GAMWORKS, GBOS⁶⁹ or to private establishments. The most recent land use plan for the GBA and regional growth centres is 30 years old.

Information on land rights is scanty and not readily available to institutions. There is no policy for the sharing of land information with interested institutions. It is difficult for NGOs and other agencies to acquire land in the rural areas for long term investments in community development due to the difficulty of accessing information. It is even more difficult for private companies to acquire land in rural areas for enterprise development. There is a general information deficit. Ownership rights are fragmented between families and kabilos and, it is usually not clear who has the rights over land intended to be purchased or leased.

Recommendations

- Formulation of a comprehensive national land policy ought to be a priority.
- The regulatory framework for all land agencies requires updating and responsibilities clarified.
- The public need to be sensitized on the processes involved in registration and other land transactions.
- Harmonized Institutional mandate review covering all land agencies on cross cutting issues is also needed.
- A harmonized strategy to implement the ANR policy should be developed.
- The ANR Working Group (which includes personnel from agriculture, forestry wildlife, environment, water resources, NEA and lands) should be reactivated to coordinate the development of the strategy.
- The ANR Policy should be reviewed with a view to addressing policy gaps and harmonizing departmental policies for a more holistic and clearly articulated national policy.

⁶⁷ National Water and Electricity Company

⁶⁸ Gambia Telecommunications Company

⁶⁹ Gambia Bureau of Statistics

- All land need to be surveyed, mapped and demarcated and owners clearly recorded.
- Landowners should register their land titles.
- The related information should be properly kept in a comprehensive land register, efficiently managed and made available when needed.
- Collection and storage of land and land-use data should be part of the mandate of the revamped urban planning/development sector.
- To remain relevant and up-to-date, the system should allow for period updating and processing of data.
- Sustainability requires that this activity be self-financing by assessing fees on parties that need land data (Gamworks, SSHFC, NAWEC, real estate firms etc.) as opposed to depending on government subvention.

7.1.6 EQUITY AND NON-DISCRIMINATION IN THE DECISION MAKING PROCESS

LGI-Dim	Equity and Non-Discrimination	Score			
		A	B	C	D
6	i				
6	ii				
6	iii				
6	iv				

Clear land policy developed in a participatory manner

There is no clear overall land policy in the Gambia. There are a number of pieces of legislation - State Lands Act, Land Regions Act, Physical Planning and Development Control Act. Most of the laws and policy instruments emanating from them are outdated including the GBA national Master Plan, Growth Centre Master Plans which cover only the most densely populated urban areas as at 1985. The Population has increased by approximately 70% since then.⁷⁰

There is no record of public participation in the legislative processes relating to the enactment of any land related laws. Most people are therefore unaware of the contents of these laws and policies.

Public consultation in the policy formulation and legislative processes in land administration is non-existent or very poor.

⁷⁰ The population in 1993 Census was 1,039,145 it was projected at 1,735,830 by 2012.

7.1.6 Meaningful incorporation of equity goals

Rights of...	Considered in policy	Meaningfully monitored	Impact compared in other policy instruments	Comments
Indigenous	Considered but could be improved	Not monitored	Impact not compared.	Rights of indigenes are provided for in the Land (Regions) Act. There is however no policy document on the issue.
Migrants	Considered but could be improve	Not monitored	Impact not compared	Migrants are not singled out nor is the term used in any land legislation. The term non-Gambians would extend to external migrants. Internal migration is not addressed.
Landless	Considered but could be improved	Not monitored	Impact not compared	An objective of the Housing policy and land allocation procedures is the provision of affordable housing to the landless. Land allocation practice prohibit the allocation of more than one plot of State land to any person.
Women	Considered but could be improved	Not monitored	Impact not compared	There are a number of policy documents and numerous policy statements on promoting women's access to land. Unfortunately there has been no attempt at land reform on the subject. The inheritance rules are based on personal law which for a Muslim is Sharia and for non-Muslims, the received English Law. The Women's Act asserts the right of women to own property, but again the point of reference is Personal law.
Non-Gambians	Well considered	Not monitored	Impact not compared	No mechanism is in place for monitoring this policy

- **Indigenes**

The Lands Regions Act enacted by the colonial administration applies to the majority of land in The Gambia. This Act made a distinction between indigenes (defined to mean belonging to a tribe indigenous to the Region or having a certificate of domiciliation from the Minister) and others. There has been only one insubstantial amendment after independence. The term "indigene" has more or less evolved to mean Gambians and "non-indigene" to mean non-Gambian. There is no monitoring mechanism in place and no policy instruments.

- **Migrants**

No specific policy relating to migrants as a group separate from non-Gambians exists.

- **Landless**

The housing policy's main focus is said to be the provision of low cost housing. This includes providing land to the landless. This policy is said to underpin the allocation of State Land for residential purposes and land is supposed to be allocated on a one family one home basis. Unfortunately the Policy cannot be located. The SSHFC applies similar policy in their mortgage schemes. Priority is said to be given to first time home owners, families with children, and married couples. The Corporation could not produce any written policy on the issue but same can be inferred from the questionnaires applied during the application/interview process

- **Women**

The Women's Act, 2010 provides:

Section 11: Every Woman, whether by means of inheritance or otherwise, has the right to acquire and own, movable and immovable property, and to administer, manage and dispose of, the property freely without restrictions.

Section 41: A woman has the right to acquire her own property and to administer it freely

Section 44: A widow has the right to an equitable share in the inheritance of the property of her husband according to personal law.

Section 45:

A man and a woman have the right to inherit, in equitable shares, their parents' properties, subject to personal law.

These provisions implement the national women's policy.

Communities in The Gambia are patriarchal and generally the rules of inheritance are displaced by customary law. So long as land is not individualized it cannot be inherited by individual members of the family. Where it is individualized and can be inherited, it is inherited in accordance with personal law which for over 90% of the population is Islamic law in accordance with which a woman would be entitled to one half of a man's share. Therefore the Women's Act in effect only reasserts women's right as previously recognized by existing law.

The fundamental obstacle to women's land rights is the communal ownership of land in a patriarchal society in which control over land resources vests in the male lineage. Women in the rural areas are generally marginalized by the Alkalo's, Kabilos and male members of their families on the basis that women cannot own land, although it was acknowledged that women have access to farm land.

Section 28 of the Constitution provides that:

- “(1) Women shall be accorded full and equal dignity of the person with men.
- (2) Women shall have the right to equal treatment with men, including equal opportunities in political, economical and social activities”.

In relation to matters regulated by customary and personal law however the Constitution also provides in section 33 (5) (c) and (d) that- the: “discrimination” .. *“shall not apply to any law in so far as that law makes provision.....with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal Law”*; ...*and for the application in the case of members of a particular race or tribe of customary law with respect to any matter in the case of persons who, under the law, are subject to that law”*.

Thus the Constitution itself validates the application of Islamic or customary law on matters relating customary land, and inheritance generally, even if discriminatory against women. The statutory rights of women to own and register property in their name are therefore undermined by their personal law and prevailing traditional practices.

- **Non Gambians**

Section 7(10) of the State Lands Act limits the rights of Non-Gambians to land. The section is somewhat retrospective and its constitutionality questionable as it affects existing rights without due process and contrary to section 19 of the Constitution. The strategy seems to be to limit ownership of land to non-Gambians. State land cannot be allocated to non-Gambians for residential purposes. Non-Gambians cannot be a deemed lessee of more than 2,500 square meters of designated State land in any one city, town or village. There are no monitoring mechanisms, but the policy is enforced through the leasing and land transfer processes.

As already indicated there is no national land policy, and the above issues are not addressed in any coherent or strategic way nor have the general public been consulted on the issues covered by recent amendments to the State Lands Act relating to non-Gambians.

Cost of implementing policy is estimated, matched with benefits, and adequately resourced

A holistic land policy is long overdue. Even if such policies can be inferred from existing legislation, there is no evidence of programme budgeting. No budgets are available either at the national or regional levels for the implementation of related projects and programs. Capacity is also very weak in the main land agencies. Most have very few professionals.

There is no land policy. This dimension score was made based on the premise of dimension 6(i) and (ii) above.

Regular public reports indicating progress in policy implementation

There is no clear land policy and therefore no systematic monitoring or implementation of progress.

There are pieces of legislation and regulations but there is no organized way of reporting how they are implemented except through monitoring briefs submitted by land officials to their lines of authority, (not to the public) from sporadic field visits.

The reporting system is weak and is conducted only as a bureaucratic mechanism for the benefit of authorities, not as a public information service.

Recommendations

- A comprehensive national land policy which will address women's rights and other equity issues is needed.
- The enactment/review of appropriate laws to implement such land policy.
- The holding of extensive consultations in the process of formulating the legislation.
- This policy should be prepared with a detailed plan of action including specific projects and programs which are properly and efficiently costed.
- The national land policy should spell out a comprehensive reporting mechanism not only for bureaucratic control of processes but also for public information and engagement purposes.

7.2 Thematic Area 2: Land Use Planning, Management and Taxation

7.2.1 TRANSPARENCY OF LAND USE

LGI-Dim	Topic	Score				
		A	B	C	D	
Transparency of Land Use						
7	i	In urban areas, land use plans and changes to these are based on public input				
7	ii	In rural areas, land use plans and changes to these are based on public input				
7	iii	Public capture of benefits arising from changes in permitted land use				
7	iv	Speed of land use change				

Urban land use plans

The last land use plans for urban areas are the GBA master plan and the land use plans for the three Growth Centres- Brikama, Basse, and Farafenni. These came into effect in 1985 and were to expire in the year 2000. There is no record of public input being sought at the time.

A general land-use plan for urban areas has not been prepared for almost 30 years. There has been little scope for participation in an activity that has not happened.

At the level of project sites, specific land uses such as for gas stations that require an environmental impact assessment (EIA) have generally included aspects of public participation. Also, where urban services and infrastructure are to be funded by multilateral agencies, public participation in selecting and prioritizing investments is a requirement (as in the PACAB Urban Audits & Medium Term Investment Plans (UA-MTIP)).

It can be concluded therefore that elements of public participation in the planning process are in place if and when planning were to occur. With very little land use planning in recent times, there has been no opportunity for public participation.

Rural land use plans

There are no existing land use plans for the rural areas. There is no history of public engagement in the preparation of any land use plans. In the Gambia land use planning is administrative. It is conducted by lands officials and plans emerging from the processes are not publicly displayed, sanctioned or approved.

In the absence of land use plans the panel of experts were unable to score this dimension.

Public capture of benefits arising from changes in permitted land use

Both government and the public (particularly the communities that surround sites undergoing land-use changes) are entitled to benefits from that process. This is justified on the basis that it is generally government that funds and implements the expansion of urban infrastructure and services which, in turn, facilitate the transformation from peri-urban agricultural land to urban residential neighborhoods. This holds especially where large tracts are owned by individuals with no intention or capacity to develop. However, because fees imposed are sunk into central government revenues, there is little perceived link between such processes and

corollary benefits to the public in the form of infrastructural services, social amenities and so forth.

Land-use changes which are driven by (established) real estate developers take a different track. Here, government negotiates benefits to communities in the form of roads, water and power supply, recreational amenities and so forth. But the criteria for and the outcomes of such negotiations are not transparent or publicly disseminated, and are often times not even written. Thus, the process is considered highly discretionary.

Mechanisms to allow the public to capture significant part of the gains from changing land use (which may contribute to fund the infrastructure and services required to support the requirements of the new land use) do not exist, or if they exist, are not clearly defined or widely disseminated. Currently, there is no apparent connection between the generation of funds for Government from change of land use to the provision of infrastructure and other public goods.

Since the last land use planning cycle 1985-2000, no public input has been sought regarding land use restrictions and no public information exercise on the implementation of land use plans and changes has been undertaken to ensure that potential restrictions on use serve a clear public goal and are made public.

Speed of land use change

Land use changes are a balancing mechanism to safeguard Development plans. It serves as a safety valve to avoid abuse.

Most land use change is from agricultural to residential and most applications are made in the GBA and WCR because of the high demand for residential dwellings and the activities of real estate developers. No specific data has been kept on lands that have benefitted from change of use post the change of use approval. In most cases the use to which the land is put would not be apparent until development commences. Generally this takes longer than 3 years and might be due to the inability to proceed with development.

Due to lack of land-use planning in the last 2 decades, there have been very few cases where a change-of-use is pronounced by DPPH pursuant to which on-site developments follow. More typically, it is the developments “on-the-ground” that compel the DPPH into effecting a change of use.

In the few specific cases where a developer spearheads a change-of-use, subsequent development along the new land-use is fairly rapid as the rate of change affects project viability and profitability.

Given the absence of specific data on the use of land after a land use change has been granted, this dimension could not be scored⁷¹.

⁷¹This dimension was scored ‘B’ by the expert investigator based on interviews of planning officers in the field.

Recommendations

- Current DDPH capacity is not sufficient to track urban development on-the-ground much less plan it with public participation. As previously outlined in the recommendations for LGI 3(v), considerable and holistic sectoral intervention is required if land-use planning is to have any effect at all on urban development patterns. The recommendations for capacity development under LGI 3 (v) on sectoral overhaul are repeated.
- The entire system for change of use should be revisited and reviewed to ensure that it is oriented towards creating public benefits. Some of the penalties which apply are perceived to be inequitable e.g. the level of forfeiture of land for change of use.
- Review, agree/develop, routinize and disseminate information on policies and mechanisms for extracting benefits from changes to land use;
- Differentiate between tracts held by speculators (who have no intention to develop and do not put land to anything close to its highest and best productive use) and real estate companies;
- Based on an up-to-date urban land-use plan, areas identified for land-use change should be interposed into the public realm, and auctioned off to highest bidders to ensure equal opportunity to investors.
- Public and stakeholders consultations should be part of any major Land Use Planning process.
- Environmental Impact Assessment (EIA) exercises should be stipulated as a requirement in all future Land Use Plans in the rural areas. This is particularly critical in the event of planning for major projects like construction of roads and highways.
- There should be a system of monitoring and recording of change of use to ascertain that the system is not subject to abuse and to also serve as a guide for future land use planning. This is also necessary in order to preserve the integrity of physical development plans.

7.2.2 Efficiency in the Land Use Planning Process

As stated in Part 2 of this Report, in order to adapt the dimensions in this indicator to country situation, reference to largest city was replaced with GBA and reference to the 4 largest cities was replaced with the Three Regional Growth Centres, Brikama, Basse and Farafenni.

LGI-Dim		Efficiency of Land Use Planning	Score			
			A	B	C	D
8	i	Process for planned urban development in the largest city				
8	ii	Process for planned urban development in the 4 largest cities (exc. largest)				
8	iii	Ability of urban planning to cope with urban growth				
8	iv (a)	Plot size adherence (planned areas)				
8	iv (b)	Plot size adherence (unplanned areas)				
8	v	Use plans for specific land classes (forest, pastures etc) are in line with use				

Process for planned urban development in the largest city

According to the Physical Planning and Development Control Act, 1991 – the hierarchy of plans in the country should be as follows: National plans, Regional growth centre plan Development plans; Local plans; Action area Plans and Subject Plans.

Three urban plans have been developed since 1983. The GBA Master Plan and the plans for the 3 Growth Centres. The purpose of the GBA Master plan is to rationalize the use of land in the City and containment of spatial expansion. Plan implementation is not successful to the extent that urban sprawl is a vivid occurrence. The main capital area of the city is restricted in terms of expansion because of its physical limits as an Island city and therefore the population has in the last two decades been moving out to new areas without proper planning. Not much effort appears to have been made since 2000 to plan the process of urbanization including the provision for infrastructure (roads, drainage utilities etc) to make sure these are not out paced by urban growth. The demand for land has increased greatly over the last decade and is still increasing with about 80% of the population moving to the coast⁷² and no planning mechanism exists to channel such demand. Instead it is being addressed in a discretionary manner, if at all.

While approaches to land use planning and mechanisms for implementation are on-the-books, albeit outdated. There has been little capacity either to produce current plans or to actually utilize such plans to control the urban development process. Institutional mandates for land use planning are also not clearly defined such as between city/municipal councils BCC, KMC, BAC and national agencies such as GTBoard, DPPH, NEA and others.

It must be concluded that land use plans do not control urban development in the Greater Banjul Area. Urban services are sometimes provided to new neighborhoods after settlements are developed, generally after significant densification.



Flooding in unplanned areas - Kotu

Process for planned urban development in the next 4 largest cities

Three urban growth centres⁷³ – Brikama, Farafenni and Basse were identified in the Provinces and planned alongside the GBA from 1984 - 1989.⁷⁴ The same hierarchy of plans applies nationally, by law.

⁷²GBOS Population Estimates and projections

⁷³ The 3 Growth Centres were substituted for 'four major cities' by expert consensus.

⁷⁴The expert investigator identifies Brikama, Farafenni and Basse as 3 other largest cities; Soma/Mansa Konko is the fourth.



While a hierarchy of regional/detailed land use plans is specified by law, in practice urban spatial expansion occurs in an adhoc manner with limited infrastructure provided and most times after urbanization. The plans are also almost 30 years old, and with limited capacity to update them to cater for the pressure of development in most areas.

A process of planned urban development is not followed in practice. Because of the non-planning situation currently existing, urban planning cannot cope with urban growth. The contravention of existing (albeit outdated) regulations and land use plans is a huge problem. Urban expansion is unplanned. Urban services are sometimes provided after evolution of settlements, generally after they undergo some densification.

Just as in the GBA the Growth Centre plans have not been revised Centre plans have not been revised. Brikama is part of the greater Banjul metropolitan area and its rate of growth far exceeds the other 3 towns which are located in the rural hinterlands and where growth has been slow. Rural-urban migration tends to favour the GBA rather than provincial growth towns. The suggestion is to include Brikama in a new demarcation of the GBA.⁷⁵

Ability of urban planning to cope with urban growth

The increase in demand for serviced units arises out of the unprecedented rapid urban expansion. In the GBA the urban planning process is barely able to cope with the increasing demand for serviced plot/land as evidenced by the fact that many new dwellings are informal. Adequate provision of serviced plots is hampered by the inability of local authorities to fund the cost of planning and infrastructural services, leaving this responsibility to the central government which also has its limitations. A recent phenomenon is the growth of real estate developers who have been taking advantage of the high demand for service plots. The market seems to be glutted with companies advertising serviced plots for sale throughout WCR. There is no oversight or framework for the operation of these companies.

Within the GBA developing areas are sparse and widespread making the provision of services more expensive. Under these circumstances, even with the assistance of GAMWORKS (a public agency undertaking civil works in the country) local government authorities are finding it difficult make contribution towards service provision.

If “formal” dwelling units are defined as those with Development Permit, then most of the new (as well as the old) units must be considered “informal”. While, strictly speaking, these units are illegal, there has been no case of demolition excepting a few highly publicized, cases (which did not involve urban housing). Dwelling units are “informal” only because the DPPH has no capacity to enforce penalties, thus there is no motive for public compliance.

⁷⁵PACAB Study

Urban planning has no capacity to deal with growth in the context of rapid urban expansion. However, this translates to “unplanned” rather than “informal/illegal” areas.

Plot size adherence

The recommended plots sizes are as follows:

For urban areas 250sqm to 500sqm

For Semi urban areas 500sqm to 750sqm

For urban rural 750sqm to 1000sqm

These standards were recommended by the 1984 Master plan of the GBA and the 1985 Physical Development Plans of regional Growth Centres viz; Brikama, Farafenni, and Basse.

These plot sizes are generally adhered to in urban areas but there are exceptions in certain instances. In some areas of Serrekunda plot sizes are smaller especially in traditional areas where inherited land is subdivided among the beneficiaries. It is estimated that at least a majority of applications adhere to these plot sizes in formal areas. This may be because of the more visible presence of the Physical Planning authorities in GBA and growth centres.

There are no major variations across urban centres in the country.

Plots within planned areas maintain 100% compliance with size requirements for urban and peri-urban areas as they were allocated through the MLGL or SSHFC. The same is generally true of other areas planned by private developers.

The score is⁷⁶ ‘A’ for planned areas.

Plots in unplanned areas such as in Serrekunda often start out being very large, and generally get smaller as inheritors subdivide and develop land to establish private space for their individual families. Thus, plots in this area are likely to be larger or smaller than prescribed maximum and minimum sizes respectively, depending on family size and patterns of inheritance. The score is D for unplanned areas

The rationale for minimum plot sizes can be understood in terms of ensuring public health (ensuring adequate space for drainage systems, ventilation and such). With regard to maximum sizes, even where plots start out being very large, they are subdivided over time as land values increase and new households inherit property from original owners. This gives unplanned areas significant potential for densification, a process which has absorbed a significant proportion of population growth in the KMC area over the last 3 decades.

Plans for specific land classes (forest, pastures, etc.)

There are apparent and substantial deviations from existing plans for forests, wetlands, reserves and Parks, green belts and buffer zones. Some of these have documented in the National Forest Assessment Report 2010. There is insufficient data to substantiate the magnitude of deviation from use plans for all the foregoing land classes.

⁷⁶The experts pointed that However there is no empirical data to support this score. These numbers were estimated by the expert investigator based on discussions with officers of the PPHD.

Generally, available land use plans for parks and reserves in rural areas are obsolete, not publicly displayed and in most cases not in line with actual use on the ground, and therefore obsolete.

The dimension is not scored on account of lack of specific data.

Recommendations

- Land Use Planning should be incorporated in land policy.
- A national assessment study is needed to determine the total area of land available for specified and non-specified Land Use Categories all over the country.
- A policy framework to provide necessary urban services and ensuring such services reach the urban poor is integral to a successful planning process. Key to the services is waste disposal which will enhance environmental cleanliness and physical well-being of the inhabitants.
- Standard size of 250sqm should be maintained especially in open areas. In the built up areas the discretion should be left to the planning officer responsible to use his/her judgment when implementing plot size.

7.2.3 SPEED AND PREDICTABILITY

LGI-Dim		Speed and Predictability	Score			
			A	B	C	D
9	i (a)	Applications for building permits for residential dwellings are affordable and processed in a non-discretionary manner (modern construction)				
9	i (b)	Applications for building permits for residential dwellings are affordable and processed in a non-discretionary manner. (traditional structures)				
9	ii	Time required to obtain a building permit for a residential dwelling				

Requirements for building permits

The process of obtaining a building permit begins with the submission of plans with ownership documentation (lease or certificate of ownership) at the PPHD. The Department vets the application and provides an invoice to the application for payment. Once payment is effected, the Department opens a file which it sends to the Department of Lands and Surveys for verification of the documents. Finally after verification the file is sent to the Physical Planning and Housing Department for approval.

Where the proposed building is a complex one, it requires a technical committee headed by the PPHD for consideration. If the application is a tourist facility it has to go to the Tourism Board for approval.

The Technical justification for the above steps includes the verification of the structural soundness, safety consideration, health and ventilation. The condition of submitting ownership documents with the application is to ensure that permission to build is actually given to the rightful owner of the land. The payment of cost is D5.00 per square meter for residential, D8.00 per square meter for commercial and D15.00 as an application fees.

The dissemination of information about building permit is through land use reports, pamphlets and sensitizations on the radio. In practice, however, these channels of dissemination are not regularly or effectively used to have the required impact.

The time required to obtain a building permit ranges between 2 – 4 weeks. Any delay in obtaining the permit is usually attributed to the failure of the applicant to submit the correct documentation and failure to follow up. Failure to pay up too can result to delay.

Generally speaking the requirements for building application are justified, affordable but not clearly disseminated. Without an application and an approval, no building work should start. Application fees are generally affordable: a medium-sized residential unit of 150m² would attract fees of D750 at D5.00/m², equivalent to 3 bags of cement.

Importantly, the image of a majority of house builders struggling to obtain development permits and being hindered by unaffordable technical requirements and a time-consuming and unaffordable process would not be accurate. For most people, even for modern villas on expensive neighbourhoods, development permits are not viewed as a critical requirement due to the absence of (perceived) penalties for non-compliance. The indicator therefore does not accurately reflect or provide feedback on issues such as “inefficient allocation of land” nor can it be viewed as a hindrance to “investments and economic development”.

Overall, indicator is not particularly relevant to current urban development processes in The Gambia. For traditional buildings, requirements are reasonable; however, there is no distinction between large, complex modern structures and simple low technology structures such that the proportional cost of producing the technical documentation required for a permit is higher at the low-cost, low-technology end of the construction spectrum.

The time required to obtain a building permit ranges between 2 – 4 weeks. The exact period required for processing applications is subject to discretionary action: it can be as short as 1 week with the right kind of contacts and incentives. Delay in obtaining the permit is usually attributed to the failure of the applicant to submit the correct documentation and failure to follow up. Failure to pay up too can result to delay.

Furthermore, there may sometimes be undoubted delays for applicants of permits to get approval duly. Apart from technicalities such as unavailability of transport for an official to visit a site, absentee of official, work overload etc, some applications may suffer delays due to logical reasons advanced by Department officials. Whether this is for “speed money” or some other reason, delays caused by Department officials to the public are certainly inexcusable.

Recommendations

- Ensure wider affordability by applying a distinction between modern (complex) and traditional (more simple) structures, and assessing different application fees.
- Also, facilitate and expand compliance by locating technicians that can advise on and/or produce technical documentation for nominal fees in community-based LGA offices.

- Notwithstanding interventions above, public compliance will remain at a low level in the absence of any form of enforcement activity by the DPPH.
- Significant institutional capacity for enforcement needs to be instilled in order that the process of obtaining a building permit, as a tool for urban planning, becomes more relevant.

7.2.4 TRANSPARENCY OF VALUATIONS

LGI-Dim		Transparency of Valuation	Score			
			A	B	C	D
10	i	Clear process of property valuation				
10	ii	Public availability of valuation rolls				

Process of property valuation

Determining the clarity of the valuation process has to begin with the clarity of definitions. By common understanding and usage, the terms ‘Land’ and ‘property’ are inter-changeable. According to the Rating Valuation Act, 1986 (Cap.34:01) assessment for rating purposes should be based on capital value as at the assessment date of the owners ‘interest’ in the property. Capital value is defined as the market value of the assessable property and “in the absence of evidence sufficient to determine the market value, the amount is arrived at by an assessment of the replacement cost of the improvements only.”⁷⁷ Thus market value is required to include the valuation of the property as a whole – i.e. to include both the land and its improvements.

In practice valuations have never been based on market value but rather on the cost per square metre of the structures on the land in obvious preference for the latter part of the foregoing legal definition. The law does not seem to be clear on the approach to ‘replacement cost’, which may require some further definition. For purposes of rating valuation, it is the ‘depreciated replacement cost’ that is required – which is the cost of replacing the improvement of similar construction and facility and at a depreciated rate that is commensurate to the extent or state of repairs. It is not however also clear whether Municipal Councils⁷⁸ are depreciating the value of the improvements or only using a cost per square metre for new buildings. In addition, it was noted that where the value of the property is less than D300,000 the Councils apply a fixed rate between D100 - D500.

With the latter provision permitting the assessment of the value of improvements only in the absence of market data on land values, it has become the practice of the Area (Municipal) Councils to conduct their assessments based on the improvements only. Two issues arise from this.

First it is an inequitable approach to taxation. The market value of a property is to a very large extent influenced by its location. Properties of similar improvements, for example, a three bedroom bungalow of similar design, at a construction cost D1million when located in different neighborhoods would fetch different market values because the added values of the land in these locations are different. If this building were located in a high land value area

⁷⁷ See section 2 Rating Valuation Act 1986 (Cap.34:01)

⁷⁸ The Municipal Councils are the Rating Authorities for each local government area responsible for collecting annual rates (property taxes for their jurisdictions)

(say, Fajara)⁷⁹ it may fetch D10million, but if built in a lower land value (say, Kanifing) it may fetch D4million market value. Thus, limiting assessment to only the value of the improvements on the land, results in property owners of higher property values paying less tax.

The 'cost per square meter formula (cost/sq. m) so universally applied throughout the country to determine the values of properties for rating purposes is inequitable in its application. The same formula is applied across the entire spectrum of properties without any differentiation in terms of area or neighborhood, so that the same poundage rate is applied to a residence in a high value neighborhood as to a similar structure in a lower value area. It was also observed that, the owner's interest in the land itself is not valued as required by law and reflected in the valuation of the land.

The methodology applied in carrying out valuations, although inequitable, is convenient for the councils since it eliminates the relatively tedious research to establish land values. It was noted that Councils adopted this approach after having found out in their initial research that land value data available from the office of the Registrar of Deeds (Land Registry), which was their main source, did not reflect the actual or true market prices for which properties were bought or sold⁸⁰.

The current value of a property theoretically should be determined by the market price of the property on the last valuation date which was in 2003.

The transparency of Council assessments is questionable because there is very little public awareness of valuation exercises which may mainly be due to the lack of frequent assessment exercises as required by law and the lack of public sensitization. Although there is a statutory provision for the establishment of a valuation tribunal to resolve disputes that may arise from the assessments, this has never been implemented-

Both the government agencies and Area Councils suffer from serious capacity constraints - both human⁸¹ and material. They lack the trained personnel to conduct the assessments and the material resources to conduct supplementary exercises. The Rating Valuation Act states that a general assessment must be conducted every five (5) years and a supplementary valuation must be done every other year in order to update the valuation roll. Currently, the valuation roll is at least eight (8) years out of date, the last supplementary assessment (valuation) having been conducted in 2005.

In order to facilitate the updating of current valuation rolls (2003 and 2005) the Poverty Alleviation and Capacity Building Project (PACBP) carried out a mapping exercise of the G BA that computerized the valuation rolls.

It was however observed that, the data from this mapping exercise was neither preserved properly nor put to use by the intended beneficiaries due to the lack of the requisite skills and trained personnel to do so. On the other hand, there is significant capacity in the private

⁷⁹ Note that both Fajara and Kanifing are in the Kanifing Municipal area.

⁸⁰ As discussed in the Panel on Land Registries, this is a consequent of widespread under declaration of transaction values in order to avoid capital gains tax (which is perceived to be high) and is seen as a perennial challenge to the administration.

⁸¹ There is currently one trained person undertaking all the Council valuations of the entire country who is himself retired and on contract

sector which could be harnessed. This would allow outsourcing of valuation exercises for Area Councils.

The panel discussed capacity in the private sector. It was observed that land sector experts involved in valuation do not have a local controlling or monitoring body that ensures professional qualification and/or capacity to conduct valuation activities as is available to most professions. Thus, there is no criterion outlining who can be a valuer. An attempt to regularize this situation culminated into the passing of the Surveyors Act 1991 which states that there should be a board set up to monitor and regulate surveyors⁸² in general – both private and public. After over 22 years a board is yet to be set up.

Another issue that was extensively discussed was the lack of coordination among government land agencies both legal and administrative agencies (i.e. area councils and Department of Lands and Surveys) that would have allowed the effective and efficient use of resources such as the PACAB aerial maps for their various needs.

The panel underscored the fact that (as is necessary for all cases of reform in the public sector), in order to institute relevant changes and reform in land administration/ taxation that would enhance performance, there must be the general will and the capacity to implement the reforms.

The consensus score is “D” because assessment of property for tax purposes is not based on market prices. The data available is also out of date. Assessment of market value of assessable property does not include both land and improvements, which is the primary purpose of the Rating Valuation Act.

Public availability of valuation rolls

According to the Rates and Valuation Act, the valuation role has to be published. The following observations were made:

- The last general assessment/valuation was conducted in 2003. The valuation rolls prepared from this exercise were not displayed publicly. There is no clear policy in place for guaranteeing access to the public to valuation rolls or enlightening the public of their right to do so.
- The valuation roll is required to be published in a gazette and placed in the office of the Minister, Local Government Office and the Office of the Auditor General. There is a 30 days period for inspection by interested parties within which anyone who wishes to make an appeal can do so. The Gazette has very limited circulation.
- There is a huge awareness problem; the public are unaware of valuations exercises and the publication of valuation rolls. They are also unaware of their rights to appeal against valuations.
- Even if aggrieved property owners wanted to appeal against a valuation, they would usually learn about their rights after the appeal period has elapsed, because of the very limited statutory appeal period - (30 days).

⁸²Surveyors here includes the three professions of Property Valuers, Land Surveyors and Quantity Surveyors

The consensus score is D. The valuation roll that was prepared from the last valuation (2003 - 2005) was kept by the Area Councils but was not available for public viewing and it is unclear whether there is any specific policy in place to ensure public viewing of the valuation roll.

It was observed that the general public are generally only aware that their properties have been valued when the tax collector shows up at their door. In addition, people are reluctant to allow valuer`s into their homes to conduct valuation exercises as they do not understand the valuation and rating process.

Recommendations

- A regular and equitable system of valuation is necessary. This will require the preparation of a new and up to date Valuation Roll and the correct application of the law to include the value of the land (in addition to the value of the improvement as currently undertaken).
- Adequate effort and resources should be allocated for this exercise. Each property (both land and improvements) should be looked at subjectively to determine its market value as opposed to having an indiscriminate application of the rate per square meter to the improvements only.
- The capacity issues in the Valuation Units of DLS and the Area Councils should be addressed in a sustainable manner, which should include the possibility of outsourcing the critical tasks to private sector professionals.
- Enhance capacity in the land agencies by employing land valuation experts and licensed surveyors.
- The aerial maps developed under PACAB should be located and updated as a basis for conducting a comprehensive street mapping exercise with the objective of identifying all ratable properties and updating the valuation rolls.
- The Surveyors Act should be reviewed. As envisaged in the Surveys Act 1991, a Board should be set up to monitor/regulate the activities of surveyors. In addition, a policy framework is needed to regulate valuers both private and public.
- Alternatively, private surveyors/valuers should consider the possibility of establishing their own self-regulating body.
- Employ public sensitization campaigns during valuation exercises that should include professionals in the private sector (e.g. lawyers and accountants) who have public contacts and can advise their clients on upcoming valuations and their right to appeal.
- The Rating Valuation Act enacted in 1986 should be reviewed to ensure that there is more extensive public dissemination and access to the valuation rolls.

7.2.5 TAX COLLECTION EFFICIENCY

LGI-Dim		Tax Collection Efficiency	Score			
			A	B	C	D
11	i	Exemptions from property taxes are justified				
11	ii	Property holders liable to pay property tax are listed on the tax roll				
11	iii	Assessed property taxes are collected				
11	iv	Property taxes correspondence to costs of collection				

Property tax exemptions

The General Rates Act ⁸³ exempts religious institutions, schools, health facilities, burial grounds, premises used for recreational purposes, and any other premises exempted by resolution of the local authorities with the Minister's approval, and discussed the following issues:

These exemptions are generally found to be justified and are also consistently applied. Theoretically, the Minister has the power to exempt private individuals from the payment of rates on the resolution of an Authority but, in practice, there is no evidence that this privilege has ever been extended.

Agricultural structures as well as household boreholes are also subject to rates. This is found to be unjustified having regard to the crucial role of agriculture and the limited capacity of the National utilities company.

Capital gains tax is also a property tax to which the LGI applies⁸⁴. The manner in which capital gains tax is applied is neither transparent nor consistent. Exemptions from capital gains tax can be granted but the basis for this is not clear. The revenue authority has devised a unit rate per square meter of land on which they levy the capital gains which has no bearing on the actual transaction price. Capital gains tax is generally negotiable and this leaves a great deal of room for arbitrariness and abuse.

Completeness of tax roll

The tax roll is not complete since the last general assessment occurred in 2003 and supplementary assessment in 2005. Currently, it is estimated that less than half of property owners eligible to pay rates are listed, since all new properties after 2005 are not included in the Valuation Rolls.

In Kanifing Municipality for instance which had a population of 322,735 in 2003 and a projection growth up to 409, 727 by 2011 (source GBOS) and approximately 65,654 structures⁸⁵ the number of properties listed are 33,587. On the other hand Banjul, which is an Island with no space to grow, has all properties liable listed including public buildings.

⁸³(Cap. 34:02). This Act was enacted in 1992

⁸⁴The panel discussed capital gains tax and considered whether it was intended to be covered and in this regard reviewed the background explanations to the LGI. The panel was of the view that capital gain tax is also a property tax to which the LGI applied.

⁸⁵ GBOS 2010

Many property owners cannot be located by tax collectors, particularly the absentee landlords. Some of the property owners who can be located but who acquired their properties after the 2005 supplementary valuations were done contest the amounts they are charged and even refuse to pay rates on the grounds that their properties have never been valued.

Current municipal officers do not seem to be aware of the existence of the maps and other tools developed by the PACAB project which could have assisted in the identification of properties existing in 2005. The Aerial Maps developed by PACAB project were apparently handed to all the councils but only one Council, the Kerewan Area Council, retains theirs.

Property identification is more efficient in Banjul and Janjanbureh where the streets are named and compounds numbered. For the rest of the urban areas in the Greater Banjul area in particular, this is a difficult process for the Councils due to the lack of street names and numbers, and the size of area to be covered.

The score is D. The number of properties listed for tax purposes do not correspond with the number of existing properties, except for those in Banjul. It is the view of the panel that the names of more than 50% of current property holders do not appear on the existing tax roll which is based on the 2005 Supplementary valuation rolls.

Assessed property taxes are collected

Municipalities lose a lot of money because of their inability or unwillingness to collect taxes.

Only a minority of tax payers voluntarily come forward to pay their rates this is supported by the data provided from KMA and WCR (Brikama). (These 2 local government areas constitute 80% of the population). 77% of all property taxes for 2012 are uncollected. D60million for KMC and D46,394

Receipts from property taxes and arrears 2012 –KMA

NO	Type of property	Rated value	Amount collected	Outstanding	%
	Commercial	934,936,677.40	10,050,832.40		
	Residential	834,298,410,.38	6,088,337,.20		
	Government	123,001,844.65	5,033,123,.64		
	Arrears	77,560,176.06	17,560,176.06	60,000,000.00	77%

Comment⁸⁶ : All these properties are lease and deemed lessee, property owners especially valued property owners don't want to pay rates only the deemed lessees are the ones who struggle to pay their rates.

Receipts from property taxes and arrears (2012) WCR (Brikama)

N0	Type of property	Rated value	Amount collected	Out-standing	%
	Customary land /flat/Water/Lease	36,059,569.0	6,992,596	29,067,173	
	Valued Properties	24,271,364	7,103,963.66	17,167,400	
			70,960	104,040	
			93,743	56,275	
	Total	60,3330,933.00	14,261,262.66	46,394,888	76.9%

Comment: ⁸⁷

⁸⁶From rating officer.

⁸⁷From Rates officer.

Customary Land owners are difficult to locate. It is only when they need to have title deeds that they come to pay. The valued properties are registered and the owners know the legality of valued properties.

There is no up-to-date data base for rates. Rates can be speculative (not based on actual assessments), so that some properties that should have paid more end up paying less.

The poundage for the calculation of annual rates is high.

The Councils have not developed an effective system or capacity to collect rates or enforce payment and there is substantial anecdotal evidence of corrupt practices and evasion e.g. of property owners buying time or evading payment by warding off collectors with incentives.

Another issue is the case of absentee landlords. The tenants on rented properties can be served with demand notes for onward transmission to the landlord or be compelled to pay the landlords rent directly to the municipality upon failure by the landlord to pay the rate due, but this discretion is hardly exercised.

The tax collection process is not automated in the councils and so, typically, they tend to retain a bloated staff list of collectors other staff.

Collection costs for taxes

Typically most of the Staff in charge of actual collection are in junior positions and their salaries and allowances are generally low. It is therefore expected that collections would be far in excess of staff costs. It is the other costs associated with collection (i.e. transportation, stationery and printing, the tribunals and salaries and allowances of the senior cadres of staff) that are significant. This is borne out by the figures obtained from KMA and WCR.

There are no incentives for tax collectors who do not seem to be very motivated, neither are there any incentive schemes for the early payment of taxes. The legal process of getting property owners to pay their rates is quite unjust; Councils are perceived to be both the prosecutors and judges since they have their own internal courts for this purpose.⁸⁸

Area councils are faced with serious challenges in the collection of property taxes particularly in urban areas.⁸⁹ Rate poundage is high especially for commercial properties.⁹⁰

People lack any incentive to pay rates. The councils do not offer any services in return (e.g. rubbish collection etc) or amenities. Public confidence in the councils to properly manage collected funds is low or non-existent.

⁸⁸ Rates Tribunals are set up in each areas council manned by magistrates who are paid by the councils. This is supposed to be part of the enforcement mechanism for rate collection. The Tribunal issues summons to property owners who fail to pay the annual rate.

⁸⁹ In rural areas, tax collection is the responsibility of the Alkalo, who are required to ensure that all properties in their villages pay tax. In return the Alkalo's are entitled to retain 10% as commission.

⁹⁰ The poundage for residences is .006 and for commercial properties .01

Cost of collection: KMA

No	Staff Category / title	Grade	Salary net	Allowance	Gross
2	Managers	10.7	126168.00	98,167.00	20,214.00
1	Supervisor	7.4	36,888.00	1,000.00	4,074.00
2	Senior rates clerk	6/7	60,480.00	2,000.00	7,193.00
19	Debt collectors	5/4	470,376.00	19,000.00	58,198.00
13	Debt collectors	¾	173,900.00	13,000.00	30,439.00
1	Magistrate	10	49764.00	5,354.65	9,501.65
TOTALS					

Subtotal 917,576.00 138,521.00 129,619.00 per annum D1, 185, 716.00

Comment: Risk, Responsibility allowances and transport allowances are paid when requested.

Cost of collection: Logistics and administration (KMA)

No	Transportation	Fuel	Stationery	Litigation/ prosecution	Other
3	Vehicle	684,000.00	150,000	256,000.00	

Collection cost per annum D1, 090,000.00

Comment⁹¹: Lack of proper addresses, street names and un numbered compounds. The Municipality covers a land area of 75.5 km². We also use the print and the media to notify the public.

Cost of collection: Collection staff pay roll budget BAC

N0	Staff Category/title	Grade	Salary net	Allowances
1	Manager	10	56,434	131,000
2	Accounting Assistant		20,099	131,000
6	Senior Revenue Collectors	6	177,288	131,000
48	Revenue Collectors	4/5	929,556	131,000
	Total		1,183,377.00	524,000

Comment: Allowances are paid when claimed. They are paid under one budget line (D131,000)

Cost of collection: Logistics and administration BAC

N0	Transportation	Stationery	Other
	<u>280,000</u>	<u>85,000</u>	<u>8,500 as office rent</u>
TOTAL	<u>Staff cost</u>		<u>D1,987,377</u>

TOTAL: Staff Cost = KMC 8% of collected revenue

WCR – Brikama = 14% of collected revenue

⁹¹ Rate officer

Recommendations

- A policy should be developed on tax exemptions with guidelines. Exemption from the payment of rates ought not to be left to the Minister's discretion.
- The exemption regime ought to be extended to boreholes and agricultural structures having regard to the critical role of agriculture in the economy.
- In view of the perennial problems and widespread dissatisfaction in the application of capital gains tax, a special study should be commissioned to review this tax and to put in place transparent and equitable processes and procedures for its application.
- Streets should be named and compounds numbered properly in the major urban centers of Greater Banjul Area, and the regional towns.
- An efficient system of property identification should be established.
- Tax collection should be based on an efficiently updated valuation roll and a property identification system, and efficient system of collection
- A database of properties should be created with an updated valuation roll which should be regularly kept up to date.
- Tax collection staff should be trained and properly motivated.
- The possibility of engaging with or outsourcing to the private sector should be explored in any area of municipal operations where capacity is lacking or weak.
- An incentive scheme should be considered that gives a discount to those who come in early to pay their rates.
- The tax levels should be reviewed. The poundage rate is too high particularly for big commercial complexes like hotels.
- Area councils should improve on their image and be seen to be offering services to the public instead of being perceived as another burden to tax payers.
- The General Rates Act requires revision in consultation with the private sector.
- Collection and other services should be outsourced so that the Area Council operates a lean and more efficient structure for monitoring, and supervision and the discharge of its regulatory functions.

7.3 Thematic Area 3: Management of Public Land

7.3.1 Identification of Public Land

LGI-Dim	Identification of Public Land	Score			
		A	B	C	D
12	i				
12	ii				
12	iii				
12	iv				
12	v				
12	vi				

Public land ownership

The definition of public land contained in the LGAF manual is - “*land in the custodianship of the state, municipality, or local authority, as opposed to private land*”. In the Gambian context the foregoing definition would include all State land and land vested in the district authorities by law. State land by definition⁹² includes all land in Banjul and the KMA that is not under private ownership. The said definition will also cover land that is designated State land, forests, wildlife parks and reserves and land held by public institutions.

From the above definition, it is fair to say that in The Gambia land which is not under distinct private ownership, whether in Banjul, KMA or in the districts, falls under the definition of public land.

It was noted that a comprehensive inventory, specially prepared to provide information on the extent of public lands – has not yet been prepared.

Institutions in the ANR sector apart from Agriculture are regulated by statute which provide for specific functions/powers to deal with or acquire land for those functions. Each of the sectors is supposed to have its own focus. Corporations are also set up by statute and have powers to acquire land for their public functions. The Land Acquisition and Compensation Act vests the Government with the powers to acquire land for public purposes. However, an overall policy for the management of all such land is absent. Apart from for Forestry, there does not appear to be any clear strategy for the management of public land whether at sector level or national level.

The larger majority of public land is in the custody of district authorities. These lands are held by them for the benefit of the communities in their areas under customary law. However, there is no structure within which such public lands are managed by the district authorities. Their role seems to be only relevant when land is being leased, disposed of, registered, or involved in any transaction that requires their statutory consent.

In the absence of a public land inventory and the unstructured rather loose public land management environment, abuse is rife particularly in the customary system of tenure. The Alkalo plays a lead role in the demarcation and allocation of public lands and the granting of

⁹² all lands which have been or may hereafter be acquired by or on behalf of the state for any public purpose or otherwise however and all such land so designated by the minister under this act

certificate of ownership without proper authority derived from either statute or the customary system of land tenure. In traditional Gambian setting the village Alkalo was not recognized as a sole owner or vendor of land, but is expected to allocate village land to indigenes based on need and subject to the approval of Kabilo owners of the land. This traditional practice of land allocation has diminished in the greater GBA as urbanization and demand for land increased. However in some Regions, the Alkalo today is significantly involved in the unlawful allocation and sale of public land. Despite attempts to prohibit the practice both administratively and legally it has persisted and still continues rampantly as an open and regular occurrence.

The experts underscore this role of the Alkalo as possible only because of the wholesale vesting of lands in the district authority without a clear regulatory framework within which both the district authority and the State manage land at local level.

In conclusion, the Management of public land is fragmented amongst State land agencies, district authorities and the Village heads (The Alkalo). Therefore apart from forest land, wildlife parks and lands acquired for specific public purposes (e.g. Government layouts, SSHFC estate and road construction) the public goods aspect of public land ownership is not apparent.

Recording of publicly held land

Some public land is mapped and demarcated on the ground but most are not.

Designated State land comprises Kombo North, South and Central with an area of 677.03sq KMA. This is recorded in the State Lands Order, 1994, registered and mapped by the DLS but is not clearly identified on the ground.

Forest Parks, Wildlife parks/Nature reserves, land acquired for public planning purposes and lands directly vested in the State or public institutions are reflected mapped and identified on the ground.

However apart from forests and wildlife parks and reserves public lands belonging or earmarked for public purposes, open public land is generally always marked on the ground.

There is no available data or information regarding the boundaries of the TDA, except that it is 900m from the high water mark. Since the high water mark has shifted over the years because of extensive coastal erosion, it is the general view that the boundaries of the TDA are no longer certain. In 2006 The Tourism Master Plan Study proposed a further 9 TDA's making it 10.⁹³ These are yet to be mapped. Further the general descriptions of both the TDA and State lands are not very helpful for the purposes of public land Management because it does not assist in identifying the extent of private ownership which is within the area so described. Similarly, the boundaries of designated State Land Areas are indicated in the law but not marked on the ground. The specific extent of public lands at any one time cannot therefore be determined.

Files do not exist for publicly held land.

⁹³The Gambia Tourism Development Master Plan 2006

It is worth noting that the GTZ assisted urban Master Plan was prepared in the 1984 and was adopted as the general land use plan for the greater Banjul Area. Public lands were planned based on appropriate planning criteria and according to a land use pattern commensurate with environmental requirements. Future developments for various land uses were required to be based on the master plan. It was to form the basis for detailed action area plans. The GTZ Master Plan was conceived and prepared based on modern concepts of planning with consideration for medium and long term land use requirements, with emphasis on the preservation of the environment. A large portion of the public lands was designated for agricultural purposes and or forestry.

The score for this dimension is 'D'. There is no inventory of public land as stated. With the exception of forests and wildlife parks and reserves, public land is not clearly identified on the ground, or on maps. It is estimated that less than 30% of public land is mapped and identifiable on the ground.

Assignment of management responsibility for public land

It was noted that two land agencies, Forestry and Wildlife have clear mandates. On the other hand, there is significant ambiguity in the management of designated State Land and Land vested in the district authorities.

Management is not clearly assigned in regard to land vested in district authorities in that the powers of the district authorities are not clearly defined in this regard. Nor is the relationship between Land Agencies in relation to land clearly defined. The Land Commissions Act provides for a land commission which will be responsible for ensuring transparency in land allocation, land policy advice etc, but this it is yet to be set up.

- ✓ There are no checks and balances between the different land agencies.
- ✓ There is no policy for data sharing between land agencies for the management of public lands
- ✓ The current activities of the Alkalo is a clear manifestation that the responsibility for managing public lands is not clearly assigned

The score is 'D' due to serious ambiguities in roles and mandates of land agencies and traditional authorities, especially in the Greater Banjul Area and the inadequate capacity in the management of land resources which impacts on the effective management of land assets.

Resources available to comply with responsibilities

Resources available to land agencies are inadequate for their responsibilities. Shortage of trained technical and managerial staff at the DLS seriously compromises their ability to perform the various duties effectively. Most have not received formal training directly relevant to their duties. Furthermore there are no written departmental instructions defining not only the duty responsibilities and accountabilities of staff but of the manner in which the various tasks are to be fulfilled. Most of the staff have acquired their expertise solely through practical experience.

The technical capacity of the land agencies is extremely weak. Example, the department lacks relevant capacity in the discipline of surveying and mapping or land economy⁹⁴ only the director has a degree in planning. These are key to their operations. There is no career

⁹⁴ Although the expert investigator was informed that 3 personnel are currently on .. outside the jurisdiction.

structure or training program and morale/discipline is low. The departments as presently constituted cannot be considered as being capable of fulfilling their requisite role in the management of public lands.

CILA, in its findings, pointed out the poor condition of regional lands offices including the absence of reference plans.⁹⁵

Most of the inadequacies are linked to inadequate budgets. The exercise of mapping and or planning is very costly and the budgetary allocations are insufficient to undertake them. Capacity can only be developed or built by hiring skilled professionals, or by sending officers for training courses abroad. Becoming a professional in surveying or other land related field professions takes time and the only other alternative would be to outsource work to the private sector.

The budgets of the following land agencies were considered. MLRG and its line departments DLS DPPH, the District Authorities and GTB.

MoLRG: The budget 2011: D16, 001,146; 2012: D16,911,220; and D18,997,290 in 2013.

This is an incremental budget allocation trend but the main budget lines in all three years are for the financing of salaries and allowances of personnel, overseas travelling, purchasing and maintenance of vehicles and office equipment. The budget lines in the estimates do not include any estimates for policy research, or human resources development, or capital equipment.

DLS: The Department has never had half of its budgetary requirements met for its operations in the past (10) years. The 2013 budget of the department is **D4,038,919**. The Estimates of Revenue and Expenditure 2013 indicate that none of this allocation is targeted for capacity building. Many requests have been made for funding for staff training but nothing has been allocated for these in the past ten years.

Modernising the department requires the availability of digital mapping and surveying equipments and the training of the required staff but none of this has been considered in the budget.

Only **D1M** is allocated for compensation arising from expropriation, whereas an estimated D16M is the amount outstanding for the payment of compensation

DPPH The development control section is poorly staffed and equipped. Like the DLS, they lack vehicles for field visits and staff. With the current pressure and public demand for land the lack of vehicles and trained manpower is a great hindrance to the progress of the department to effectively monitor and control development.

The department's annual budget for 2013 is **D3,812,688**, the bulk of which is earmarked for salaries and allowances, overseas travel, procurement and maintenance of office equipment. A request for a Zero Printer and Plotter in conjunction with the DLS and Surveys was turned down on account of lack of funds. Only the director has a Higher National Diploma. The

⁹⁵Page 26 Commission of Inquiry into Land Allocation in The Gambia

heads of the three units: Development Control, Housing and Physical Planning were promoted to the positions only through years of practical service.

The District Authorities: Most traditional rulers are not literate in English and they generally rely on the staff of department of physical planning and housing in the regions to perform their functions. They complain about staff capacity, mobility and geographical positioning (GPS) equipments for the easing of their tasks. Their budgets are provided under the allocations of the Ministry.

Resources are generally inadequate and organizational capacity to perform relevant functions lacking.

There is no public information on land allocated. Such information is treated as confidential. In most cases, the government is faced with the problem of catching up on developments. Also in the case of allocations done by Alkalos, the land agencies would not know of this unless the owner applies to register land allocated.

Recommendations

- (i) A policy approach should be developed towards public land management and this policy should consider the different levels of government to be mandated to manage public lands.
- (ii) A comprehensive land policy should be developed which should address the management of public lands with clear mandates.
- (iii) There must be a comprehensive review of current legislation on land management with the view to putting in place comprehensive management guidelines.
- (iv) This review should address the following:
 - Introduction of clear cut policies to administer the allocation of land.
 - Land allocation under the State lands Act should not rest with the Land agencies and the MoL, and for the Regions the district authorities. It should be the responsibility of an independent body as envisaged by the Constitution. An independent mechanism for public land allocation should be established for the regions.
 - Vacant lands should be comprehensively planned rather than being left to the Alkalos with no planning criteria, resulting in irregular street layouts, with little or no public amenities.
 - The Alkalos should have their roles limited to or redefined as village heads and perceived roles as land administrators and or endorsers of transfers should be removed.
 - Absorption of land by government for any purpose must be done transparently and records should be available to the public. The Government should set out specific guidelines for the absorption of public lands.
- (v) Government should undertake detailed country wide mapping and topographic exercises using modern techniques to provide land information reflecting land use on the ground and to record the stock of public lands.

- (vi) The land information database developed from such exercise could form the basis for the creation of a new master plan.
- (vii) Government should adopt a policy to enforce development permits in all new extensions
- (viii) The requirements for building permits (surveying, planning and demarcation) can be used to update future master plans.
- (ix) Information sharing between land agencies could help fill any vacuum left by mappings, or to update the master plan, and should be encouraged.
- (x) A separate study should be undertaken to evaluate the current capacity of DLS and DPPH and to determine the training requirements at all levels for the immediate, medium and long term
- (xi) The Local Governments Act should be reviewed to redefine the role of traditional rulers in the management of land.
- (xii) Mechanisms on the coordination and sharing of information between the land agencies should be encouraged and supported.
- (xiii) There should be a short term policy to recruit professionals and technicians in the field of Land Surveying, mapping and land economy to support the management of the department of Lands and Surveys.
- (xiv) The staff should preferably be on technical assistance from countries of the commonwealth with similar background on the laws relating to real property.
- (xv) Over the long term proper internal or local training for technicians as well as external training for technologists and professionals should be made available.
- (xvi) Pending the development of appropriate capacity levels, land agencies should out-source work to local private firms.
- (xvii) Staff of Land agencies, while undergoing training or capacity building, should serve as supervisors to out-source works.
- (xviii) The budget allocation to land agencies should be reviewed and enhanced.
- (xix) Surveyors Act 1991 should be reviewed and its intentions implemented.
- (xx) A complete topographic survey should be conducted and recorded and its records kept as an inventory. After conducting this exercise, the inventory should be kept on public display at a venue accessible to members of the public.
- (xxi) Unfettered access should be available by members of the public to information on all allocations and or sales of public land.

(xxii) There should be a degree of transparency involved in the allocation or sale of public lands, particularly if the allocation or sale is conducted by public institutions.

(xxiii) The sale of public lands should rest in the hands of an independent land agency

7.3.2 JUSTIFICATION AND TIME EFFICIENCY OF EXPROPRIATION PROCESS

LGI-Dim	Incidence of Expropriation	Score			
		A	B	C	D
13	i	Transfer of expropriated land to private interests			
13	ii	Speed of use of expropriated land			

Transfer of expropriated land to private interests

Over the past ten years, expropriations have taken place in the areas listed in Table 4.17 below:

LAND USE CONVERSION IN THE PAST 7 YEARS

PROPERTY DESCRIPTION	ORIGINAL STATUS	USE CHAGE	SIZE
Mandinari Industrial Layout	Customary	Industrial	3.9 ha
Jabang Layout	Customary	Industrial	5.04 ha
Bijilo Institutional Layout	Customary	Industrial	3.4 ha
Kanifing Institutional Layout	Freehold state land	Industrial 97 residential plots	8.73 ha
Brikama Industrial Layout	Customary	Industrial 19 residential plots	3.8
BrikamaKabafita Layout	Customary	399 residential plots	29.925 ha
Nemasu Layout	Customary	573 residential plots	28.650 ha
Coastal Road Layout	Customary	322 residential plots	19.32 ha
Salagi Layout	Customary	895 residential plots	44.75 ha
Futurelec Layout	Freehold state land	Commercial 19 plots	3.990 ha
Old Jeshwang Layout	Freehold state land	65 residential plots	3.25 ha
Katchikally Layout	Freehold state land	62 residential plots	2.48 ha
Brufut Heights Layout	Customary	165 residential plots	15.98 ha
Bijilo Layout	Customary	119 residential plots	5.95 ha
Bijilo Annex	Customary	Industrial 40 residential plots	2.3 ha
Bijilo Annex C	Customary	Industrial 21 residential plots	1.57 ha
Half Die	Freehold Private land	Ports Expansion	3,500 sq m
Alatentu	34 compounds	Residential	36.48 ha

Half Die –All 34 compound owners were allocated plots of Land at the Katchikally layout as compensation in addition to cash compensations for the developments in the compounds. The Compounds were acquired in 2008 and the Katchikally Layout which comprises of 1.66 hectares was allocated in the same year.

Salagy Layout – was demarcated in 2003 as a Government layout to provide residential housing. The area was originally agricultural land and therefore the affected farmers were allocated residential plots in the layout. Residential plots account for 46.14 hectares whilst the rest of the area comprises of public amenities including roads. Issues of compensation are still being discussed.

The Kotu Quarry – Has, for a long time, been a squatter settlement located inside the disused Kotu Quarry. For environmental reasons, the Allatentu Layout was created near Sotokoi village in Kombo North, Western Region, to relocate the Kotu Quarry squatters for residential purposes

Allatentu Layout - was demarcated and allocated in 2011 and 2012 respectively. It covers a total area of 36.48 hectares. Residential plots cover an area of 31.85 hectares whilst the rest comprises of different public amenities including roads. Issues of compensation are still being discussed.

In addition to the above, the following sites were allocated to the SSHFC for housing development projects between 2003- 2007. It is not clear whether this was done pursuant to Lands (Acquisition and Compensation) Act. The Jabang site is the subject of litigation because the owners contend that the government purported to forfeit the site from a person who had been allocated a lease without the consent of the traditional owners. The case is yet to be decided.

Brikama – 34.46 hectares.

Tujereng – 12.43 hectares.

Jabang – The total size of the Jabang site could not be obtained.

Institutional layouts include the University of The Gambia –allocated a piece of land at Faraba Banta in the Kombo East District, Western Region. This site measuring 80.29 hectares was originally agricultural land and was allocated for use as the University’s main campus.

In general, expropriations are carried out in the general public interest. However, as a matter of policy expropriations for the purpose of creating residential layouts do occur in which case the majority of beneficiaries are private individuals. This policy aims at making housing available and affordable. It is uncommon for government to expropriate land for pure private use.

In the past 3 years only 2 expropriations occurred i.e. the Allatentu layout and the expropriation of 34 properties in half-die for the Banjul Port Expansion Project. These are not considered to be expropriations for private interests. For that reason, the dimension is ranked (A).

Speed of use of expropriated land

Only 2 expropriations – the Alacentu layout and Half Die/ports expansion has occurred in the last 3 years. These have been transferred to destined use.

Expropriated land is in most cases transferred to destined use immediately, whilst the acquisition and compensation processes are undertaken. The duration it takes varies and depends on the complexities of the expropriation process. In all the expropriations highlighted under Dimension 13 (i), the land expropriated was transferred to its destined use overtime.

Recommendations

There should be more government expropriations to cater for residential housing to meet the increase in population, but this should be done within a well-structured ‘shelter delivery’ policy. Such a policy is absent.

7.3.3 TRANSPARENCY AND FAIRNESS OF EXPROPRIATION PROCEDURES

LGI-Dim		Transparency of Procedures	Score			
			A	B	C	D
14	i	Compensation for expropriation of ownership	Green			
14	ii	Compensation for expropriation of all rights			Yellow	
14	iii	Promptness of compensation				Red
14	iv	Independent and accessible avenues for appeal against expropriation			Yellow	
14	v	Appealing expropriation is time-bounded				Red

Compensation for expropriation of ownership

Registered property is either freehold or leasehold. In the case of registered freehold property a fair compensation, based on the market value of the expropriated land is paid to enable the displaced owners have comparable assets and maintain social and economic status.

Only 1 expropriation of registered property occurred in the past 3 years. The Half Die relocations involving 34 freehold registered private residential properties which were acquired for the expansion of the Port of Banjul. A task force comprising of different Institutions and Property Owners, was setup to implement the process. These Institutions included: MLRG, DLS, DPPH, GPA and Office of the President.

Compensation was paid in both cash and kind. Cash compensation was paid for the developments on the properties based on their values whilst the Katchikally Layout was created in Bakau Cape Point to compensate for the individual plots on the basis of one plot for land in Katchikally for each property acquired. It is to be noted that the only secondary rights recognized during the process were those that placed a charge (e.g. legal mortgages, life estates, etc.) on the property. Secondary rights such as easements were not recognized. All the costs associated with preparation of the property documents for the allocated plots was borne by the GPA. The whole process was implemented consistently and in a transparent manner. However, the process took more than 2 years to implement due to the complexities of negotiations and the time taken to create and demarcate the Katchikally Layout.

The score is ‘A.’ Compensations are usually paid to owners of **registered** expropriated properties although not always done in a timely manner.

Compensation for expropriation of all rights

Status	Fairness of compensation	Compensated rights	Timeliness of compensation	Implementation	Comments
urban property	2	2	3	2	Compensation for both land and developments and implementation fairly consistent. However, process is not timely because of delays in reaching mutual agreements as well as lack of sufficient technical staff to facilitate the process.
Unregistered Rural property	2	2	3	2	In most cases, Compensation for user rights only, except where the property has physical developments in which case the developments are compensated based on the value of such developments. Implementation fairly consistent. However, process is not timely for reasons mentioned above.
Codes:	1=Compensation enabling comparable assets and maintenance of social land Economic status; 2= Compensation enabling comparable assets but not maintenance of social and economic status; 3=little or no compensation paid	1= All secondary rights recognized; 2= Some secondary rights recognized ; 3= No secondary rights recognized.	1= Most receive compensation within 1 year; 2= About half receive compensation within 1 year; 3= Most do not receive compensation within 1 year.	1. Consistently mented; 2= Implemented with some discretion; 3= Implemented in highly discretionary n	

The Land Acquisition and Compensation Act⁹⁶ provides for compensation to be paid for the value of any improvement or works constructed on the land, and in the case of land under customary tenure - the usufructuary rights, in the case of freeholds -the value of the land.

Unregistered lands in and rural areas are almost always farmlands held on customary tenure by small-scale farmers for subsistence. Dispossessed farmers are paid very little compensation determined on the basis of the value of the loss of usufructuary rights only. No factor is taken for the market value and no secondary rights are recognized. Implementation is highly discretionary.

Nearly all lands expropriated to create residential and other subdivisions are farmlands held under customary tenure. Compensation is paid using a statutory rate per unit area of farmland. The basis is the loss of usufructuary rights only. Compensation is usually small and may not exceed the loss of the farmers’ income in one farming season.

Apart from the Land (Acquisition and Compensation) Act which provides for compensation on the basis of loss of usufructuary rights, administrative measures are sometimes applied to address the issue of compensation to dispossessed farmers. This involves compensation in

⁹⁶ Section 11

kind; e.g. by allocating land in the newly created sub-division to members of the community affected in lieu of cash.

The most recent expropriations of unregistered property are –The Salagi and Alatentu Layout, both are Government layouts created in Kombo North, Western Region to be allocated as residential plots. The lands were expropriated from their customary owners. The Salagi layout was created and demarcated in 2003 - 2005 respectively, but compensation is yet to be agreed with the land owners. The discussions are centered on allocation of plots of land in the layout as compensation. However, the process has taken more than 7 years and is still not finalized.

The policy regarding expropriation and compensation for unregistered lands, both urban and rural, is unclear and inconsistent. There are no clear guidelines, for instance, on how computation for the loss of usufructuary rights is to be done, giving rise to a very high level of discretion in the process and complaints of discrimination in compensations.

Compensations are not always paid for unregistered rights. CILA findings are that the taking over of expropriated land before compensation is unconstitutional. Compensation “*should be addressed at the point of creation of a layout.*”

Promptness of compensation

In the case of the 34 properties at Half-Die in Banjul expropriated for the port expansion, compensation was promptly paid to more than 90% of expropriated owners. This, however, was an exception to the norm.

In most expropriations, especially of unregistered lands, dispossessed owners do not receive prompt compensation as highlighted in the case of the Salagi Layout. In most cases less than 50% would receive compensation within 1 year.

Persons affected by expropriation are expected to submit a claim for compensation. There are affected persons still seeking compensation for customary lands lost due to allocation of layouts. Over 20 Kabilo families/clans in Kombo North and Central lodged complaints with CILA claiming compensation for their expropriated lands.⁹⁷ Some of them said the first time they were aware of the expropriation was when they saw government officers measuring their land. All of them claim not to have received compensation years after the land in issue was appropriated.

Payment of compensation may be delayed:

- a) Where the owner chooses to be compensated with another piece of land, the process may involve extended negotiations usually because the size of land offered as compensation is regarded as too small. An example of this is the case of the Salagi Extension layout which is still not allocated because the land owners have still not agreed to the amount of compensation offered.
- b) Lack of adequate professional staff to undertake the required procedures in a timely manner.

⁹⁷Page 30. Commission of Inquiry into Land Allocation in The Gambia

- c) Lack of funds to pay for compensation. DLS estimates that at least D16 Million is needed to settle outstanding compensation.

Prompt compensation for expropriated land engenders confidence in land governance especially when such expropriations affect the most vulnerable sectors of society. The process of compensation ought to be first resolved before the land is put to the required use, otherwise unnecessary conflict is created.

For registered land compensation is usually prompt as was the case for the acquisition of 34 properties at Half-Die Banjul and the compensation of those affected by the Westfield Sukuta Road Project. However the policy regarding expropriation and compensation for unregistered lands, both urban and rural, is unclear and inconsistent.

In the interest of fairness and transparency action ought to be taken to formulate a set of regulations that can be uniformly applied in future compensations for expropriated lands registered or unregistered.

Independent and accessible avenues for appeal against expropriation

There is provision in the Land Acquisition and Compensation Act, 1991 for persons dissatisfied with the level of compensation paid for properties compulsorily acquired to seek redress through the law courts or by arbitration.

Pursuing a legal battle in the law courts can take many years to resolve. Cases have been known to take as much as 10 years before a final judgment is reached.

The procedure involved is costly and therefore not affordable to all parties. Most land cases end up going through 3 stages of appeal. At times the amount being compensated is not worth the fight and most parties would abandon their rights rather than go through the courts. Arbitration through ADRS should be accessible. Arbitration does not seem to be used at all by claimants. It appears that this may well be because the laid out procedures are not followed and affected persons, particularly illiterates, would not be aware of their rights. It would be desirable for an arbitration panel to be set up once an area is marked for expropriation.

Appealing expropriation is time-bounded

Decisions on complaints regarding expropriations vary depending on the nature of the complaint and its complexity. Two main types of complaints are generally encountered. In the first instance, the Complaints relate to the land owner's reluctance to lose the land. The other type of complaint relates to dissatisfaction with the amount of compensation offered. In both cases, complaints are addressed either to the DLS or MLRG. Invariably, complaints made to the Ministry are referred to the Technical Departments for joint action.

The action taken at this stage depends on whether the expropriated land is registered or not. For registered land, the required verifications are simple and straightforward as title deeds, occupancy or land transfer certificates are available. In the case of unregistered land the procedure is more complex and time-consuming, for traditional evidence is required

In the urban areas people are usually more conscious of their rights to seek redress in the law courts if they feel aggrieved in such instances. For registered properties in the urban area, where there is a reasonable level of understanding of individual rights, redress could be sought and obtained in the law courts.

For unregistered lands under the customary system of tenure most people may not be even aware of the existence of a legal provision. There is nothing in the process usually applied to suggest that people affected are made aware of their rights. Additionally, the costs involved in retaining the services of a legal practitioner and the long delays associated with litigation do not encourage people to make use of the avenues for appeal.

The current cases on expropriation that are pending mostly relate to the SSHFC allocated layout of Brusubi (1994), Jabang and Tujerang. 4 cases are pending filed between 2004 and 2007 for Brusubi and Jabang. There are 5 closed files, mostly through out of court settlements. They all took longer than 3 years

In a nutshell decisions regarding complaints of expropriations are not usually taken in a timely fashion. The panel agreed that about ¼ of decisions are reached in the first instance. Where an expropriated land owner decides to take a legal avenue, he may end up appealing through 3 courts excluding the court of first instance (High Court, Court of Appeal Supreme Court). This may take up to 12 or more years.

Recommendations

- All valuations for expropriations should be done by private consultants.
- The intentions of the Lands Compensation Act should be properly implemented.
- Compensations should be done in a consistent and uniform manner. There should be uniform guidelines on compensation. In the interest of fairness and transparency action ought to be taken to formulate a set of regulations that can be uniformly applied in future compensations for expropriated unregistered lands.
- There should be a statutory timeline for the payment of compensation and penalties awarded for delay. Compensations should be done as soon as properties are acquired.
- All compensation disputes should be dealt with by arbitration.
- The government should set up an independent arbitral panel every time it wishes to expropriate land.
- In the recent past the most successful expropriation exercise in terms of fairness and transparency of the process is the Half-Die expropriation of 34 properties by the Gambia Ports Authority. During the course of the process the property owners were not only sensitized on the issues of compensation but were informed of their rights of appeal in an arbitrary process. An independent consultant was hired to carry out the determination of value and to conduct negotiation for compensation to the property owners. Subsequently the few owners who were dissatisfied were heard by a panel in an arbitration exercise. It is recommended that a similar approach and intention to compensate expropriated lands in a timely fair and transparent process should be adopted in all expropriation.

7.3.4 ALLOCATION OF PUBLIC LAND

LGI-Dim	Transparent Processes	Score			
		A	B	C	D
15	i				
15	ii				
15	iii				

Openness of public land transactions

The sale of public land to private interests is a new phenomenon in land administration in the country and started in the last decade or so. Hitherto, all public land is vested in the Minister responsible for the administration of the State Lands Act, 1991 and its forerunner, the Lands (Banjul & KSM) Act, Cap 102. Both Acts empower the Minister to make leasehold grants of land for a term of years (99 years under the former and 21 years under the latter) in consideration for the payment of an annual rent. Government did not sell land. It gave out leasehold grants. More than 50% of all lands are still allocated by leasehold grants.

Now, in addition to these powers vested in the Minister to make leasehold grants, there is a new mechanism which allows government to sell public land at market price so as to enhance revenue for national development. This is not based on or supported by legislation. The last decade has seen an increase in the sale of public land at market prices by government or agencies acting on its behalf. These include the GTBoard and the AMRC and the Ministry of Finance through the LSC.

In general, public land transactions are conducted in the same manner regardless of the type of public land or its level of management. Public land is sold by the LSC through an open bidding process. This committee, which was set up by Government through some administrative arrangements, has sold over 321 mainly residential plots of different sizes between 2005 and now. The price that such lands are sold at is expected to be based on the market value of the land which is determined by the Valuation Unit of the Department of Lands and Surveys.

The LSC is chaired by the Ministry of Finance and Economic Affairs include the following members:

- i) MoLRG
- ii) DLS
- iii) DPPH
- iv) MoJ
- v) Office of the President
- vi) Directorate of National Treasury

The GTBoard manages the TDA, stretching along the Atlantic coast from Kotu to Kartong in Kombo south. The TDA is public land designated strictly for tourism development. However the Board had approval of government to create a residential subdivision within the area for sale to private interests. The area, known as Brufut Heights, sits on prime land that was meant for tourism development but now converted to residential use and sold by open tender to private interest for value. The mandate that allowed the GT Board to sell residential property was transferred to the MoL at the end of the year 2008.

Similarly, AMRC established to manage the recover the assets and liabilities of the defunct Gambia Commercial and Development Bank, has also been engaged in the sale of land forfeited to the state. The corporation has created residential sub-divisions on what used to be farmlands and sold them through open bidding to the highest bidder. It has also acquired land from customary owners and sold them as well.

The prevailing view is that there is no transparency or public consideration in the allocation or sale of public lands. Records of land transactions of government agencies are not publicly accessible.

According to the findings of the CILA” *There was very poor documentation of the plots sold by the LSC and how they were identified. The Minister completely denied approving any lands sale. There were no records of maps and valuations.*⁹⁸ Some sales were not advertized resulting in lack of transparency in bidding. Some even negotiated sales privately”

Also according to the Commission report, there was an instance were two un-assessed plots of land had been sold to committee members at a giveaway price. The said plots of land were neither advertised for sale by public tender nor sold at market price.⁹⁹ Discounts were also made in less than transparent circumstances.

Although the SSHFC have their records up-to-date, these records are also not accessible to the public

Usually sale prices are supposed to be based on market values. The land values are in most cases outside the affordability of most salaried workers. Prices are usually 1 million Dalasi and above and out of reach of most Gambians except highly successful business people.

The average cost of land space is approximately D500 per square meter in high density sub-divisions. This is considered too high for the average salaried worker. Even where such people manage to acquire such land they usually would not find the resources for the development of the properties and would eventually end up selling them.

Government is the trend setter for high pricing. Once government sets the prices for land values it tends to establish the trend and parameters for private land transactions Public land sales must be based on the affordability of Gambians. Government land sales policy for residential should not be revenue motivated but intended to create an environment for an effective ‘shelter delivery’ system which reflects the aspiration of the people.

In conclusion, the vast majority of public land is not sold but allocated through DLS for residential purposes. The process of allocation is entirely discretional and lacks transparency.

Collection of payments for public leases

In general all agreed payment for the sale or lease of public land have to be made before title is transferred to the buyer.

⁹⁸Page 36.Commission of Inquiry into The Allocation of Land in The Gambia

⁹⁹Page 36.Commission of Inquiry into The Allocation of Land in The Gambia

Going by the procedure in place, it is a pre-condition to the issue of a lease that all statutory payments (Stamp duty etc.) is made.

Modalities of lease/sale of public land

Sale of public land in the past 10 years indicate the following:

Brufut Heights plots were sold through a technical committee setup by the GTBoard. The technical committee comprised of the following:

- i) Some members of the Board
- ii) Representatives of the Finance Department of GTA
- iii) Representatives of the Development Department of GTA.

The plots and their reserved prices were widely advertised on Radio and TV as well as on Newspapers and the internet. Interested buyers were invited to submit applications which were considered on a first come first serve basis. 160 residential plots were sold at the Brufut Heights. The two categories of plots were sold for D425,000 for seafront plots and D375,000 for rear view plots. The prices were based on the market value of similar plots of land. This process was found to be transparent. However the GTA Act then and the current GTBoard Act do not provide for sale of land.

AMRC created residential sub-divisions on what used to be farmlands. CILA however found that the process was not transparent.

The LSC sold land through an open bidding process and has sold over 321 residential plots of varying sizes between 2005 and now. CILA has criticized the process applied. None of the land Acts provide for sale of land.

SSHFC sells part of the land in each of its estates. The prices are fixed at market prices but with affordability in mind. The process is found to be transparent.

All public land sales are supposed to be at market prices whether to domestic or foreign investors. This is not followed by all institutions. Transparency is also a major issue for some of them.

Additional Issues

There is a widespread practice of individuals acquiring vast tracks of land from vulnerable customary owners for speculative purposes. The practice will in future generate scarcity of land this will in turn create corresponding pressure on land as the population increases. This will necessitate the intervention by government to expropriate land and to make it available for private development at significant costs. Policies must be developed now and strategies put in place for controlling this practice.

Recommendations

- Government should set up a policy review panel to look into all aspects of public land sales with a view of creating the appropriate environment for shelter delivery to the people.
- During the course of the discussions AMRC was considered to have outlived their original mandate and with its current inadequate staff situation should cease to operate as land sales agency.
- SSHFC should be encouraged to expand their current policy and activities in the creation of residential layouts and the sale of land to people and with the consideration of the affordability of the people for such sales.
- The Central government should be discouraged from sales of public land.
- All land agency sales should be advertised and conducted by way of tender.
- Records of public land sales should be inventoried and displayed at the respective land agency.
- There should be guidelines for the sale of public land for the sake of consistency.

7.4 Thematic Area 4: Public Provision of Land Information

7.4.1 COMPLETENESS OF REGISTRY

LGI-Dim		Completeness of Registry	Score			
			A	B	C	D
16	i	Mapping of registry records				
16	ii	Economically relevant private encumbrances				
16	iii	Economically relevant public restrictions or charges				
16	iv(a)	Searchability of the registry (or organization with information on land rights)				
16	iv(b)	Searchability of the registry (or organization with information on land rights)				
16	v	Accessibility of records in the registry (or organization with information on land rights)				
16	vi(a)	Timely response to a request for access to records in the registry (or organization with information on land rights) (Land/Deed Registry)				
16	vi(b)	Timely response to a request for access to records in the registry (or organization with information on land rights) Cadastre				

Mapping of registry records

All registered properties are accompanied by plans that show location & size. Copies of the cadastral maps are held separately with the DLS. The cadastral plans are prepared by DLS before registration in the Land/Deeds Registry so that the plan attached to a registered document is identical with the plan held by DLS. No property can be registered without a cadastral map or, in case of a transfer, a sketch plan prepared from a cadastral plan.

However, maps attached to subsequent transactions i.e. assignments or subleases are not always accurate. This is attributable to the fact that there are no standards in place for the preparation of such maps. These can be sketched by any one and attached to the requisite document. So, in almost all assignments, reference would have to be made to the original lease in the registry to identify the land concerned.

Cadastral plans must be accurate and up to date at all times to avoid the risk of misrepresenting both the de facto and the de jure situation. This implies that there must be a system of constant revision to capture new areas onto the existing plans, and also to reflect changes in old areas for example where properties are the subject of physical subdivision. This is best achieved by a digitized and automated land registration system that has a database that is accessible to all stake holders, and that would have built into it sufficient safeguards for the protection and upkeep of the land records.

The upkeep of cadastral records in analogue format over extended periods is not tenable. With the increasing pressure on the land resources, these base maps must of necessity be digitalized in order to be sustainable.

An underlying problem is the non-implementation of the Survey Act which was supposed to prescribe standards for surveying and mapping and to also license and regulate surveyors. Thus many unqualified physical planning officers act as surveyors and make cadastral plans for assignments of leases and applications for physical planning clearance, which is one of the main requirements for the issue of the certificate of occupancy before the leasing process

can even commence. The Survey Act should be operationalized to ease up what is perhaps one of the most time consuming aspects of the leasing process.

The lack of technical capacity in both the DLS cadastre and the Land/Deeds Registry is a serious challenge. The introduction of digital technology for mapping, and an automated system of land registration would be counterproductive without extensive capacity building, as most officers at physical planning do not possess modern skill sets to make proper use of modern mapping software.

Recording relevant private encumbrances

Types of encumbrances usually registered are:

Formal: mortgages, leases on freehold, subleases and assignments

Informal: caveats to indicate that a title deed has been deposited as security.

Encumbrances for formal mortgages are recorded in the Land Registry pursuant to the Mortgages Act. It does not register pledges of title deeds. However, a person to whom a title deed is pledged may register a caveat on the title in the register.

Since the records are analogue, cross referencing can be a problem, so that there are incidents where a mortgage may not show against a property in the registry. Also it seems most subleases are not registered because of the high cost of stamp duty fees – 20% of annual rent.

Other fees are:

Search fees: D200

Registration fees: D 1,000

Stamp duty on mortgages and charges 1.5% of mortgage sum.

It is noted that the Land Registration of Deeds Act which seems to be the only law for the registration of land documents was passed in 1880 and last amended in 1972. Its usefulness is questionable.

The system of registration in The Gambia is voluntary and as such there is no law requiring the compulsory registration of private encumbrances which is also entirely voluntary. Registration is always desirable because the laws only protect encumbrances that are registered.¹⁰⁰ Encumbrances whether formal (mortgages) or informal (pledges of title deeds), are not always recorded.

The system is not automated and mistakes do occur when encumbrances are not properly registered against a title. The failure to cross reference may happen when an encumbrance submitted for registration is not registered instantaneously and cross referenced due to the pressure on the registry staff responsible for recording the transactions affecting property is high.

One of the main challenges is that the AGC Registry is understaffed and manned by only two people. Storage conditions for the records are less than ideal. Already the Registry is losing some of its old records as they have deteriorated over time.

¹⁰⁰ The protection alluded to is through the principles on 'priorities' under the Mortgages Act and equitable principles of the received English law.

There is no requirement in the law for pending litigation over land cases to be registered as an encumbrance; and it is not uncommon for land to be sold only to discover that it was embroiled in litigation. Apart from the formal mortgage, there is in fact no law requiring the registration of any other encumbrance.

Recording relevant public restrictions

According to DLS public restrictions and charges are not registered at the AGC. This has been confirmed by the Registrar. While the various statutes provide procedures for: (i) re-entry of leases (State Lands Act), (ii) change of use Physical Planning and Development Control), (iii) compulsory acquisition of land -Land (Acquisition and Compensation) Act, no provision is made for their registration.

However, notices are given to individuals by DLS with regards to the following:

- Re-entry of leases
- Change of use
- Compulsory acquisition
- Relocation of leases

There is no law which makes registration of public restrictions mandatory. As a result there have been instances of re-entered leases being sold because the buyers would have no notice of re-entry.

The procedure applied for recording re-entries of leases is by letter to the AGC Registry. A letter should not be the proper process for the cancellation of a registered title. Since the registration of a lease is by deed one would expect a similar instrument signed by the Minister to be filed.

It was finally concluded that none of the laws provided for the procedure to be applied when the status of land changes in a restrictive manner. There is no requirement, for instance, that change of use of registered land should also be registered.

The Land (Registration of Deeds) Act is the only law requiring registration of transactions affecting land. However the law makes provision for the registration of the document itself and not the registration of title/interest or subsequent changes to that interest. This was compared to the position in other common law jurisdictions where it is title that is registered.

It is essential that all public encumbrances are registered to serve as notice to third parties dealing with the property.

Searchability of the registry

Registered property in Banjul is searchable by parcel because they are recorded as town lots with a street number assigned to each town lot.

Leased properties can only be searched by the serial registration number given by the Registry. The DLS uses these serial registration numbers. The Records' Clerk of DLS updates DLS records from AGC records periodically.

Recorded documents are assigned a sequential number in the "Book" as it is called. To assist

users in finding relevant documents the Registry created a searchable index that contains the names of all parties to a document and where applicable the property address. Searching is done manually, and time consuming, in some cases tracing a document could take days. Search fees are D200

Without the lease SR Number, it is virtually impossible to locate the title of the property

The records at the cadastre are kept in files which are also searchable only by the serial number issued by the land registry. The DLS recording system is also manual and land documents are kept in individual files. These are sometimes misplaced or said to be lost. The conditions under which they are kept poor and inadequate There was an attempt, with support from the Netherlands Management Cooperation Program (NMCP), for the computerization of land records and digitization of the cartographic and lithographic information presently kept in manual form. The goal was to develop a LRIS for efficient land administration. The project provided computers, scanners, digitizing equipment, etc as well as in house training for staff and took off to a good start but could not be sustained when the partnership with NMCP ended. It was desirable for all land to be searchable electronically by parcel and right holder.

Accessibility of registry records

Details of registration are available to anyone upon payment of the prescribed fee. This is a statutory right.

Retrieving information from the AGC Registry can be extremely tedious and time consuming because of the manual system in place. In fact without the Serial registration number of the deed being searched, it is unlikely that information on a property can be found unless it is a freehold property in Banjul. It is only in regard to Banjul that there is a street register of town lots

The records in the Registry may be searched on the payment of a search fee. On request and payment of fees prescribed, an extract or copy of any entry in the register or records kept in the registry ought to be obtainable. This is provided for under Lands (Registration of Deeds) Act. In practice however Registrar does not give certified copies of whole title documents unless requested by a party or a lawyer or public authority. This, it is said, is a precaution on the part of the Registry against abuse. The relevant provisions of the Act (section 18 and 19) refer to a “copy or extract of any entry” in the record. It was therefore not clear whether the copy of a whole document should be given on demand.

The registry does not in fact have a format for providing an extract. It would usually provide a photocopy of what is required which is then certified upon payment of the prescribed fees.

The members expressed the view that the intention of the section is that a copy or extract “shall” be given. This is mandatory. It was therefore necessary for public access to be facilitated.

The digitization of the information in the AGC Registry is crucial. The system has been under pressure for the last decade as the number of properties registered has increased.

Timely response to requests

It takes a while because of the recording system – manual- to obtain copies of documents from the registry. It can take from 1 day to a week in the land registry depending on the nature of the record and whether the serial registration number of the document is provided.

Obtaining documents from the DLS Cadastre usually takes longer. It is not uncommon to be told that files cannot be located.

Recommendations

- A robust and modern registration system is required. A digitized and automated land registration system that has a database that is accessible to all stake holders, that would have built into it sufficient safeguards for the protection and upkeep of the land records.
- There should be an electronic record management system for the registry with the ability to cross reference records in the creation of new titles and charges.
- The Survey Act should be operationalized to ease up what is perhaps one of the most time-consuming aspects of the leasing process- the preparation of cadastral maps.
- The lack of technical capacity is also a serious challenge. The introduction of digital technology for mapping, and an automated system of land registration would be counterproductive without extensive capacity building, as most officers at physical planning do not possess modern skill sets to make proper use of modern mapping software.
- All current records in the registry should be computerized and the old records in particular should be restored.
- There should be a remote back up for the Registry and a disaster recovery plan
- Institutional procedures guiding the recording of charges should be clearer and more consistent.
- The legislative framework should be reviewed with a view to addressing the need for all encumbrances to be registered to ensure that interests in all registered land are recorded and apparent. The Land (Registration of Deeds) Act was enacted in 1888 and last amended in 1972 it should be modernized.
- More trainable people should be recruited and skills of existing staff upgraded.
- The various Acts referred to above should be reviewed with a view to ensuring that all public encumbrances subsequent to the registration of land are registered.

- A comprehensive mapping of land in the whole country using Geographical information system (GIS) followed by a street naming exercise so that land can be registered and identified by parcel should be undertaken.
- The project for introducing an LRIS should be revived and completed.
- Search instruments should be reviewed for greater accessibility of the registered records.

7.4.2 RELIABILITY OF REGISTRY RECORDS

LGI-Dim		Reliability of Records	Score			
			A	B	C	D
17	i	Focus on customer satisfaction in the registry				
17	ii	Registry/ cadastre information is up-to-date				

There are no published service standards for the Land registry or DLS cadastre. There is no hotline to register complaints of malpractices or display boards to show tariffs. There are no public awareness campaigns in the form of radio programmes, information leaflets or display boards. There is need to improve office conditions, customer relations and separation of front and back office operations.

The last publication of user charges for the AGC was 1972. Registration fees of D1.25 in 1972 is currently set at D1,000 in 2013 without any publication.¹⁰¹

There is no feed-back system for persons who use the land registration system. There is no policy of recording customers' grievances and needs. The orientation and mind set is not service delivery and therefore there is no focus on public needs. The system is oriented more towards revenue generation than public service.

There are no meaningful service standards and very little or no conscious attempt is in place now for the monitoring of customer service.

Cadastral/registry information up-to-date

There is no system of updating the registry or cadastre information.

Since only lawyers can, by law, file deeds, the Registry depends on lawyers to update the information on the Register. From experience however there are many transactions relating to property which are never registered, i.e. sub-leases and tenancies.

The cadastre is only updated in the process of preparing leases for any area or when a property owner registers a transaction on the property. Most of the country has not been surveyed and the available cadastral plans are not up to date. The pace of physical development in the field is much faster than the process of updating these cadastral plans by way of consistent and systematic map revision campaigns by the DLS.

¹⁰¹The registry informed the expert investigator that revised fees were pasted on the Registry door for a while but same came off.

GBOS has some wide ranging maps of the country but these are not shared with the Land Agencies. The department of lands has not had any project to help with improvements in operations since the 2003 PACAB Project¹⁰². Systems and procedures are old and require digitization/computerization. PACAB project was carried out with the assistance of private consultants. The study does not seem to have benefited the land departments.

The land departments and Land Registry have a huge capacity deficit and a very limited number of trained staff. Solutions to these constraints would include the augmentation of the capacity of the DLS in mapping and continuous map revision.

The Survey Act 1991 was intended to enable private sector participation in the mapping process so that cadastral records are maintained in an accurate and up to date manner. This is yet to take effect despite the legislation for doing so having been enacted since 1991.

Staff skills require substantial upgrading to operate the land registry and the DLS cadastre more professionally. There is no budgetary allocation for the updating of registry/cadastre information or for training of the staff.

Recommendations

Policies and systems for the operations of the registry should be service oriented and AGC Registry and DLS should receive training on customer service and care.

Public servants should acquaint themselves with Civil Service Codes of Conduct, the General Orders (GO), these are the minimum standards set for conduct.

There should be public sensitization and awareness campaigns by the AGC/DLS, and the possibility of the National Council for Civic Education being engaged on rights of tax payers. Refresher courses for registry personnel should be conducted on the purpose of the registry.

DLS has to embark on a project to upgrade its information base and modernize its operations. Resources must be allocated for the continuous updating of the registry/cadastre information. Upgrading the human resource capacity through in house and external training programs is a priority.

PART OF AGC LAND REGISTRY RECORDS

**DLS – CADASTRE – SHOWING LEASE
FILES AND EQUIPMENT**

¹⁰²The Poverty Alleviation and Capacity Building Project carried out a baseline assessment of municipal infrastructure and services in eight selected towns funded by IDA and intended to complement the then on-going decentralization programme led by the Department of State for Local Government and Lands (now Ministry for Regional Administration Lands and Traditional Rulers)



7.4.3 COST-EFFECTIVENESS, ACCESSIBILITY AND SUSTAINABILITY OF LAND ADMINISTRATION SERVICES

LGI-Dim		Cost Effective and Sustainable	Score			
			A	B	C	D
18	i	Cost of registering a property transfer				
18	ii	Financial sustainability of the registry				
18	iii	Capital investment				

Cost of registering a property transfer

The transfer process is expensive and the procedure is cumbersome. The computation of the Capital Gain Tax as a percentage of value introduces some degree of discretion which results in uncertainty. In principle, the value to be applied should be the value for which the property has been sold and this is subject to the honesty of the seller.

Due to the high taxes property owners are prone to under-declare the true value of their properties. As a result, the Government has come up with its own guideline of calculating the value rate which is not published but yet applied by the Gambia Revenue Authority to determine both capital gains tax and stamp duty.

Procedures/documentation required for registering a property transfer for property value date	Transfer Related Costs [cost or % of value]
Leased Property	
1. capital gain tax –	1. 5% to 10% of property value (individuals) or 15 to 25% of the gain (companies) whichever is higher
2. Stamp duty	2. 5% of transfer value
3. Registration –	3. D 1,000
4. Consent form – Customary Tenure	
1. Area Council transfer fee	1. D 4,000
2. Clearance & occupancy fee	2. D 500
3. Capital gains tax	3. 5% to 10% of property value or 15 to 25% of the gain whichever is higher
4. Alkalo fee	4. 5 to 10% of property value
5. Chief fee	5. D 1,500 flat
6. Lawyer's fee	6. 3 to 10%
7. Surveyor's fee	7. D 3,000 to D 5,000

Stamp duty which is payable by the buyer is 5% of the purchase price. Up to another 3-5% is payable by the buyer to a lawyer. This excludes the capital gains tax payable by seller. In addition the assignment of a lease requires the permission of the Minister otherwise it would not be registered. If this permission is not followed through as it progresses from the Department to the Ministry it can take months sometimes years. The buyer may have to employ agents to pursue the application.

While customary land is not registered in the registry and a transfer of a customary title does not require registration, such a transfer requires recording with the area council. The fees payable in such a process is even higher than the transfer of registered land, because the Alkalo and Chief would also have to be paid, although the services of a lawyer are not a necessity in the latter case.

There are also too many intermediaries/land agents who are totally unregulated. Estate agents are collecting money from anxious clients without any assurance that the services they are contracting are genuine. The agent's fees can be up to 10% usually paid by the seller.

Financial sustainability of registry and cadastre

- **Land Registry**

The revenue collected by the Land Registry could not be assessed because it was not separately accounted for by the Department which is also responsible for the registration of trademarks, and even marriages. The unit responsible for the Deed's registers is manned by 2 people an assistant registrar and legal clerk. We have been informed that there has been no significant capital expenditure for the unit in recent times apart from the purchase of some furniture.

However, the number of deeds registered in 2012 does give some indication of the amount of revenue collected in 2012 since a flat fee of D1000 is charged per registration.

Leases	358
Assignments	1121
Mortgages	144
Total	1623
	D1,623,000

Personnel cost of the 2 land registry personnel plus Registrar General¹⁰³ is approx. D112,440. The registry budget is allocated from the consolidated revenue fund. The registry is financially sustainable through fee collection given its other revenue streams.

The Land registry is massively underfunded considering the revenue being generated from it. Registry fees should not be regarded as tax revenue and should be applied to fund the operations of the Registry.

- **The Cadastre**

In regard to DLS the revenue generated by the cadastre is also not desegregated and the

¹⁰³ The land registry is one of the units of the Registrar General's Department. It is also responsible for Trade Marks and Patents; Marriages, collaterals etc. Most of its revenue is from Trade Marks.

numbers of paid transactions could not be ascertained. Financial sustainability through fee collection could not be determined. However the itemized Revenue Analysis of Government Estimates of Expenditures as at 31st December, 2012 indicates that the total revenue collected for land related matters is D 9.5 Million. This is paid into central revenue.

Fees for assessing land values published in the State Lands Regulations 1991 is obsolete because the stipulated charges have not been reviewed. Some fee levels are very low. For example, the cost incurred to survey a property far exceeds the fees paid by applicants as explained below.

The survey fees for a residential plot of land situated in Basse is D125.00. It takes a DLS surveyor from Banjul to travel all the way to Basse to conduct the survey. Apart from travelling expenses, an over-night subsistence allowance must be paid. The surveyor prepares the lease plans upon returning to HQ, and forwards it to the drawing Office of the DLS. Thereafter a cartographer works on the preparation of lease plans (required in 6 copies).

The time inputs of personnel alone, not to mention the logistical costs of travel and map production are indicative of the disparity between what is charged and the actual costs only for the component dealing with Lease plan preparation. The cost for surveying a single plot could be as high as D10,000.00. This could be much lower if survey visits could be better planned such that the trekking surveyor could carry out several individual plot surveys during one sortie. However, what this means is that Requests for survey have to be accumulated (meaning delays to some applicants) until a sufficient number is received. An alternative would entail the decentralization of surveying services throughout the country – thereby cutting down on the time requirement for surveys to be carried out, transportation/other logistical costs. The level of fees needs to be revisited to reflect the actual costs incurred for different services.

Capital investment in the system to record rights

There has been little capital investment in the Land Registry or the Cadastre. The equipment in the DLS is broken down and has not worked for years. Mobility is also a problem. The Land Registry has no equipment.

It is to be recognized that a map of whatever thematic purpose is obsolete as soon as its compilation and preparation is completed. Its value as an information source diminishes with time, as its failings in accurately reflecting the de facto situation increase due to upcoming new developments hitherto not captured in the original mapping exercise.

What is therefore needed is a system of continuous revision after the initial investment to comprehensively update the existing mapping records. In this way, new settlements are reflected, and likewise all changes within the settlements previously surveyed are updated.

The following has been identified by DLS as items needed to upgrade the land recording system in the country:¹⁰⁴

Geographic Information System (GIS) equipment for area mapping through satellite imagery

¹⁰⁴Equipment was provided under the Netherlands Management Cooperation Program (NMCP) but same was not maintained and the equipment has not been used for many years. It was necessary to find out why the equipment was not used.

- Theodolite and other land survey equipment
- Utility vehicle
- Plotters (A0 size)
- Laptops
- A3 printers
- A0 size scanners
- Computerized land registration system, capacity development in-house and overseas

There has not been any capital investment in the land registry. It is in urgent need of a modern and computerised registration system. Urgent attention should also be given to the preservation of the records. A number of the old registers (Banjul in particular) are in very poor condition and virtually illegible. Unless the situation is addressed many of the records will be lost.

Any investment in the registry or DLS cadastre must be supported by substantial capacity building to ensure that the skill set required to maintain any capital investment is also available

Recommendations

- Stamp duty should be revised downwards since capital gains tax has to be paid by the seller which is a minimum of 5% for an individual and 10% for a company.
- Estate agents should be licensed and their activities monitored.
- Alkalo/Chief's fee should be totally abolished or regulated for transparency.
- The Registrar Generals Department should be an autonomous Agency so that it applies resources generated to upgrading its capacity and providing efficient and effective services to the public including efficient and modern land registry services. The panel is of the view that the autonomy of the land registry would make it possible for part of the revenue generated to be retained and reinvested in the registry.
- The recommendation for dimension 18(ii) is repeated here.

7.4.4 TRANSPARENCY OF FEES

LGI-Dim		Transparency	Score			
			A	B	C	D
19	i	Schedule of fees is available publicly				
19	ii	Informal payments discouraged				

Schedule of fees for services is public

- **DLS Cadastre**
Through hands-on experience by experts and confirmed by the Director DLS, all formal fees are receipted. Some of the fees are also published under the State Land Registration. This includes the following fees:

Change of land use
Premium and land rent

However, only people who have access to the laws would see the publication. There is no system of publishing fees in a publicly accessible medium. Also the fees published in the laws are not usually current.

It is desirable that fee schedules are periodically published in an accessible medium e.g. newspapers of general circulation or pasted outside appropriate public areas.

- **Land Registry**

Registry fees are by the Land Registration of Deeds Act expected to be published. The last publication (which can only be found in the statute book) has not been updated since 1972. Receipts are issued for all registration. The Registry has indicated that a Schedule of fees for the registry service is published in the gazette when a change is made. However, because the gazette is not publicly distributed, it is not generally accessible to the public so that the public would not be aware of the change.

The published laws of The Gambia (2010) Edition did not reflect any recent schedule. The last change shown was in 1972¹⁰⁵. This suggests that recent changes to the Schedule were not done by legal notice.

Informal payments

The pre-registration processes (to register a lease or to perfect a transaction) are excessively bureaucratic. Registration in the land registry was found to be quite simple and straight forward. The bottlenecks are the cumbersome processes before final registration. These include obtaining the consent of the Minister prior to the registration of any leasehold property, or assignment of a lease, Capital Gains tax clearance, Alkalo clearance, district authority approval, area council clearance, Physical Planning etc.

The absence of strict procedures and processes all encourage informality to grow.

The land sector operates in a very informal way with numerous intermediaries all trying to live off the system. Apart from lawyers and licensed surveyors, persons involved include land agents, surveyors, local authority personnel and staff of the DLS and DPPH. It was noted that sometimes an intermediary may have to be paid e.g. to expedite the process of obtaining the consent of the Minister, whether to assign a lease, to obtain a lease or to obtain change of use. Alkalo's charge up to 10% of the value of a transaction before they would endorse as required for submission to the district authority and Area Council.

These practices are widely known but there is very little action to discourage them. The general public is therefore held victim. A major challenge is the low level awareness of users of their rights and of applicable procedures which make the processes intimidating. Another challenge is the low level of government salaries.

¹⁰⁵ The absence of a recent fee schedule in the 2010 Edition of the laws of The Gambia suggests that the increase was not by legal notice.

It was concluded that while the system cannot be said to actively support informal payments, there is little deterrent against it.

Recommendations

- The laws should be amended to allow for the publication of all fees in other media that are more widely available in addition to the Gazette
- The Gazette should be published online for greater circulation as it contains all official information of Government.
- A help line should be established for customers to lodge their complaints against corruption and other forms of mal practice.
- An active campaign should be designed and launched against corruption in the land sector.
- The level of informality in the system should be reduced or even eliminated by the introduction of simple and transparent processes and procedures for all steps that are required before and during registration as part of a comprehensive reform, to overhaul and replace all laws relevant to the registration of title to land
- All reform efforts should be supported by a sustained public awareness campaign
- The land registry and cadastre are at the heart of the Gambia’s land administration system. They are however suffering from neglect. A comprehensive review of both the Registry and cadastre should be undertaken with a view to first adopting a policy on the public provision of land information and then designing a strategy for effective reform and management.

7.5 Thematic Area 5: Dispute Resolution and Conflict Management

7.5.1 ASSIGNMENT OF RESPONSIBILITY FOR CONFLICT MANAGEMENT

LGI-Dim	Assignment of Responsibility	Score				
		A	B	C	D	
20	i	Accessibility of conflict resolution mechanisms				
20	ii	Informal or community based dispute resolution				
20	iii	Forum shopping				
20	iv	Possibility of appeals				

Accessibility of conflict resolution mechanisms



The first instance land conflict resolution mechanisms are the district tribunals, magistrates’ courts, high court, cadí courts and rent tribunals. In terms of accessibility, the most accessible courts since they are present in every district within the Gambia (39 districts) and were also highly accessible to the communities within their jurisdiction. However many concerns

were raised relating to the operation of the tribunals particularly in terms of their constitution. The concerns raised related to their composition, independence and public perceptions of partiality in matters before them.

- (i) It was discussed that the tribunals are constituted by the chief of the district as chairman and selected members recommended by the chief. In many districts these members are village Alkalos. The Alkalo's are deeply involved in land matters in their areas as most lands in their areas are either allocated or even sold by them. Most cases concerning land in the rural areas would therefore involve the Alkalo. Their impartiality in any circumstances is questionable. Traditionally, Alkalos were selected from founding families who were in many respects the custodians of local custom. There has been a departure from this tradition by the Local Government Act¹⁰⁶ resulting in the appointment of Alkalos who may not understand the customs of the communities they are purported to serve. Members of the panel shared the view that Alkalo's should not be members of tribunals. Regarding the Chiefs as president of the tribunals, concerns were raised about their diverse functions and roles often giving rise to allegations of inequity. It was noted that Chiefs are often perceived as not being impartial in cases involving persons alleged to be "opposition" party members. The view was expressed that because of their close connections to the community and diverse economic interests it was difficult for most Chiefs not to have an interest in cases before them, and this is seen as the root of the problem.
- (ii) The informality in the proceedings of district tribunals (formal rules of evidence do not apply) leaves room for high levels of discretionary actions. For effective dispute resolution, it was suggested that the role of adjudicator must be completely separated from other functions.
- (iii) The Magistrate courts were not as accessible as District tribunals. They were concentrated in the Greater Banjul Area and currently in the Central River Region and the Upper River Region with one circuit Magistrate covering the vast area. The panel was of the view that Magistrates do not have the training or experience to deal with land disputes.
- (iv) As regards the High Court, it was observed that a high proportion of rural disputes are brought to the High Court in Banjul, which may be far away from the land which is the subject matter of the dispute. This limits proper access and causes the trial to become expensive and lengthy. It was opined that less than a quarter of the population of The Gambia has easy accessibility to the High Court. The competence of judges was also discussed. It was observed that not all High Courts have the appropriate experience in Land matters.
- (v) The view was expressed that the principles of English law are often applied to customary land. The example was given as regards the concept of ownership. There was undue focus on concepts of possession rather than actual ownership whereas ownership under customary law is not based on possession.

¹⁰⁶ Section 142 of the Local Government Act (Cap.33:01) provides for the appointment of the Alkalo by the Minister responsible for Local Government in consultation with the Regional Governor and District Chief/Seyfo.

- (vi) As regards the Cadi courts, it was stated that the recent extension of the cadi court system to the regions - Basse, Kerewan, Brikama, Bundung, Kanifing and Banjul was an opportunity to remove the sharia jurisdiction from the District tribunals. The statutory composition of the Cadi Courts in the Constitution was criticized. A Cadi Court is constituted by 3 panel members. This is expensive and unnecessary now that there are well trained and competent Cadis. At the same time the Cadi Appeal is constituted by 5 panel members. The panel shared the view that it was time that the Cadi system was streamlined. If the presiding Cadi was only one, it would be possible to provide greater access to more communities, many of whom rely also on the district tribunal to adjudicate matters of Islamic law, when they may not have the knowledge and experience to do so.
- (vii) The other dimension of access was awareness. The level of awareness of avenues for land dispute resolution available to people in rural and urban areas is not high, even for those who are literate. It was observed according to the expert findings, that chiefs claim to have only a few pending land cases and that most were settled by ADR. This may be due to other factors including strong influences that are brought to bear on dissatisfied litigants. In such cases the underlying disputes are never resolved.
- (viii) The availability of lawyers to represent litigants is also a concern. It was pointed out that most people in the rural areas and even in the urban areas cannot afford to pay for a formal land dispute process. A huge problem exists in terms of getting legal representation in the rural areas as all law chambers within the Gambia are found within the Greater Banjul or West Coast Region. Lawyers are prohibited from appearing before district tribunals because they are informal. The pros and cons of allowing representation before the district tribunals were extensively discussed. A contrary view is that if lawyers were allowed to appear before district tribunals, raise serious equity issues as parties who can afford representation might have an advantage.
- (ix) Very few avenues exist for a formal and cost effective land dispute resolution. Attention was drawn to the extension of the ADR system to the Regions. There are currently 3 officially recognized offices for the Alternative Dispute Resolution Secretariat (ADRS). These offices are spread across The Gambia, and are located in Banjul, Farafeni and Basse. This effectively means that the Banjul office handles all the ADR work within the West Coast Region. West Coast is too big to be served by one ADR office and that effectively makes Banjul inaccessible to the majority of the people in that Region. Land disputes do not occur or originate from Banjul.
- (x) The provisions of the States Lands Act whereby land can be designated state land was cited as the source of a great deal of disputes. It was agreed that the Act does not cater for the needs of the population and should be reviewed.

The above issues notwithstanding the district tribunals are found to be widely accessible to local communities. However, it was noted that mere access to a court does not translate to access to justice.

Informal or community based dispute resolution

Informal and community based dispute resolution systems exist including ADR mediation.¹⁰⁷ Other informal mechanisms include the ‘Bulundar’ (the traditional Mandinka adjudicating committee of elders) which still exists in some traditional settlements like Brikama, Kombo Central; the informal distribution of intestate estates undertaken outside the Cadi Court System which includes distribution by the Curator of Intestate Estates; and specific mechanisms set up by different ethnic groups for settling disputes.

Recognition of decisions of the ADR Secretariat is a challenge. There are cases of people going through ADR mediation and pursuing redress through the courts afterwards. There is a perception that agreements reached through ADR are non-binding. Possibility of enforcing such decisions through the courts had previously been discussed by the ADRS with the courts but not resolved. Before the establishment of the Secretariat, court annexed ADR was thriving but this mechanism was discontinued after the Secretariat was set up. The attitude of the courts has been somewhat ambivalent in that they exercised the discretion to either ignore or apply decisions or information forwarded to them by the ADRS.

The expert opinion is that at the minimum agreements reached through mediation should serve as an estoppel i.e. should prevent the parties from litigating the issues compromised. It is not consistent with good public policy that agreements reached after mediation can be re-litigated. These ought to be binding.

The Bulundars have been in existence for centuries and were the traditional courts. The methods used by the Bulundars have been criticized as not equitable and their proceedings not transparent because its members are selected in secret and its proceedings also secret. Its decisions are however recognized. In the areas where the Bulundars are effective, their decision is final and must be applied. Parties to a Bulundar decision are not challenged in a court of law, because of traditional beliefs and myths. It was concluded that the Bulundar was more adjudicatory than mediatory. Its decisions were not recognized by the formal systems.

Mediation among the Serehule and Fula communities were regarded as very effective among themselves. All the foregoing methods are however not recognized by the formal systems.

The informal distribution of estates carried out by people outside the court system (including distributions made by the Curator of Intestate Estates)¹⁰⁸ was also criticized. These were usually done by people perceived not to be as knowledgeable as the Cadies but who were trusted. Members agreed that while it was acceptable to consciously compromise one’s right away, in many cases compromises are reached on legal premise without professional advice and this was not acceptable. Further, the curator in any effect lacked the in-house capacity to determine contentious matters.

¹⁰⁷There was some argument as to whether ADR was formal or informal. The view was expressed that since the ADR Secretariat was established by statute its mechanisms were formal. It was finally agreed that while arbitration is formal since it is binding and there are clear procedures for enforcing an arbitral award, mediation cannot be regarded as formal since it is entirely voluntary.

¹⁰⁸ The Curator of Intestate Estates is appointed under the Intestate Estates Act (Cap.14:02) to administer the estate of deceased persons. It is a department under the Attorney General’s Chambers and Ministry of Justice.

Informal systems were criticized as easy avenues for injustice. Informal systems should follow a detailed structure of recording which may be binding on parties. Diversity of cultures sometimes makes it difficult for traditional adjudicators to be binding on all affected parties, as not all of them may share the same cultural values.

Forum shopping

There is an overlap of jurisdictions among the High Court, district tribunals, *cadi* courts and Magistrates courts on first instance land matters. Both the High Court and district tribunals have concurrent original jurisdictions over land disputes while at the same time the High Court has appellate jurisdiction over the district tribunals, and this was anomalous. District Tribunals have the jurisdiction to preside over Sharia matters. If a particular district does not have a *Cadi* court, the matter is referred to the District Tribunal. *Cadi* courts do not have jurisdiction on all land disputes and where a dispute over land ownership arises during a succession dispute the case is supposed to be transferred to the High Court but this is not provided for in any rules.

It was observed that over the past two years there has been a noticeable increase of land cases being referred to Magistrates' courts on recovery of possession and dealt with summarily even where title is in dispute, because some Magistrates are of the view that they have Jurisdiction in these matters. The provisions relating to the jurisdiction of Magistrates' courts over land disputes has been subjected to different interpretations, but the main superior courts have held that the court has no jurisdiction over disputes of landownership.

Although there is no record of 2 courts hearing the same case simultaneously, the expert opinion is that there are no clear rules as to what courts can preside over land disputes.

Possibility of appeals

Appeals lie from each of the first instance courts - from Magistrates courts and district tribunals to the High Court. Appeals lie from *cadi* courts to the *Cadi* Appeal Panel as a final court of Appeal.

Attention was drawn to the rent tribunals that handle all landlord and tenant matters both residential and commercial. No appeals lie from their decision except by way of judicial review.

It was noted that many land matters reach the Supreme Court as many litigants do not give up until they reach the apex court or they are frustrated by their lack of means to do so. The average land dispute may last for as long as 10 – 15 years. The average cost for an action on land dispute in the High Court is about D 100,000.00 (including lawyer's fees). If an appeal is involved, an additional cost of up to D350,000.00 (including court cost) can be envisaged by the time a final decision is handed down by the Supreme Court. The cost that may be awarded to either party by the court is unclear, inconsistent, ambiguous and discretionary. A High Court Judge may award costs of up to D100,000.00 or more without ordering that cost be taxed (investigated). The cost of land litigation is not affordable to a majority of Gambians.

The two tier *cadi* system while there are four tiers for all other courts suggests a double standard that is inconsistent with equality before the law. These results in the anomaly that an inheritance case commenced in the district tribunals may be appealed to the Supreme Court

while a similar case commenced in the *cadi* court has only one chance at appeal. The contrary view is that the four tier system may be too long and two chances at appeal should suffice.

The preparation of records of appeal can also be expensive. This is an additional burden on litigants from poorer communities.

There is also limited local resource material on land cases and no local text books at all on land law. On the whole while an appellate process exists, it has become unaffordable to most Gambians, and it takes too long to exhaust all remedies through the appeal process.

Recommendations

- (i) The District Tribunals are very important to the communities since they are the court of first instance for a majority of the people and also because customary law is what applies to land in the Regions. They should be maintained as courts of first instance for all regional land. However:
 - Their jurisdiction and composition should be reviewed. They should be constituted by independent persons of undoubted integrity in the community who are knowledgeable in customary law.
 - Local community leaders (Chiefs and Alkalos) serve a very vital role in the community but having regard to their executive, administrative, security and political functions, they are much better suited to community ADR rather than formal adjudication. Moreover the concentration of functions is inconsistent with the constitutional principles on separation of powers and independence of the judiciary.
 - District tribunals should be fully brought under the administrative supervision of the judiciary and their members appointed by the Judicial Service Commission.
 - The Governors should not have any review jurisdiction over tribunal decisions.
- (ii) The ADR system is now being extended throughout the country¹⁰⁹ should be reviewed with a view to giving the Alkalo's and Chiefs a prominent role in ADR while transferring their current formal adjudicatory functions to an independent tribunal referred to in recommendation (1).
- (iii) High Court should not be a court of first instance for land disputes in the Regions. The High Court should, when sitting over land cases that are subject to customary law be constituted by a judge and 2 assessors knowledgeable in customary law because of the high incidence of common law principles being applied to customary land.
- (iv) First instance judges must have proven competence in land law.
- (v) Magistrates Courts should have no jurisdiction over land disputes only on ejection and, where ownership is in dispute, the case should be transferred. The Subordinate Court Civil Proceedings Act should be amended accordingly.

¹⁰⁹ They currently have offices in WCR, URR and NBR

- (vi) More effort is required to sensitize people about the avenues open to them to settle land disputes both informally and formally.
- (vii) Free legal aid should be extended to land disputes.
- (viii) The ADR Act should be reviewed with a view to ensuring that decisions reached after any mediation once reduced into writing and signed are binding because that is the fundamental purpose of mediation; and if appropriate, a party to the mediation may apply to court for judgment on the basis of the decision.
- (ix) Inheritance matters should be removed from informal adjudicatory systems and should always be determined by the Cadi Court (if affecting Muslims) or the High Court (if affecting non-Muslims) and any compromises agreed should be made before the court.
- (x) The non-demarcation of land is the source of most problems in The Gambia. Lands should be demarcated and titles registered through a transparent and participatory system that would solve most of the current disputes relating to ownership of land.
- (xi) There ought to be no ambiguity in the law about the jurisdiction of the courts.
- (xii) Jurisdiction regarding matters of sharia should be removed from the District Tribunal and be dealt with entirely by the Cadi Court system.
- (xiii) The Cadi Court system should be extended to the Districts which can be done if presided over by a single competent Cadi instead of 3.
- (xiv) A High Court should be established in each Region to form an effective appellate structure for the District Tribunals.
- (xv) There is need for clarity of jurisdiction and the laws should be reviewed to remove all jurisdictional overlaps in land matters including the jurisdiction of the Magistrate's courts.
- (xvi) The appellate process should be reviewed with a view to ensuring that the time is shortened and the costs are affordable. Ensuring that each Region has a functioning High Court presided over by a competent judge and trained assessors is essential to an effective appellate process for land disputes emanating from the district tribunals.
- (xvii) A well-functioning Cadi appeal system covering the whole country is essential.
- (xviii) The preparation of records in land cases should be borne by the state because unresolved land cases where a party does not agree with a first instance decision leads to further conflict.

- (xix) There should be a transparent scale of costs and procedure for reimbursing a successful litigant the fees incurred in pursuing his claim, which should not be punitive.
- (xx) The numerous decisions on land should be compiled and collated to form a compendium of cases to guide the courts on the applicable land law.

7.5.2 LEVEL OF PENDING CONFLICT

LGI-Dim		Low Level of Pending Conflicts	Score			
			A	B	C	D
21	i	Conflict resolution in the formal legal system				
21	ii	Speed of conflict resolution in the formal system				
21	iii	Long-standing conflicts (unresolved cases older than 5 year)				

Conflict resolution in the formal legal system

Type of disputes	Number of conflicts (in sample or dataset)	Average Time to resolve (months)	Average Cost to Resolve
Total cases in sample/dataset	430	1-24	D150 – 2000
Total Land Disputes	184		
Inheritance/family dispute	31*		
Property transaction/ contract			
Challenge to ownership	118		
Expropriation	4		
Boundary dispute	4		
Dispute over use	7		
Trespass	15		
Right of access/passage	2		
Mortgage/loan	3		
Other (please specify)			

The information in the above matrix was collected from the High Court and the District Tribunals as the courts of first instance dealing with land disputes. Excludes inheritance/succession cases in the Cadi Court system¹¹⁰

¹¹⁰ The data from some of the Cadi courts was received after the panel workshops. Kanifing Islamic Court records show that out of 187 cases lodged over 2012- 47 were land related (inheritance) (25%). Of 101 outstanding cases – 38 were land related (inheritance) (37.6%). The average period for land related cases was stated to be 4 months.

The Cadi Appeal Panel also sent in some data indicating that out of 20 appeals lodged in 2012, 5 were land related (25%). 17 cases were disposed of including 5 land related cases (29%).

(Cases) Summary by Region

Questions	NBR	CRR	LRR	URR	WCR
1. Resolved Cases (10/2011-12/2012)	11	17	43	6	81
Resolved land cases	6	5	7	15	49
2. New cases lodged (10//2011-12/2012)	13	17	45	5	148
How many of these are land related?	6	5	7	2	83
3. How many pending cases at the current time?	2	6	5	1	56
How many of these are land related?	2	2	4	1	51
4. Pending land cases above 5 years	0	0	0		0
- How many of these are land related?	0	0	0	0	0
5. What is the average time to reach a first instance decision in the court in the past year?					
- Overall	30	3	12	22	46
- For land case specifically	30	1	17	21	52

The results from the district tribunals

WCR has the highest number of cases resolved over the past year which was 81 and out of this 49 (60%) were land related. In terms of the new cases 148 were lodged and out this 83(56%) are land related cases. 56 cases are currently outstanding and 51(91%) of which are land related. According to the information gathered thus far there are no outstanding cases that are 5 years and above in the District tribunals. This claim is equally made of all the regions.

The data from the High Court show that 360 cases were pending as at end of 2012 and of these 124 (34%) were land cases. Cases resolved are 431 and of these 117(27%) are land cases. 628 cases were filed of which 30.7% are land cases.

When the data from the high court and district tribunals was consolidated the following picture emerges:

<i>ATTRIBUTES TRIBUNALS</i>	<i>HIGH COURT</i>	<i>DISTRICT</i>
<i>Pending cases</i>	<i>360</i>	<i>70</i>
<i>Pending land cases</i>	<i>124</i>	<i>60</i>
<i>Resolved Cases (10/2011-12/2012)</i>	<i>431</i>	<i>158</i>
<i>Resolved land cases</i>	<i>117</i>	<i>82</i>
<i>Pending cases above 5 years</i>	<i>63</i>	<i>0</i>
<i>Land cases above 5 years</i>	<i>48</i>	<i>0</i>
<i>New cases lodged (10//2011-12/2012)</i>	<i>628</i>	<i>228</i>
<i>How many are land related</i>	<i>193</i>	<i>103</i>

Of the 430 cases pending as at the end of 2012 country wide, 42.7% are land cases and of new cases lodged for the same period 34.6% are land cases.

The 430 cases in the sample data set comprised the pending cases in the High Court and District tribunals. The data on resolved cases was not segregated by type from the high court and therefore not included in the sample dataset.

The vast majority of all land transactions occurred in WCR hence the high volume of cases. Distribution of communal land among family members that is not properly mapped nor ownership properly identified, the sale of land by Kabilo heads without proper consultations, and attempts by current generations to undo the allocation of lands to outsiders made by previous generations for agricultural purposes (which lands are now being converted to residential use and sold) are some of the main sources of land dispute cases in WCR.

It was noted that a serious problem of land grabbing by more privileged Gambians including public officers to existed. This phenomenon was found to be facilitated by the designation of State lands under State Lands Act to the detriment of communal land owners.

Speed of conflict resolution in the formal system

The longest time that was stated by the district tribunals to reach a first instance decision in the court on average for WCR is 46 days and for land cases specifically is 52 days. The longest time recorded is 1 year in the Kombo North District. Generally, the rest of the other regions indicated a range of 14 days to 30 days. The High court on the other hand averaged 8 months to 4 years.

Both High Court judges interviewed emphasized that the new High Court Rules introduced in 2010 has sped up the resolution of all cases. It is a system which shortens the proceedings by requiring parties to file all the evidence including witness statements on which they rely thus obviating the need for cross examination. However, the new rules found a significant number of cases in the system some of which are still pending.

Other issues which impact the rate of case disposal in the high court include:

- (a) ADR System. The court annexed ADR system introduced in 2007 had a positive impact on the settlement of cases but was discontinued when the ADR Secretariat was established. The ADR Secretariat does not seem to have made any impact however, because lawyers do not seem to have confidence in it. The ADR system should have had a significant impact on land cases as well but for the disconnection between the ADR Secretariat and the courts. It is important for the connection to be restored. It was pointed out that many land disputes are now being taken to ADR, but there are no statistics on the impact of this.¹¹¹ The extension of ADR to the Regions will also not make the necessary impact if its decisions remain informal.
- (b) Court reporting. The automated system introduced in some of the courts with technical assistance from DFID¹¹² have also had an impact but only 3 out of the 9 High Courts have benefitted from it. No other courts have benefitted.

¹¹¹The ADRS panel member undertook to collect data from their various offices as a basis for comparison with the formal system.

¹¹² DFID – Legal Capacity Building Project (LCBP)

- (c) Hurricane judges. Short term contract judges were also appointed for a period of 6 months under the same project to clear the backlog of cases and this also succeeded in eliminating the backlog that had built up over a period of over ten years. The entire backlog could not however be cleared before the contracts ended.
- (d) Specialization. Specialized divisions of the High court introduced in 2008 seemed to have been abandoned and land cases are now distributed throughout the entire high court system. This does assist neither in the building of capacity nor in a systematic monitoring of land cases.
- (e) The need to build the capacity of lawyers and judges was also discussed.
- (f) Reference was made to the new court rules which have expedited the disposal of cases. Experts were of the view however that invariably judgments were entered in default because the Defendants did not comply with the requirements laid down by the rules. It was wondered whether such a procedure was suitable for land cases. The view was expressed that it was desirable that all land cases be fully heard and determined on the merits rather than one party left feeling that they have not been heard and thereby denied justice.
- (g) The role of public officers from Departments of Lands and Surveys and Physical Planning and Housing was also discussed. The presence of these officers was usually necessary only because they prepared sketch plans or participated in land transactions or have done a valuation for one of the parties and are therefore called to give evidence. This is an area that is completely unregulated and plans are being prepared by officers who are not qualified to do so. Also, sometimes trials are delayed because the Departments cannot locate files or documents in their custody or particular evidence required in court.

Long-standing conflicts (unresolved cases older than 5 years)

There is no case that has spent more than 5 years in the District tribunal system.

An interview of 3 District Tribunal Presidents/Chiefs revealed that most cases are settled by ADR and therefore do not come to them as formal court cases to be decided. The first objective of the tribunal is to mediate the dispute and that it is only where such efforts fail that the matter is set down for formal adjudication.

The high court has 360 pending cases as at end 2012. Of these 63 have been pending for more than 5 years of which 48 (76%) are land cases. Total pending land cases are 124 and of these 48 (38.70%) are more than 5 years old.

The proportion of long standing land disputes is disproportionately high despite substantial reforms mentioned above which have accelerated the rate at which cases are disposed of. This has been attributed to the following:

- The hurricane judges did not clear the entire backlog and there are still a number of cases that are more than 10 years old.
- Non-utilization of the ADR process

- Difficulties in obtaining formal witnesses e.g. officers from land departments to attend court. Most of the cadastral plans are done by officers working in the DLS/DPPH in a private capacity their attendance to the court is sometimes difficult to secure. The Surveys Act which was to regulate surveying work is not enforced.
- Not enough experienced lawyers dealing with land cases.
- Lack of commitment by lawyers to dispose of cases quickly.
- Manual recording system for most of the courts.

Reference was made to Judgments that could not be enforced by the parties because the case took too long. One such case is Bernard George v Alkalo Yankuba Jatta. In this case the Sheriff could not enforce the judgment because there were so many intervening third party interests that were created during the period of the trial and hence there was physical resistance against enforcement. Sometimes the immediate parties die and never get to witness the final results of the case.

In fact in many such cases even the winning party becomes a loser because of the high cost both in time, money and health.

Recommendations

- Land disputes constitute a significant portion of all cases and should be given special attention.
- There is need for clear legal procedures for the handling of land disputes including jurisdictional issues.
- A task force of stakeholder's should be established for the purpose of reviewing and putting in place effective mechanisms for dealing with land cases.
- Lawyers need to be involved in ADR and this can only happen when agreements reached can be enforced. The ADR Act needs to be reviewed so that it may be fully connected to the courts.
- There is need for a professional body of surveyors and land valuers who can be relied upon in land disputes instead of public officers. The Surveys Act should be enforced so that the appropriate standards can be set for surveys and related services.
- The new rules of procedure in the High Court need to be fully discussed with regard to their impact on land cases with a view to ensuring that they are equitable.

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- It is essential that a sustained effort is made in ensuring that the system does not carry a dispute for more than 2 years. The specialized land courts should be maintained to encourage specialization in land matters. This helps to cut down time spent in determining a case. Investing in automated court reporting systems for all courts of record is essential. The Judiciary, Government and the GBA should be encouraged to organize training seminars on land law and land cases to encourage the development of a uniform understanding of the applicable law and principles.
- A Computerized registration system, data base and case management system would add tremendous value to judicial administration.

7.6 Forestry Module

LRR



7.6.1 COMMITMENTS TO SUSTAINABILITY AND CLIMATE CHANGE MITIGATION

FGI	Topic	Score			
		A	B	C	D
FGI 1 (i)	Country signature and ratification of international conventions				
FGI 1 (ii)	Implementation of incentives to promote climate change mitigation through forestry				

Country signature and ratification of international conventions

FGI 1, Dimension i			Assessment		
Country signature and ratification of international conventions and treaties in support of forest conservation (CITES, CBD, CCD, Ramsar, UNFCCC)			C – The country has committed to follow most or all of these treaties, but its implementation needs improvement.		
Treaty / Convention	Relevance	Signatory	Ratification/ In Force	Implementation	Remarks
CITES	High	26 th August 1977	24 th November 1977	Regulatory enforcement (License to allow trophies and any plant/animal parts). Monitoring and surveillance with customs & excise Department. Capacity building.	Contribution of the State not honored due to high bank charges.
CCD	High	1994	11 th January 1996	Implementation of community forestry concept. 2000 Draft National Action Programme circulated by DoF. March 2000 Draft GEAP II submitted to Office of the President. August 2000 NAP First Draft Investment Programme submitted. September 2000 National Forestry Action Plan launched. September 2000 The “National Action Programme to Combat Desertification in The Gambia” is adopted by the Second National Forum in Banjul on 27 September 2000. 2012 Multi-stakeholder committee responsible of the Rio Conventions meet to discussion on the possibility of reviewing UNCCD NAP and Roadmap	Limited funds for practical applications of NAP Inadequate institutional capacity at the Department of Forestry. Weak institutional collaboration within line departments at all levels
Ramsar	High	January 1997	January 1997	Designated Baobolong, Tambi Wetlands & Niimi-national park as Ramsar sites in 1997 (31,244ha) Designation of more wetlands as Ramsar sites (Alahine River and Tanji Bird Reserves) Management Plans developed for all the sites Implementation of management activities through projects Creation of Alternative livelihoods activities for wetland dependent communities (Oyster collection, Village Banking, Horticultural activities and Beekeeping) Patrolling and surveillance Data collection (socio-economic and environment) Implementation of capacity	No funding of projects to member countries from the convention secretariat DPWM developed projects on wetland management and funding sourced from other donors such as GEF Currently, the country has not yet fulfilled expected membership contributions. Department of Parks & Wildlife Management should expedite the evaluation of consultancy bids for setting up the National

				<p>development programmes for the management committees and staff of DPWM to respond to issues related to site management</p> <p>Participatory Monitoring and Evaluation</p> <p>Restoration of degraded areas through mangrove</p>	<p>Biodiversity Trust Fund such that DPWM fulfills her mandate in ensuring sustainable management of the nation's wildlife and biodiversity.</p> <p>GEF Funding to be sourced directly towards wetland management</p> <p>Limited awareness of the populace on the socio-economic and ecological functions of wetlands</p> <p>Continuous sensitization and enforcement of the law such that the population sees "wetlands as not waste lands."</p>
UNFC CC	High	12 th June 1992	10 th June 1994	<p>Submitted first national communication to COP 2003 December.</p> <p>Ratified Kyoto protocol June 2001.</p> <p>Local Institutions attempted to take part in the CDM of the Kyoto protocol.</p> <p>2001 Gambia joined the global partnership for clean fuel and vehicle initiative.</p> <p>2006 July total ban on the importation and selling of leaded petrol in the Gambia.</p> <p>Enforcement of NEMA of 1994 as a strong regulatory tool for pollution control of activities.</p> <p>Gambia agreed to reduce the consumption of CFCs by 50% by 2005.</p> <p>By 2010 the Gambia succeeded to fully eliminate CFCs.</p> <p>1990 The Gambia committed to phase-out of Ozone Depleting substances (ODS).</p> <p>Ratified the Vienna convention for the protection of the ozone layer in July 1990 and the Montreal protocol on substances that deplete the ozone layer.</p> <p>The Gambia has also ratified the London amendments under the multilateral fund of the protocol (article 10).</p> <p>National action Plan for Climate change Adaptation 2002.</p> <p>National GHGs inventory conducted in 1993 and updated in 2000.</p> <p>Establishment of national Disaster Management Agency.</p> <p>Establishment of Early warning systems office.</p> <p>Sensitization on Early warning systems.</p>	<p>Overall aim is to prevent dangerous human interference with the climate system</p> <p>Bureaucratic procedures cumbersome to access funds to implement action plans</p>

The Gambia is a party to the five (5) major International Conventions that are directly relevant to the rational, and sustainable management and utilization of forest resources. These are:

- The United Nations Convention on Biological Diversity (UNCBD),
- The United Nations Framework Convention on Climate Change (UNFCCC)
- The United Nations Convention to Combat Desertification (UNCCD)
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and
- The Convention on Wetlands of International Importance (RAMSAR).

All the above international conventions are fully domesticated and integrated in the policies (Forest, water and Wildlife) of technical departments responsible for the implementation of the activities leading to the achievement of the objectives of the conventions. In addition, national action plans were developed and streamlined with national development plans such as the PAGE.

The accessibility of developing countries to funding for the implementation of major projects on desertification and biodiversity loss control from the Least Developed Countries (LDC) and GEF funds need to be enhanced and facilitated to expedite the implementation of National action plans. This would complement already existing locally initiated small scale projects funded from the National Forestry Fund (NFF) and the proposed biodiversity trust fund. In short the developed action plans are short of funding from the conventions secretariats impeding full scale implementation of the interventions.

Incentives to promote climate change mitigation through forestry

Scheme	Relevance	Remarks
1. PES: -Carbon	High	Designated national Authority office yet to be established for sourcing funding from the schemes.
2. REDD+ -CAC -MBI	High	

Although, these incentives are very relevant and highly required as mitigation measures to control and alleviate climate change impacts, however, the country is not benefiting from any of the schemes mentioned above. According to the “National forest Assessment report 2010” the total carbon capacity of the country is equivalent to 13, 296, 000 ton/ha. The only possibility is for the country to access funding from REDD +, PES, etc. is to join other countries in the trade in carbon reduction that mitigates climate change through a designated national authority as highlighted in the National Portfolio Formulation document (GEF- 5 Focal Area Strategies).

There is public sector awareness in agencies such as Forestry Department, Environment Agency etc. of the need to provide incentives to promote climate change mitigation through forestry. Conversely there is limited awareness among the private sector and local communities.

Despite Government's endorsement of the Framework Convention on Climate Change and the elaboration of the first and second communication on climate change, relevant incentives such as payment of environmental services (PES), REDD+ to promote forestry activities to mitigate climate change are seemingly absent.

The panel of experts noted that the concept/notation on the payment of environmental services (PES) as an incentive seemed ambiguous in its application. Is it limited to CDM or does it cover payments e.g. by tourists in accessing forest parks and/or other nature reserves, environmental taxations, GIEPA taxation etc.?

It was also pointed out that the national tax incentive is missing but that it should be knowledge and judgment limited considered under the CDM and REED+ mechanisms. The panel however concluded that such mechanisms were absent in the country as there was no institutionalized effort to promote awareness in this respect.

It was suggested that further investigation should be made into why Gambia is not benefiting from PES and what mechanisms are in place for implementing PES to promote investment in forestry to mitigate climate change, therefore this issue requires some attention.

There is no institutionalized system and mechanism in the Gambia for the implementation of PES or REDD+. However, under the GIEPA Act, Forestry is considered as a priority sector and extensive tax incentives are provided for investment in the sector.

Recommendations

In connection to improving efforts for the effective implementation of the conventions, the following recommendations are proposed:

- Capacity building of the stakeholders;
- Rehabilitation of the Forestry Training School;
- Develop strategy to address the current attrition rate of the staff;
- Conduct forest valuation (ecological, social etc.) to provide the tool for enlightening and raising more awareness;
- Conduct extensive sensitization through radio programs
- Train law enforcement officers
- Provide the better alternative livelihood support systems to address the problem of deforestation;
- Identify ways of reducing the over centralization of authority;
- Harmonize Forestry and Agriculture and other related Policies to minimize policy conflicts e.g. between Forestry and Local Government;
- Implement the decentralization policy; and
- Communicate and disseminate key information on the Conventions and Treaties to communities so as to connect local realities to global dialogue on REDD+, management of biodiversity sensitive areas, wetlands and coastal areas with regard to their contributions to the maintenance of livelihood support systems and contribution to Food Security.

The following recommendations were made:

- Incentives for investment in forestry deserve much consideration and wider publicity to ensure that there is awareness of the provisions of the GIEPA Act; Environment Tax and how it is administered.
- Integrate climate change mitigation and adaptation strategies in the National Forest Policy implementation strategies;
- Establish appropriate mechanisms to promote awareness and capitalize on the implementation incentives under the CDM and REED+ in respect of mitigating climate change impact.
- Sensitize the private sector and local communities on the incentives for investment in forestry;
- Create the required institutional structures and build the capacity to capitalize on the opportunities in securing funding for REDD+ and PES from the common global source; and
- Shorten current administrative procedures for concluding tenure arrangements in the transfer of state forest lands to community managed forest lands.

7.6.2 RECOGNITION OF PUBLIC GOODS ASPECTS OF FORESTS AND PROMOTION OF SUSTAINABLE USE

LGI-Dim	Topic	Score			
		A	B	C	D
FGI (i)	2 Public good aspects of forests recognized by law and protected				
FGI (ii)	2 Forest management plans and budgets address the main drivers of deforestation and degradation				

Public good aspects of forests recognized by law and protected

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Public Good	Relevance	Status in Law	Types of Actions and their Effectiveness	Remarks
Biodiversity	High	Banjul declaration 1977 Wildlife Policy 1998 Agriculture and Natural Resource policy 2009-2015 Wildlife and biodiversity act 2003 National Environment Management Act NEMA (1994) Forest Policy 2010- 2019 Forest Bill 2010	Reviewed NBAP Designated biospheres in the North bank Region Sustainable management of wetlands (RAMSAR sites) Introduction of Participatory management of Protected Areas Conduction of research and development. Mangrove rehabilitation initiatives	The current situation of biodiversity goods, services and products in the Gambia indicates that the resources are declining and the situation is likely to worsen, unless appropriate regulatory and management measures are undertaken.
Soil	High	Agriculture and Natural Resource policy 2009-2015	Creation of soil and water management unit (SWMU) 1979 Sustainable land management initiatives Soil mapping, land reclamation and conservation (reclaimed 8, 049ha) Establishment of community woodlots Institutional capacity building for effective planning and monitoring Construction of multipurpose dikes to protect fields from saline tidal influence. Construction of water retention dikes in water collecting basins further upland, free from saline tidal influence. Construction of contour berms in the upland to reduce soil erosion. Protection of upland by tree planting.	Soils in the Gambia are generally poor in organic matter and chemical fertility Sub-optimal management of soil and water resources

¹¹³Based on the discussion in respect of expert knowledge and relevant documents referred to, the group’s assessment score is “A” as indicated above as opposed to the “B” rating by the consultants.

Water	High	Agriculture and Natural Resource Policy 2009-2015 Water Resources policy 2009-2019	Implementation of Rural Water Projects Integrated Management of the Fouta Djallon Highlands Integrated Water Resources Management	Sub-optimal management of soil and water resources required
Cultural and Religious aspects (such as protection of sacred groves)	Low	Not recognized by statutory law	Protection and Management based on customary arrangements IUCN and FIBA conducted a study on valorizing Natural Sacred Sites in The Gambia in 2011	Policy Brief was prepared and forwarded to IUCN and FIBA for onward discussion with stakeholders

Biodiversity in the Gambia is faced with several direct threats including the loss and fragmentation of the natural habitats due to deforestation, (the biggest one), wetland drainage, infrastructural development, overgrazing and poor farming practices, as well as, indirect pressures including human population pressure, and poverty.

At the national level, total annual exploitation of groundwater resources is less than 20 per cent of the annual recharge. However, because of the national water resources development strategy and the expanded horticultural development, the country is witnessing an escalation in the construction of boreholes which have led to over-exploitation and pollution (through the seepage of salt water into some bore holes) in specific urban areas such as Greater Banjul.

The increased use of portable water in the urban areas and growth centres will result in environmental health problems unless the Local Government Authorities construct adequate and effective drainage systems. Soil erosion by both water and wind is quite widespread throughout the country. The eroded soil material is usually deposited in the lowlands further compounding the problem of land degradation. An acidity problem is widespread due mainly to reduced rainfall and shortening of the fallow period.

The policy issues under the “status in Law” column in the table under this section should be moved to the analysis section taking note of other relevant laws and Acts such as the Forest Act 1998, Forest Policy 1995-2005, Biodiversity Policy 2000 -2010 and Act 2003 as well as the Local government decentralization Act 2000; the National Water Resource Council Act 1979 and the draft Bill 2001 and other relevant Bills.

The panel was informed that the Biodiversity Act is revised but yet to be validated. Indications are that currently the Gambian Laws are silent on Soil management. However, reference should be made to the provisions of the Forestry Act relating to protection of forests whose main purpose is to prevent soil erosion and stabilization of river banks.

Forest management plans and budgets

Budget Allocation	Annual in a Multi Year Planning Frame	Annual with no clear long-term horizon	Linkage to underlying pressures for deforestation	Stability and reliability of budget allocation	Remarks
At the Central Agency Level		Budget allocations are for protection, rehabilitation and implementation of participatory forest management.	Linked to the improvement of forest management endeavors	Fluctuates annually depending on revenue generated by the department and government subventions	Limited funds for addressing the drivers such as tree planting, sensitization and bushfire control activities.
Decentralize provincial level		No Budget line allocated			Decentralization initiatives not fully implemented
Lower Levels(Specify)		No Budget line allocated except at community forestry committee level where they are obliged to reinvest at least 40% from proceeds realized during CFMA phase on forest development activities.			Obligation enshrined in the terms and conditions of CFMA

The Gambia's population density of 128 inhabitants/Km² is one of the highest in Africa and forest resources are consequently under great pressure. This fact is not only of national concern but also of sub-regional relevance since the country forms a natural barrier to the spread of desertification southwards from the Sahel.

The construction of roads and provision of infrastructure such as electricity, schools, health centers and hospitals all over the country have resulted in the removal of considerable vegetation to accommodate these facilities.

As the population of the country increased from 1.03 million in 1993 to 1.36 million in 2003 with a continuous influx of refugees from neighboring countries due to the peaceful nature of the country, a lot of forest lands have been converted for settlement.

One of the current farming systems in The Gambia is shifting cultivation requiring farmers to clear and burn a piece of forestland, cultivate it for a period and abandon it for new sites. Also, the farming system is gradually moving towards mechanization and this practice requires the cutting of trees and uprooting their roots in order to have maximum efficiency to utilize the equipment (mould ploughs, sine hoes and tractors).

The demand for forest products such as firewood and charcoal for household consumption is increasing at an alarming rate. There is increased demand on timber for construction and for poles for fencing orchards and horticultural gardens. As the population increases demand for settlement and forest products also increases resulting to gradual conversion and degradation of the forest to meet population demands.

Although, subventions to the department of forestry on addressing the drivers of deforestation and forest degradation from the central government are low, national, international and community based organizations operating in the forestry and or environment sector are affectively involved in the restoration and rehabilitation of degraded forest lands with the participation of the affected local rural communities. The main objective of these initiatives is to build the capacity of the affected communities and to take ownership in addressing soil degradation problems. These interventions are usually done with the support of the department of forestry and wildlife management which provide the required technical services/advices. This department has technical capacity to deliver such advice and support but limited in resources to address the drivers of degradation.

The sector is constrained by the allocation of funds for the implementation of planned activities in addressing the drivers of deforestation and desertification which were mainly bush fires and uncontrolled illegal tree felling evident in the various parts of the country.

- Forestry as an institution is currently confronted with several challenges. Key among them is the functional capacity to provide the basic forest management requirements. This is due to less priority being given to human resource capacity building. Without proper coordination and availability of funds for a long term capacity building program and implementation of forestry activities, participatory forest management implementation which is the corner-stone of sustainable forest management would remain vulnerable.
- The gender dimension is missing which is crucial in resource management based on their roles.
- Forestry is a priority sector of GIEPA therefore; it provides much justification to support the international mechanisms and instruments so as to tap available resources in addressing the problems of desertification and deforestation as a priority.
- Perhaps this is the best place to address the issues of Gender in the management of the forest resource, or in the public goods section.
- How does the management of the resource impact on the livelihood of the communities?
- What role do women play in decision - making process considering their great dependency on the resource base, depletion of which has acute adverse impact on their lives and livelihood?
- What is the present constitution of committees and all other decision-making processes and bodies in the sector? How do we ensure that there is gender balance at all levels?

The score was based on the simple argument that in reality, serious consideration is accorded to the implementation of plans designed by the sector, even though they are confronted with budget allocation problems in addressing the challenges of deforestation and desertification as evident in some of their current interventions in the field.

Recommendations

In order to implement the various sector policies for the protection of the environment by guaranteeing availability of goods and services from a forest ecosystems, it is prudent to:

- (i) develop management guide lines and build capacity of local community stakeholders in the areas of biodiversity, soil and water conservation for sustainable production within the framework of food security
- (ii) popularize the ANR policy at local level by assuring the protection, effective and efficient management and use of public goods and services provided by forests ecosystems.

Meeting this criterion is considered a challenge as there are no specific policies and laws that make the allocation of resources for implementation of plans mandatory at the institutional level.

- (i) The aspect of sustainable forest management which serves as (i) the bed-rock of agricultural development (ii) contributes to the socio-economic development of the rural community and (iii) the effects of climate change should be taken into consideration in national budget allocation within the framework of poverty reduction strategies.
- (ii) There must be specific policy objectives on gender dimension (gender balance in decision making bodies).

7.6.3 SUPPORTING PRIVATE SECTOR SUSTAINABLE INVESTMENT IN FORESTS

LGI-Dim	Topic	Score			
		A	B	C	D
FGI 3 (i)	Country`s commitment to forest certification and chain-of-custody systems to promote sustainability harvesting of timber and non-timber forest products				
FGI 3 (ii)	Country`s commitment to SMEs as a way to promote completion, income generation and productive rural employment				

Commitment to forest certification and chain-of-custody systems

Forest Product	Relevance	Certification/CoC and Scale	Consumption Market Shares	Remarks
Timber	High	Not Applicable	Not Applicable	Forest policy & Act silent on the certification
Nuts/Honey	High	Not Applicable	Not Applicable	
Latex and dyes	High	Not Applicable	Not Applicable	
Charcoal	High	Not Applicable	Not Applicable	Production ban in the Gambia
Crafts (from forest)	High	Not Applicable	Not Applicable	

Forest certification is a formalized procedure whereby an independent certifier gives a written assurance that a forest is managed in accordance with agreed ecological, economic, and social criteria. A label informs the consumers that the products they buy come from certified forests. Thus, forest certification is an instrument which provides an incentive for sustainable forest management as it links producers and consumers in their responsible use of forest resources. Forest certification is both a market instrument and an economic policy instrument. This performance monitoring mechanism is highly appreciated in the field of forest management, however, from the interviews and literatures reviewed during data collection neither the department of forestry, communities nor private operators are registered with individual or groups accredited to certify the management systems applied in the various forest categories. Since, a greater percentage of the volume of timber consumed in the Gambia come from the troubled region of Cassamance, chain-of-custody will be rather impossible to apply in the country. Both the forest policy and Act are silent on the certification of forest products as a control or monitoring mechanism. This process is yet to be domesticated in the Gambian Forest Management concept.

The government has through forestry put in place policy options, strategies, and management tools such as MA&D to promote sustainable management and marketing of forest resources and the protection of the environment. However, no provision is in the statutory documents that make it an obligation to promote the marketing of forest certification in respect of import and/or export of forest products of both wood and non-wood products. Hence there are no provisions for “consumption Market Shares” and “Certification and Sales”.

Commitment to SMEs

The Market Analysis and Development (MA & D) approach enables local people to identify potential products/services and develop markets that will provide income and benefits without degrading their resource base. Poverty alleviation is addressed by identifying forest products that could be commercialized, and then developing/identifying markets for them. This increases individual and community revenue while at the same time encouraging people to protect forest resources through participatory forest management.

Once the products and resources have been selected and thoroughly investigated, the target group members start forming interest groups/enterprises¹¹⁴ around the potential enterprises.

Out of the net benefits for the participating community, 40 percent have to be reinvested on Community Forest (CF) development activities, the remaining 60 percent for community or village development activities. Additionally, communities involved in CF management benefit from 50 percent of all fines collected after penalty of an offence in a CF including fees to be paid for any forest produce removed or damaged.

In the 26 villages actively employing the MA&D methodology, 11 products are being marketed effectively: fuel wood, logs/timber, honey, palm-oil, handicrafts from Rhun palm-based products, Rhun palm splits, ecotourism (forest walks), tree nurseries, “kembo” posts. Revenue realized from the implementation of planned Community Forestry activities are collected by the Treasurer of the management committee. The President in consultation with the executive committee is charged with management responsibilities of the fund. CF committees are required to pay only 15% of revenue to the National Forestry Fund. The

justification for this payment lies in the fact that Community Forest committees benefit from services rendered by the Department of Forestry including technical capacity building training, surveying and demarcation of Community Forests. Forest improvement activities like enrichment planting are also supported by the Department of Forestry from the National Forest Fund.

Household incomes have increased considerably especially in areas where Eco-tourism, Handicraft, Branch firewood production and Honey enterprises exist. The Eco-tourism enterprises offers employment opportunities to indigenous members on a monthly basis during the tourist season (October to April) thereby improving the household income of those indigenous communities employed. The trained IGs on Handicrafts are compensated for the amount of work done through cash payment and sometimes they take up individual contracts to supplement their income. Honey production also attracts individual bee farming in the communities. Large quantities of honey and honey by-products are produced by individual bee farmers thus increasing their income base. Branch firewood production is done on individual bases but and mostly women groups are also involved.

This dimension was not disputed based on the forestry policy provisions and the provisions of Export Import promotion Act of GIEPA which places forestry in its list of priority areas.

Forestry Department through collaboration with FAO introduced the concept of MA&D for the promotion of SME at community level in view of supporting small to medium sized forest sector businesses on a sustainable base.

In the analysis section of this dimension, the net benefit for the community is 85% of the total revenue from the sales of any forest products sixty percent (60%) of which is used for community or village development and the remaining forty percent (40%) to be invested in the management of the community forest. The fifteen percent (15%) of the total revenue is paid to government into national Forestry Fund. The analysis is silent over the effective appropriation of the amounts as indicated above by both the communities and government.

The existence of monitoring mechanisms and their effective application for the effective monitoring of the use of the funds as designated by the Forest policy remains questionable. The MA&D model is being currently promoted by government and used by local communities in realizing financial benefits from their managed community forests. Thus the team is in agreement with the score of the consultants.

Recommendations

The necessary mechanisms should be put in place to encourage individuals to register with certification institutions for the exportation of forest products.

A Policy should be developed on customer satisfaction in respect of quality control, product control and improvement if it does not exist.

Based on the fact that the appropriate use of the funds and their monitoring could not be ascertained, effective monitoring mechanisms should be put in place in accordance with the forest Policy of 2010-2019.

The Forest and Farm facility concept should be introduced to help equip local people with better skills and opportunities to also access investments for sustainable forest management. Thus the capacity of local communities should be built on the fundamental knowledge of product and market development for marketing of products and on cooperate management strategy.

Develop business plans of SMEs and strategic planning skills in SME.

Develop stakeholder dialogue platform on forest enterprise profitability and its contribution to livelihoods.

7.6.4 LIVELIHOOD OF FOREST DEPENDENT COMMUNITIES

LGI-Dim	Topic	Score			
		A	B	C	D
FGI 4 (i)	Recognition of traditional and indigenous rights to forest resources by law				
FGI 4 (ii)	Sharing of benefits or income from public forests with local communities by law and its implementation				

Legal recognition of traditional and indigenous rights to forest resources

Forest reserves are de facto common properties, which are used by local communities to satisfy their daily needs in terms of fuel wood, medicinal products and construction materials. Local communities also derive a lot of food items, ranging from leaves, root-tubers and bush meat from forest reserves especially during the hunger season.

With the down turn in the agricultural sector due to marketing difficulties, a lot of rural households are now turning to the forests for commercial production of firewood and charcoal. Forest reserves also act as fertile land reserves for local farmers most of whom cannot access conventional agro chemicals to increase their productivity.

Irrespective of government’s inputs, the involvement of the surrounding local population is crucial for the sustainable management of forest reserves. Further ways of strengthening their involvement like sharing of revenue from licenses with them should be considered.

Regulation 12 (1) of the Forest Regulations grants to any person residing in rural areas limited user rights within the forest before the preliminary phase. According to this regulation, upon the CFMA award, the access to and the use of the community forest shall then be determined by the by-laws.

Many of the requisite conditions for success of participatory forest management are currently in place in The Gambia – access to forest resources, well-defined user rights, clear forest management strategies, and capacity building (Thoma & Camara 2005). Some of these outcomes are the result of implementing synergistic policies like the 1998 Forest Act, the 2003 Local Government Act, and the 2010-2019 Forest Policy which promotes the transfer of forest management to local communities.

The Gambia now has a Forest Policy 1995 & 2010 that specifically calls for community forest management undertakings as well as private forestry. The policy also calls for community ownership of the forest resources being managed by them and the benefits

accruing there from, while calling on the Government to provide technical assistance and guidance to the participating communities and individuals through the Forestry Department.

The Forestry Bill of 2010 incorporated the use of chainsaws in Gambian forests and as well as re-export of timber. Recently, as at the time of this assessment, the Ministry of Forestry and the Department of Forestry conducted a briefing session with the National Assembly select committee on Agriculture and Natural Resources on the draft bill. According to the Acting Director of Forestry (UNCCD Focal Point), indications are that at the next session of the Assembly the bill will be duly tabled.

Despite the fact that the current policy recognizes the rights of the communities surrounding Forest Parks as well as their rights to access, we are still faced with the challenge of engaging these local communities in dialogues so as to contribute their ideas and traditional knowhow to forest management systems. Thus the concept of government reserving the rights of doing things based on their views remains a challenge.

The existing laws and policy of the Forestry sector encourages the participation of local communities and the private sector in forest resource conservation and management. Security of access and use is guaranteed to local communities especially those around and within forest areas for domestic use only without any levees/charges. However, it is a different case if intensions are for commercial purpose (use), in which case, access is restricted to authorization by law.

Sharing of income and benefits from public forests with local communities

During the start-up phase of participatory forest Management, the villages have no usufruct rights over the forest yet. They are however, allowed to collect forest products for household consumption and forest grazing for their animals. They are also allowed to keep any income realized from the sales of minor forest products originating from the implementation of their fire management plan for example.

In addition to free collection of household fuel, during the preliminary implementation phase, the communities are entitled to all the proceeds emanating from the sale of products from firebreaks or fruits and other minor forest products. The entire funds generated during this phase are for community and forest development uses. The Forest Act 1998 obliges local communities to spend 60% on village development and 40% on forest development operations or activities. During this phase FD will cease to issue exploitation permits for the proposed CF area, and the community has the right to deny access to non-community residents to the reserve.

According to the Act, during the final phase of implementation the community keeps 85% of the proceeds from the sale of forest products and pays the remaining 15% to the National Forestry Fund. The committee representing the community is also obliged to re-invest about 40% of their income on forest improvement or protection. The remaining 60% can be spent on community-based projects like clinics, repair village water systems and vegetable gardens. There has been no recorded incidence of money divided among the villagers. It is also spent on community projects. Individuals can however get credit especially during the rainy season. Revenue distribution for Jointly Managed Forest Parks is done on equal basis between Department of Forestry and the participating villages.

In the implementation phase, communities, especially the women have the possibility to engage in branch wood commercialization. To further assist women, FD reduced the tariff on branch wood commercialization by 25%. Villagers have free access to fuel wood and other minor forest products for domestic consumption. To ensure prudent financial management, the committee is mandated to open an account with nearest local bank.

Even though the policy advocates for benefit sharing of incomes generated from forests, this only applies to community managed forests (CF) with the local communities directly involved in the management of community forests close to them based on the management agreements signed between government (Forestry Department) and the communities.

It is strongly believed that the local communities were not adequately consulted in deciding on the proportion or amount that they would be benefiting from. These community forests were one time public forests now entrusted to community management.

The concept of “Joint Forest Park management” recently introduced as a system of state forest park management that involves both communities and the state, does not give a clear provision for benefit sharing.

Sharing benefits or income from public forests with local communities is apparent, but confined to community forest and limited to those communities directly involved in community forest management. Thus the sharing of benefits from non managed public forests and state managed forest is yet to be experienced. Therefore, provisions for sharing of benefits generated from all kinds of forest uses are really not being effectively implemented for all categories of forests in The Gambia. None of the scores fits the country situation. However, the statement of score “A” is qualified with the insertion of the words “Community Forests” to accept the consultant’s score.

Recommendations

- Engage local communities in capacity building in view of sharing management responsibilities and help contribute their ideas and knowledge in forest governance and management.
- Consolidate efforts to recognize and respect all legitimate rights of people who have interests in forest lands.
- Promote integrated forest land management.
- Promote and facilitate the engagement of legitimate tenure rights.
- Shorten the current administrative procedures for concluding tenure arrangements in the transfer of state forest land areas to community managed forest areas.
- Support local communities (people) to contribute their ideas and knowledge in helping to ensure that forest policies improve their livelihoods, food security and the sustainability of the productive forest that they rely on.
- Enhance the capacity of local community representatives and other non state actors engaged in forest resource management so that they can engage in local, regional and

national level policy dialogues and decision making processes that will influence the future of forests on a sustainable basis.

- Enhance a more equitable and inclusive governance and financial mechanisms at national, regional and local levels.
- Communicate and disseminate key information to local communities in respect of legal provisions on benefit sharing in the various categories of forests.
- Consolidate efforts to recognize and respect all legitimate rights and the people who hold such rights to forest lands and promote integrated forest land management.

7.6.5 Forest land use, tenure and land conversion

LGI-Dim	Topic	Score			
		A	B	C	D
FGI 5 (i)	Boundaries of the countries forest estate and the classification into various uses and ownership are clearly defined and demarcated				
FGI 5 (ii)	In rural areas, forest land use plans and changes in these plans are based on public input				

Boundaries of varies types of forest parks and conflict management

• Forest Parks

Forest parks are forests designated as such in accordance with section 49 of the Forestry Act 1998 and which are exclusively managed by the Forestry Department. They are state forests that have been gazetted with the objective to secure permanent forest cover. Any conversion of a forest park or parts of it into another land use or any alternation of the park border requires re-demarcation and re-designation.

Forest parks shall be managed for the purpose of forest production, demonstration of forest management techniques, training of forestry staff, local communities and other persons involved in forestry activities, for applied research and for conservation as foreseen in the Gambia Forest Management Concept (GFMC). The GFMC aims to create a nucleus approach to forest management by integrating community forest management into the forest park management system.

The conventional forest management approach of the forest parks led to soured relationships and the alienation of the rural communities. According to the re-survey result of 1986 of FPs, a total of 2,068ha of forest parks area being lost through conversion into farmlands and for human settlement every year. Bushfires and other illegal forest activities also remain high. As a result, most of the objectives for which forest parks were established could not be achieved. The Forestry Department has never met the required resources to prepare, develop and implement plans for the sustainable management of the parks.

- **Forest reserves**

These are all other state forests outside the boundaries of forest parks, community forests and private natural forests or plantations. There is a limited management system for the forest reserves; control of utilization of forest reserves is done through permits and licenses.

- **Community forests**

Community forests are forests designated as such in accordance with section 68 of the Forest Act 1998, and which are owned and managed by the designated communities. Under section 60 (1) of the Forestry Act, any forest committee, on behalf of a community or group of communities, may apply to obtain ownership rights over forests located on their customary lands by submitting an application for a Preliminary Community Forest Management Agreement (PCFMA) to the Forestry Department.

The PCFMA is a tentative agreement which serves as a testing phase for the Forestry Department and the community collaboration in forest management lasting for a maximum of three years. The management responsibilities for the forests in question are put on the shoulders of the local village forest management committees who act as the interface between the Forestry Department and the larger local community.

The PCFMA is evaluated after three years, and if the communities are deemed successful with the implementation of their preliminary forest management plans, a Community Forest Management Agreement (CFMA) is concluded leading to a permanent transfer of rights and responsibilities. This status can only be revoked if the community violates a major clause in the CFMA like changing the land use.

The challenge to resist the temptation to over exploit the forest for quick gains for the village is a serious threat. With the downturn in the agricultural sector, many villagers are resorting to the forest to earn a living. There are cases of community forest villages doing illegal forest utilization in the name of village development. This attitude is reinforced by the “island approach” many of the villagers have towards forest protection and management. Villagers often jealously guard their community forests at the detriment of the nearby state forests. Currently, 319 community forest areas are demarcated in the Gambia with a total land area of 28, 508.41ha.

- **Conflicts during Participatory Forestry Implementation**

With reference to statistics developed by the Department of Forestry staff and collaborating institutions during conflict management training in Pakalinding in 2006, 100 conflicts in 93 sites occurred so far during the CF Implementation process nationwide. Issues leading to the conflicts ranged from customary ownership conflicts, over management problems related to benefit sharing within a village or between several managing villages to conflicts related to mismanagement and illegal forest activities. Sixty seven out of these conflicts are yet to be solved or managed and thus hampering progress on CF approach or smooth management of Community Forests in The Gambia.

Most of the conflicts on CF Implementation occur during the start-up Phase and they are usually related to CF site identification, obtaining the Statement of the Neighboring Villages (SNV) and during the demarcation process. Most of the conflicts encountered during the Preliminary Phase are related to management issues. These include encroachment, illegal forest activities as well as community participation in CF planned activities. Only one conflict emerged so far during the legal designation procedure of Community Forest.

- **Relevance of Conflict Resolution for The Gambian CF Approach**

Support and service institutions facilitating the establishment of CF at rural level never received a special training in Consensual Negotiation Process or Interest Based Negotiation except one, organized in 2006 through FAO and the German Funded Forestry Project. Conflicts are thus often ignored or side lined since no adequate approaches or tools to address them are known to the field staffs.

Increasing population growth, Agricultural development and settlement expansion might still increase the pressure on forest lands in future, and thus may contribute to conflicts related to Participatory Forest Management. Conflict management and resolution is thus a crucial task of the Department of Forestry in collaboration with the Local Authorities and training in this aspect is highly needed to be able to manage more of the existing and future conflicts related to CF. This should contribute to the attainment of the Forest Policy objectives of handing over 200,000 hectares of forest to the local communities by 2019.

- **Private Natural forests and private plantations**

Private forests are forests growing or planted on lands privately owned and or leased in accordance with the relevant land legislation and whose management is subjected to conditions as specified in sections 74 and 76 of the Forest Act. While there is a relatively long history of private sector involvement in plantation management, private participation in natural forest ownership is just beginning. In line with the Government's divestiture programme, the Forestry Policy encourages private participation in both natural forest tenure and plantation establishment. Some of the incentives provided to induce private investment involvement include tax exemption and technical support from the Department of Forestry in the preparation of management plans and forest inventories. The owner of a private natural forest or plantation does not have to make any payment to the National Forest Fund.

Back in mid the 1980s, the government privatized a saw mill owned by the Forestry Department as part of the Economic Recovery Programme to Muktara Holdings, a private company. With the deal, the company had the privilege to buy logs from the state-run *Gmelinaarborea* plantations. Muktara Holding had since then established a 100 hectare Gmelina plantation at its farm in Bonto about 45km from Banjul. And Dr Njambi Touray of Gunjur is currently managing 100ha of natural forest.

- **Wildlife Protected Areas**

Wildlife forms an important component of the country's biotic assets from both the ecological and economic view point. There are seven (7) wildlife protected areas covering a total land area of 40, 000ha constituting 4.1% of the countries land area. According to available data, these parks serves as a habitat for 180 species of wild animals in the Gambia of which 13 species are extinct and a similar number threatened with extinction.

- The classification and demarcation of the limits of state forests was done in the early 1950s through the traditional chiefs and village heads. These boundaries were resurveyed in 1986 with the erection of sign boards and boundary pillars. However, the boundary pillars and sign boards of some parks are missing as evident from the recent forest assessment exercise. This creates problems in boundary identification.
- With recent increase in pressure on land due to increase in population and demand on other land uses including farming by the local communities, the

government is confronted with the challenge of encroachment and maintaining the boundary limits of the demarcated state forest and have limited control over public forest areas even though communities do not vehemently challenge the authority of the state.

The survey and demarcation of state forest boundaries as well as the displacement of boundary pillars and sign boards is well documented in official reports; but what is not evident, is record of any disputes over state forest lands between the state and any local community.

Forest land use plans

Despite the significant progress made in respect of promoting sustainable forest resource management through the participation of other stakeholders such as the local communities and private sector, considerable challenges remain which require urgent attention to increase transparency at the local community level in developing land use plans as well as participate in policy dialogues for effecting changes in these plans.

Recommendations

- The Forest policy is silent on dispute resolution over forest land areas. Thus this needs to be considered in the next policy review.
- The resurvey and re-demarcation of forest parks and reserves need urgent action.
- There must be specific indicators to take on board gender dimensions, gender balance in decision making bodies considering the contribution of women in resource management and use.
- Promote an effective system of democratization at local and national levels to empower a broad range of stakeholders in particular the local communities to participate more fully in national-level policy processes with increased transparency and a stronger voice on forest related issues.
- Support the development and updating of forest management plans with the participation of local communities and other key stakeholders.
- Consolidate efforts to recognize and respect all legitimate rights and the people who hold such rights to forest lands.
- The aspect of implementing legitimate tenure rights should be considered in developing sustainable forest resource management plans with a view to promoting and facilitating the implementation of legitimate food reduction strategies and policy reforms for community-based resource management.

7.6.6 CONTROLLING ILLEGAL LOGGING AND FOREST CRIMES

LGI-Dim	Topic	Score			
		A	B	C	D
FGI 6 (i)	Country's approach to controlling forest crimes, including illegal logging and corruption				
FGI 6 (ii)	Inter and intra agency efforts and multi-stakeholder collaboration to combat forest crimes, and awareness of judges and prosecutors				

Approach to controlling forest crimes, illegal logging and corruption

Based on the information in other sections of the report of the consultants, the panel shared the view that illegal and/or uncontrolled exploitation is very advanced in the forest parks and has negated all efforts invested in the sustainable management of the various categories of forests. This section should also reflect efforts invested in controlling forest crimes at both state and community forest levels in respect of exploitation of forest resources. There is enough evidence in the field that reflects the level of exploitation of both wood and non-wood forest products.

The over exploitation of forest resources through illegal activities in forest areas by communities is generally as a result of the need to meet daily subsistence needs. Thus the forest serves as their back-up in addressing their poverty related constraints. The level of exploitation and state of the forest parks especially the state forests is not frequently and adequately monitored except during the forest resources survey conducted in 2009/2010 through the support of FAO under a TCP.

Government monitors forest crimes only infrequently and makes no significant investment in efforts to control it as evident in the level of the department's capacity in protecting and monitoring the state of the forests.

Efforts to combat forest crimes

Local law enforcement agents play a leading role in the protection of the Gambia's environment. Currently, many law enforcement agents are unaware of numerous recently enacted environment related laws and policies, in relation to their responsibilities in halting the flow of illegal forest goods. Additionally, many NGOs and local authorities working in the Provinces are not aware of land and tree tenure rights. This lack of knowledge directly affects NGOs and local authorities' ability to function effectively and often leads to further confusion or even conflicts among the general populace.

At Regional level, the local government authority has the main function of endorsing PCFMA applications, resolving land use and ownership disputes, and generally promoting and supporting CF start-up and implementation.

As chairman of the Regional Technical Advisory Committee (TAC), the governor is expected to strongly support forest conservation and the prevention of bush and forest fires by ensuring adequate prosecution and arbitration of forest offences. Furthermore, the governor is expected to act as an arbitrator on land use and ownership disputes between districts heads and local committees. As a member of the regional licensing committee, the governor is also involved in issuing forest products utilization permits and licenses.

The district chief and district council have the main function of advising and supporting communities in identifying potential CFs, resolving land use and ownership disputes, testifying and verifying customary land ownership among communities, and promoting and supporting CF start-up and implementation.

The district chief and his council constitute the tribunal court and arbitrate as such on land ownership disputes. Upon conclusion of the CFMA, the court also judges over violations of community forest management by-laws. District Chiefs, Alkalolu and councilors are by law responsible for the protection of the lands situated in their district from the ravage of forest and bush fires (sections 71, 139 & 146 of the Local Government Act and Local Government Regulations Part II, section 48 (2). Forest Regulation 2000 Part III, section 16 – 24 also clarifies the roles of the district authorities in bushfire management. These authorities are involved in all matters involving forest and bush fire prevention, the execution of controlled burnings, and any fire occurrence regardless of whether the forest has the status of a community forest, forest park or forest reserve.

The Multi-Disciplinary Facilitation Teams are an existing structure for enhanced corporation between the civil service sectors, aiming to merge activities and thus avoid repetition or conflicting activities and to share human and material resources. Therefore extension officers are sensitised in the basics of other sectors' concepts and approaches to facilitate rural development activities.

The panel shared the opinion expressed in respect of the leading roles played by different stakeholders such as state agents, local government authorities etc. However, the panel maintained that there is little or no inter sectoral and/or intra sectoral coordination of activities to address forest crimes.

The level of comprehension of the forestry staff of the forest policy Act and Regulations was questioned.

Due to the inadequate comprehension of the Forest Policy in respect of its implementation in combating forest offences and crimes, and the absence of clear evidence of inter sectoral collaboration with other agencies/stakeholders especially the civil society, NGOs and private sector, the score is “D” as opposed to the consultants' score of “C”.

Recommendations

- Government should support the institutional capacity building of the forestry Department and other collaborating public institutions and local communities related to sustainable natural resource management.
- The capacity of Districts Chiefs, Village Heads and the Judiciary should be enhanced on the fundamental knowledge of forest resource management as well as on the policy and laws governing the forests.

Recommendation for Consolidation and Expansion of Participatory Forest Management

Although The Gambia is known to be the home of Community Forestry in Sub- Sahara Africa because several CFs have been designated, shortcomings exist in relation to:

- the development of forest management plans, enterprise development plans and support of their implementation to ensure proper management of the forests;
- conflict resolution and management in order to further increase the area under CF management and to ensure sustainable management of existing CFs;
- facilitating the conclusion of forest management agreements to ensure tenure security for the local communities; and
- the realization of new sensitization campaigns such that area under CF could be widened

The DoF field staff need to be better equipped in terms of mobility, stationeries, materials as well as training in order to be able to ensure sustainable implementation of the CF approach, Joint Forest Park Management as well as to start the implementation of Community-Controlled State Forestry (CCSF) as foreseen on the Forest Policy 2010-2019 and Forest Bill 2012 and enshrined in the revised Gambia Forest Management Concept (GFMC).

One particular observation in the analysis of forest tenure issues has been the clear absence of NGOs and other civil society organizations. More involvement of NGOs to play the advocacy role of reducing state dominance in forest tenure, and help in the resolution of the numerous conflicts that are emerging and derailing the course of community forestry is required. The continuous rise in the level of participatory forest management related conflicts poses a serious threat. NGOs can also provide vital links between the communities and marketing channels.

- Formulate a plan for the involvement of all stakeholders in policy dialogue in order to enlighten individuals on forest crime control strategies and mechanism.
- Organize a forum on enlightening people on the impacts of corruption in forest resource management.
- Introduce the concept of Forest and Farm facility to promote cross-sectoral coordination and further enhance the organization and capacity of local people and communities so that they can engage in policy dialogues and decision making processes at all levels.

8. POLICY ISSUES AND RECOMMENDATIONS

The following are the key policy implications that LGAF expert panels derived for further consideration by relevant government authorities. Annex 10 summarizes the policy recommendations by thematic area.

Given the current absence of a land policy, a clearly articulated and integrated national land policy needs to be developed as a top priority. This policy should include proposals on shelter delivery and on strengthening women's land rights, along with implementing legislation. A first step towards policy development would be the establishment of a National Land Commission in accordance with the 2007 Act. With respect to land administration, the weak legislative framework for mapping, titling, street naming, and registration needs to be addressed, and the Survey Act of 1991 should be reviewed to ease up what is perhaps one of the most time-consuming aspects of the leasing process: the preparation of cadastral maps. The legislative framework should be reviewed with a view to addressing the need for all encumbrances to be registered, to ensure that interests in all registered land are recorded and apparent. Institutional procedures guiding the recording of charges should be clearer and more consistent.

Likewise, a legislative review of all land acts as well as their implementation needs to be undertaken. Overlaps and gaps have to be addressed through legal reform and the putting in place of comprehensive regulatory mechanisms to support processes and procedures. Equally, sector legislation needs to be reviewed and reformed. In addition, reflection is needed on approaches for customary law codification and reform to enhance the robustness of customary law and align it with national objectives for rural development and poverty reduction. The Local Governments Act should be reviewed to redefine the role of traditional rulers in the management of land, in particular the *alkalos*. The State Lands Act should be reviewed, as the provision whereby land can be designated state land is the source of many conflicts.

An institutional framework for integrated and sustained land use planning capacity needs to be built, given the weaknesses in planning at the moment. Except for forestry, state land is not being managed. Vacant lands without private ownership should be comprehensively planned, including public amenities.

Moreover, mechanisms for the coordination and sharing of information between the land agencies could help fill in the gaps in the current maps and master plan, and should be encouraged in the short term. Equally, the requirements for building permits (surveying, planning, and demarcation) can be used to update future master plans. However, since data on current land use nationwide across all sectors is lacking, new data must be collated through a nationwide exercise. This exercise should include all subsectors and should result in the production of up-to-date topographic land use maps, including available state land. Land use procedures (for example, a manual of procedure) and processes that are transparent, appropriate, and participatory should be put into place. In particular, the absorption of land by the government for any purpose, as well as the granting of leases, must follow specific guidelines, which need to be laid out, and must be done transparently. In addition, such records should be made available to the public. To improve capacity, a comprehensive staff audit, recruitment, and training are required. Improved revenue generation, user fees, and donor support are also necessary.

There should be a degree of transparency involved in the allocation or sale of public lands, particularly if the allocation or sale is conducted by public institutions. The sale of public lands should rest in the hands of an independent land agency, and the central government should be discouraged from conducting such sales. There should be guidelines for the sale of public land for the sake of consistency. All land agency sales should be advertised and conducted by way of tender. Records of public land sales should be inventoried and displayed at the respective land agency. Unfettered access should be available by members of the public to information on all allocations and or sales of public land.

The government should set up a policy review panel to look into all aspects of public land sales, with a view toward creating the appropriate environment for shelter delivery via the creation of residential layouts and the sale of land to people. The government land sales policy for residential use should not be revenue motivated, but intended to create an environment for an effective ‘shelter delivery’ system which reflects the aspirations of the people.

Policies must be developed and strategies put in place for controlling the widespread practice of individuals acquiring vast tracks of land from customary owners for speculative purposes. The practice will generate future scarcity and may force the government to expropriate land for public interest at significant costs.

Compensation should be given in a consistent and uniform manner. In the interest of fairness and transparency, the formulation of a set of regulations that can be uniformly applied for expropriated lands, whether registered or unregistered, is required. All valuations for expropriations should be done by private consultants. There should be a statutory timeline for the payment of compensation and penalties awarded for delay. Prompt compensation for expropriated land engenders confidence in land governance, especially when such expropriations affect the most vulnerable sectors of society. The process of compensation ought to be first resolved before being put to the required use; otherwise, unnecessary conflict is created.

The full mapping and demarcation of all lands and an efficient system for registration of land rights should be pursued and established. Likewise, the formalization of the land and housing sectors needs to be pursued. Additionally, there is a need for the comprehensive and accurate updating of cadastral maps. Moreover, an efficient property valuation system, including a system of identification and street naming, needs to be established, supported by an effective strategy for outsourcing selected components of the valuation and collection systems to enhance effectiveness and efficiency. A robust and modern registration system is required. This implies the creation of a digitized and automated land registration system that has a database that is accessible to all stakeholders, and that would have built into it sufficient safeguards for the protection and upkeep of land records. Stamp duties should be revised downwards, since the capital gains tax – which is a minimum of 5% for an individual and 10% for a company – has to be paid by the seller. At the same time, quality and service standards should be improved, and cost-effective pricing of services should be devised in order to ensure sustainability. In order to accomplish this, capacity building on key skills should be undertaken and a framework for outsourcing cadastral support services should be developed.

A legislative review is necessary to remove jurisdictional overlaps among first instance courts. The numerous decisions on land should be compiled and collated to form a compendium of cases to guide the courts on the applicable land law, and judges should have capacity in land matters and land law. Although many forums for dispute resolution exist in the Gambia, the low level of awareness of land conflict resolution mechanisms implies the need for public sensitization. The 39 district tribunals are the court of first instance for a majority of the people, and customary law is what applies to land in the regions. Thus, the jurisdiction and composition of the tribunals should be reviewed, and the perceived lack of independence of district tribunal members needs to be addressed. They should be constituted by independent persons of undoubted integrity in the community who are knowledgeable in customary law. Likewise, district tribunals should be fully brought under the administrative supervision of the judiciary and their members appointed by the Judicial Service Commission. The governors should not have any review jurisdiction over tribunal decisions. To improve the effectiveness of the ADR system, discussion is needed on whether the *seyfolu* and *alkalos* should be incorporated into the ADR system and how to enhance adherence to ADR decisions reached after mediation. Finally, a system of appeals from rent tribunal decisions needs to be established.

The effective management of forest lands will require an action plan for the implementation of the Forest Policy 2010-2019 and the Wildlife Policy and Bill 2013-2022, as well as improved human and institutional capacity. Moreover, there is a need to encourage gender mainstreaming in forest management and to promote the creation of public-private partnerships for sustainable forest conservation.

The LGAF process in the Gambia served to highlight areas of strength and weakness in the land management systems and practices of the country. Overall, land rights have solid legal recognition, including the rights of communities to forest resources. Similarly, the country has a number of formal and informal mechanisms for dispute resolution that are accessible to local populations. Yet critical gaps remain in other aspects of land governance, particularly with respect to the absence of a unified national land policy and a severe lack of planning capacity and weaknesses in land administration. The LGAF process involved the broad and active participation of a wide range of stakeholders from within and outside government and from the central to the local level. This demonstrates a growing commitment to start addressing land issues in order to ensure the prudent and sustainable management of Gambia's limited land resources, which are central to poverty reduction, national food security, and sustainable urban development.

9. Conclusion

The LGAF process in the Gambia served to highlight areas of strength and weakness in the land management systems and practices of the country. Overall, land rights have solid legal recognition, including the rights of communities to forest resources. Similarly, the country has a number of formal and informal mechanisms for dispute resolution that are accessible to local populations. Yet critical gaps remain in other aspects of land governance, particularly with respect to the absence of a unified national land policy and a severe lack of planning capacity and weaknesses in land administration. The LGAF process involved the broad and active participation of a wide range of stakeholders from within and outside government and from the central to the local level. This demonstrates a growing commitment to start addressing land issues in order to ensure the prudent and sustainable management of

Gambia's limited land resources, which are central to poverty reduction, national food security, and sustainable urban development.

10. ANNEXES

ANNEX 1. GLOSSARY

Albreda	-	A historic settlement on the North Bank of the River Gambia
Alkalo	-	Village head
Arch 22	-	Is a tall, white arch at the entrance of Banjul.
Banjul	-	Banjul is an island on the mouth of the River Gambia. It is also the Capital city of the Gambia.
Basse	-	Basse is one of the largest towns in The Gambia located in the Upper River Region.
BatoKunku	-	Is a small coastal village located in Kombo North, it is made up mostly of TDA land.
Brikama	-	Is the headquarters of the western division. It is has the highest population and is one of the largest cities in The Gambia
Cape Saint Mary	-	Kombo Saint Mary was formerly referred to as Cape Saint Mary.
Cadi courts	-	The Cadi court is the court of first instance for Shar`iah law and it comprises of 3 members.
Cadi Appeals Panel	-	This is the appellate court for decisions reached at the Cadi Court and it comprises of 5 members.
Commissioner	-	The administrative head of a division.
Condominium	-	Revised so that it means apartment.
Council	-	Refers to area councils.
Customary	-	The usual practices of a given settlement.
Decentralization	-	Distribution of power from the central Government to local arms.
Dimension	-	The sub-section of each Land Governance Indicator.
Families/clans	-	A group of people related either by ethnicity or blood, sharing common interests and residing within the same area.
Fajara	-	Is the suburban part of Bakau and is one of the first suburbs in The Gambia. It is located along the Coast.

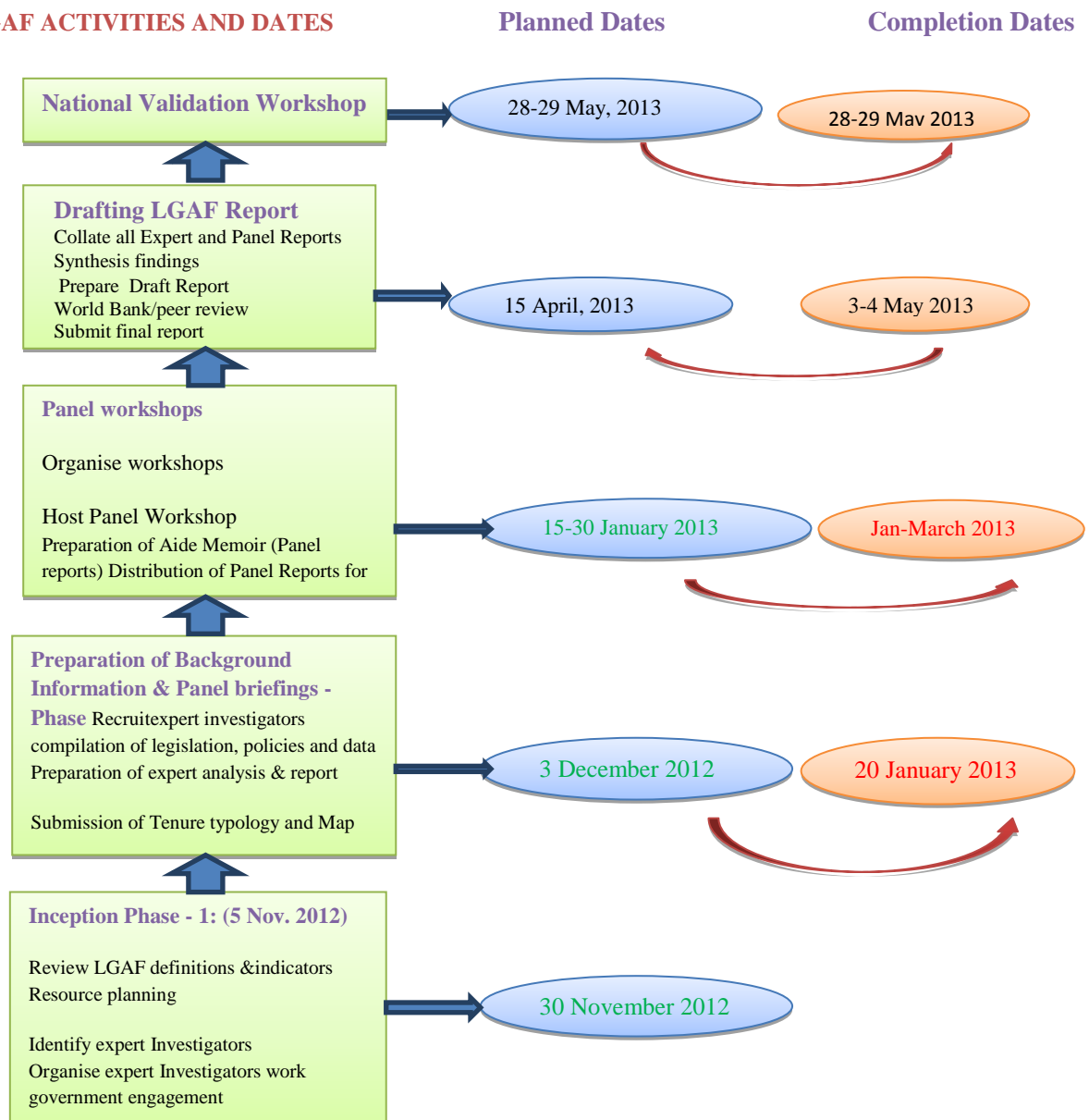
Farafenni	-	Farafenni is a trade town located on the Trans-Gambia highway on the North Bank of the River Gambia, it is also one of the three growth centres pointed out by the 1985 GBA master Plan.
Fenta	-	A private architectural firm in The Gambia
Freehold	-	An interest in land which can be held for life.
Foni	-	Foni is one of the 9 districts in Western Region.
Governor General	-	The representative of the monarchy in the colonies.
Ibo Town	-	Ibo Town is a small settlement near the buffer zone and Church hills Town.
Island of Banjul	-	Refers to Banjul, the capital city of The Gambia
Jangjangburreh	-	Jangjangburreh formerly known as Georgetown is located on the bank of the River Gambia in the Central river Region.
Kabilos	-	It is the equivalent of the English 'clan'. But to be called a kabilo, they have to be from the same village.
Kafo	-	It is the equivalent of the English words 'association' and 'group'
Kembo	-	Mandinka word for Charcoal
Katchikally	-	Small area in Bakau with sacred Crocodile
Kombo-Foni	-	In 1906, Kombo-foni was part of 5 administrative areas created.
Kotu Quarry	-	Kotu Quarry was used for sand mining/ extraction to build homes. Mining was later stopped but because of the large holes left by the mining and the risk of flooding people were prohibited from living. Notwithstanding the prohibition, people are now more than ever settling in the quarry.
Lands Agencies	-	The various land agencies involved in land Administration/management
Lands Commission Act	-	'An Act to provide for the establishment of the Lands Commission to mitigate the problems of land allocation and improve land administration in The Gambia, and for connected matters'.

Lands Provinces Act	-	“An Act to make provisions for the tenure and management of lands in the provinces”
Land Registry	-	Refers to the registry of land which is located in the Ministry of Justice Land use planning exercise 1985-2000
Leasehold	-	Property acquired under a lease
LGAF manual	-	Refers to the manual containing the procedures to be used in conducting the LGAF
Mansa Konko	-	Mansa Konko is a large town near soma Lower River Region. It was an administrative centre for the British in the colonial days. It derives its name from mandinka meaning ‘kings hill’.
MacCarthy Island	-	MacCarthy Island/Georgetown were the colonial names for Jangjangburreh. It got the name MacCarthy Island from then Governor general Sir Charles MacCathy. It is located in Central River Region.
National Assembly	-	refers to the Gambia Parliament.
Ndangan	-	It is a swamp land settlement behind New Jeshwang in the Kanifing Municipal Area. It is known for oyster gathering.
North Bank	-	The North Bank Region of the Gambia
Peri-urban	-	An area between the suburbs and the rural areas.
Physical Development Plan	-	Refers to infrastructural development
Protectorate	-	was used to describe the additional land acquired by the British under the 1889 Anglo-French convention which were not part of the original colony.
Regions	-	Refers to the divisions of different parts of the Gambia. There are 5 regions in the Gambia. The term ‘region’ replaced the term ‘division’
Rhun Palm	-	Rhun is a type of palm. Its stem is used as wood in Construction the juice from its pod used to make alcoholic beverages.
Seyfo	-	Head of a district
Shariah	-	Islamic law

Sinchu Alhagi	-	An urban village - KMA
Soma	-	Soma is located in the Lower River Region on the Trans-Gambia Highway
South Bank	-	Refers to the South bank of the River Gambia
State Lands Act	-	The Act applies to land in Banjul and Kanifing and to any other lands that the minister may.
Sudano-Sahelian	-	Refers to the Sahel Region
Supreme Court	-	The Highest Appellate Court
Upper River	-	Upper River Region
Urban growth centres	-	These are places identified to grow and serve as centers for investment.

ANNEX 2. LGAF TIMELINE

LGAF ACTIVITIES AND DATES



ANNEX 3. REVISED LGAF DEFINITIONS: CONCEPTS AND TERMINOLOGY

Terminology	Revised terms/definition	Justification
Condominium and definition “Group” means	Apartment	The term “condominium” is not a term in common use in The Gambian property sector. It was substituted with the term “apartment” which, although not a legal term, is in general use.
Conveyance	Amended to include an assignment	Considering that a significant part of land in the Gambia is held as a leasehold interest (formal and informal), the definition of the term “conveyance” was amended to include “assignment”. “Conveyance” is a legal term generally reserved for the transfer of freehold interests. “Assignment” is the term used for the transfer of leaseholds and other personal and secondary rights over land. This was also more consistent with the definition of “Disposition”.
Group	Redefined to mean: “an economic and/or social group that works towards a mutually accepted objective with rules and regulations governing the activities.”	The definition of ‘group’ in the manual was the subject of extensive discussion by the experts in regard to LGI-1 (iii) and (iv) - recognition of rural and urban group rights. Group is defined by the Manual as: <i>“a collection of households residing in a locality and operating under some common organization or set of rules and norms, with or without formal recognition of the state. In rural areas these groups include indigenous, nomadic and pastoral communities. In the urban context these groups include organized informal settlements, collectively organized migrants who cluster in a particular locality and clusters of traditional communities.”</i> The Expert consensus was that this definition did not apply to local context. The term was redefined to mean an economic and/or social group that works towards a mutually accepted objective with rules and regulations governing group activities.
Informal	Extended to cover ‘unplanned’ settlements	The concept of “informal settlements” was extended to cover “unplanned” settlements in LGI 3(v). It was agreed ¹¹⁵ that due to unique features of urban development in The Gambia, the incidence of ‘unplanned settlements’ was much higher and more relevant than ‘informal/illegal’ settlements as the growth of urban sprawls without planning is the more pressing issue than ‘illegal settlements’.

¹¹⁵Panel of Experts Urban Land Use Planning and Development

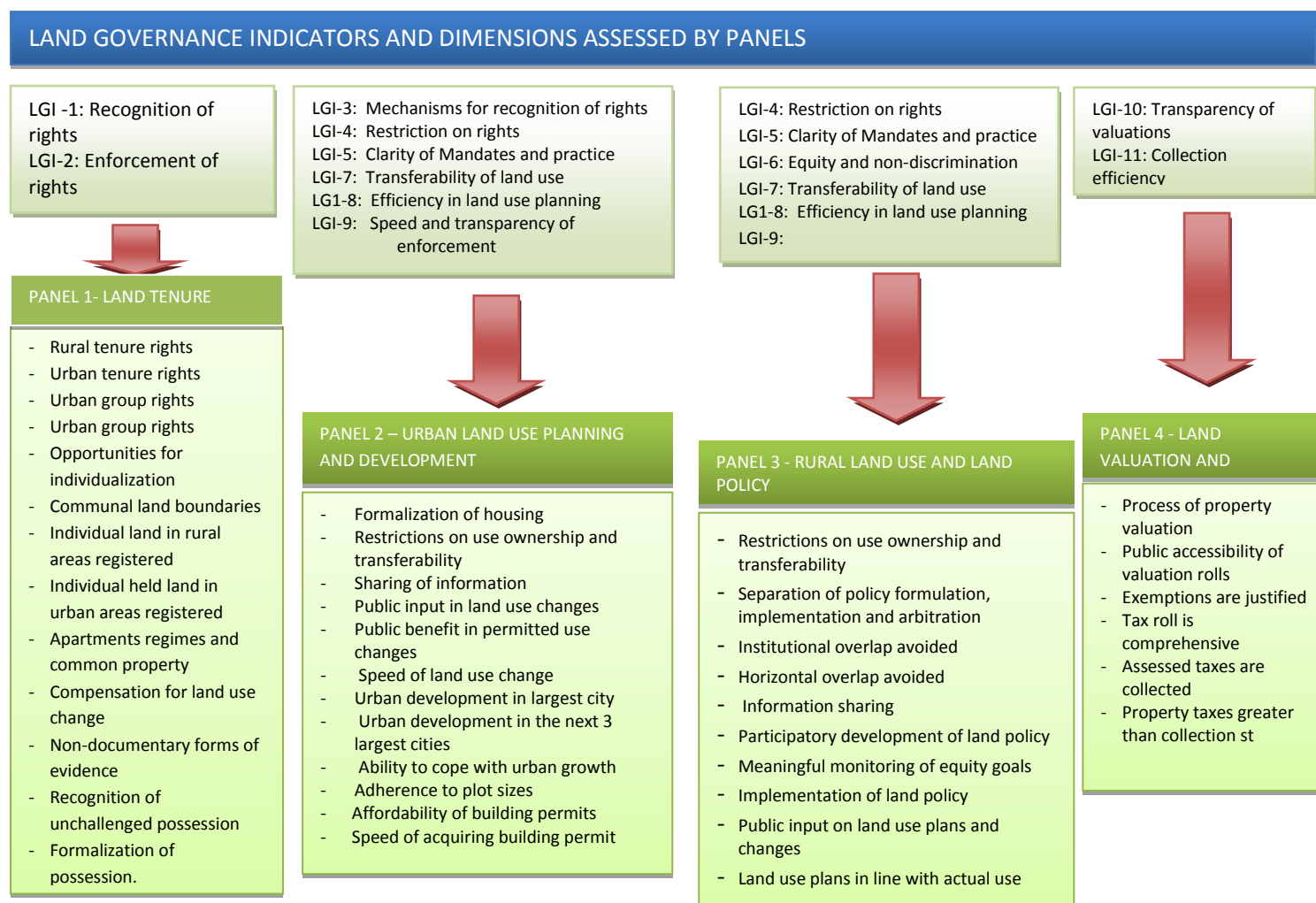
ANNEX 4. LIST OF EXPERTS AND QUALIFICATIONS

LAND TENURE	
Mrs. Amie N.D. Bensouda	Consultant/Legal Practitioner, Barrister of the Supreme Court of The Gambia and Nigeria Land Law Lecturer- University of The Gambia, Former Solicitor General Former Chief Parliamentary Counsel
LAND USE PLANNING & DEVELOPMENT	
Dr. Boro Suso	PHD, & M.A in Planning, Former Director of Physical Planning, Member of the Royal Institute of Town Planners (UK) and American Planning Association, Senior Lecturer University of the Gambia, Adjunct Professor St Mary's University, Canada
Mr. Momodou F.K. Kolley	Former Director DPPH Certificate in GIS & Land Management, International Centre for Land Policy Studies and Training (ICLPST), ROC, Taiwan. Certificates in Training of Trainers (TOT) Programme on Public Sector Management, Certificate in Land Policy, 2002, International Centre for Land Policy Studies and Training (ICLPST), ROC, Taiwan , Certificate, in building Services, Singapore Polytechnic, SINGAPORE
PUBLIC LAND MANAGEMENT	
Mr. Abdoulie K. M. Manneh	MSC Geographical Information Systems (for Cadastral Applications), BSC Survey and Mapping Sciences, Survey Officer 1978-1995 & Acting PS and PS, Ministry of Local Government (2000- 2011)
LAND ADMINISTRATION	
Mr. Momodou S. Gaye	Private Consultant, Member of the Royal Institute of Chartered Surveyors in Land and Hydrographic Survey Division (UK), Extensive practical experience in measurement sciences as applied to Topographic, Cadastral & Engineering surveying for Construction. Fellow of the Royal geographical Society (1994) , Land Administration Expert, Professional Valuer
Mr. M.S. Jobe	BSC Urban & Regional Planning, Planning Officer 1993-2000, Senior Housing Officer; and Ag Director Gambia Tourism Authority
FORESTRY	
Mr. Kanimang Camara	Qualified Teacher's Certificate GTI Diploma in Community Development FAO / Gambia Government Community Based Enterprise Development INWENT South Africa Training of Trainers on Natural Resource Conflict Management
Mr. Muhammed Jaiteh	M. Sc. Concerted Natural Resource Management BSC Forestry, Forestry Officer 2000-2008, Assistant Director, and Director of Forestry 2009-2010).

ANNEX 5. DISTRIBUTION OF TASKS TO EXPERT INVESTIGATORS

DESCRIPTION OF TASK	FOCUS AREA
LAND TENURE Compile a tenure typology (formal and informal regimes) Provide relevant data and information on dimensions relating to: <ul style="list-style-type: none"> - Social legitimacy and recognition of land rights and restrictions - Coherence of rights with practice - Formal and informal costs of registration - Clarity of institutional mandates and practice - Share of land affected by pending conflict - Provide suggested ranking for the concerned dimensions 	LGI -1 Dim (i) – (v) LGI-5: Dim (i) – (ii) LGI - 6 (ii) LGI-21 Dim (i) – (iii)
LAND USE PLANNING Provide relevant data and information on dimensions relating to: <ul style="list-style-type: none"> - Transparency of land use restrictions - Equity and non-discriminatory policy - Efficiency in the land use planning process - Speed and predictability of enforcement of restricted land uses - Identification of public land and clear management. Provide a suggested ranking for the concerned dimensions	LGI – 3(v) LGI - 4(i) & (ii) LGI-7(ii) & (iv) LGI-8(i) –(iv) LGI-9(i) – (ii) LGI-12(ii)
PUBLIC LAND MANAGEMENT Provide relevant data and information on dimensions relating to: <ul style="list-style-type: none"> - Incidence of expropriation - Transparency of expropriation procedures and public lease arrangements Provide a suggested ranking for the concerned dimensions	LGI -12(vi) LGI-13(i) & (ii) LGI-14(i) – (iii) & (v) LGI-15(i) – (iii)
LAND ADMINISTRATION Provide relevant data and information on dimensions relating to: <ul style="list-style-type: none"> - Property rights mechanisms and enforcement - Completeness and reliability of registry records - Cost effectiveness and sustainability of land record registries Public availability of scheduled fees.	LGI-2 (i) – (iv) LGI-3(iii), (iv) & (vi) LGI-16(i) –(v) LGI-17(i) & (ii) LGI-18(i) – (iii) LGI-19(i)
FORESTRY Provide relevant data and information on dimensions relating to: <ul style="list-style-type: none"> - Country signature and ratification of international conventions - Implementation of incentives to promote climate change mitigation through forestry - Public good aspects of forests recognized by law and protected - Forest management plans and budgets address the main drivers of deforestation and degradation - Country’s commitment to forest certification and chain-of-custody systems to promote sustainable harvesting of timber and non-timber forest products - Country’s commitment to SMEs as a way to promote competition, income generation and productive rural employment - Recognition of traditional and indigenous rights to forest resources by law - Sharing of benefits or income from public forests with local communities by law and implemented - Boundaries of the countries forest estate and the classification into various uses and ownership are clearly defined and demarcated - In rural areas, forest land use plans and changes in these plans are based on public input 	FGI-1: (i) & (ii) FGI-2: (i) & (ii) FGI-3: (i) & (ii) FGI-4: (i) & (ii) FGI-5: (i) & (ii) FGI-6 : (i) & (ii)

ANNEX 6. TABLE OF DIMENSION ALLOCATION



ANNEX 7. LAND GOVERNANCE INDICATORS ASSESSED BY PANELS



ANNEX 8. LIST OF PANEL MEMBERS AND QUALIFICATIONS

PANEL 1 LAND TENURE - (14th March 2013)

Mr. Omar N.R. Sonko	Agriculture & Rural Development Expert - (panel moderator)
Mrs. Jainaba B Sambou	Legal Practitioner/Consultant- recent study on Women access to land funded UNDP
Hon. Justice Basiru V. P. Mahoney	Justice of the High Court, Chairman Commission of Inquiry into Land Allocation (2011)
Mr. Manga Sanyang	Deputy permanent secretary, Ministry Regional Administration Lands and Traditional Rulers
Mr. Njaga Jawo	Executive Director, National Women Farmers Association

PANEL 2 URBAN LAND USE & PLANNING & DEVELOPMENT – (20th March 2013)

Dr. Roddie Cole	Managing Director, GAP Consultants (A leading firm of architects and planners - (panel moderator)
Mr. Omar Gaye	Technical Director, GAMWORKS (Gambia Agency for the Management of Public Works
Mrs. Fatou Biyayi	Director, Product Development, Investment and Culture, Gambia Tourism Board (The Board regulates and coordinates tourism development)
Mr. Ismaila Kah	Assistant Director, Department of Physical Planning and Housing, Ministry of Regional Administration, Lands and Traditional Rulers
Mr. Saul Frazer	Managing Director, Global Properties Estate Agency (Global properties is the oldest private real estate agency

PANEL 3 RURAL LAND USE & LAND POLICY – (13th March 2013)

Mrs. Amie Jallow	National Project Manager, Food Security through Commercialization of Agriculture, FAO-(panel moderator)
Mr. Fafanding Fatajo	Planning Service Unit, Department of Agriculture
Mr. Essa Camara	Principal Planning Officer Department of Physical Planning
Mr. Baboucarr S-Janneh	Founder and principal, Fenta Consultant Architects
Mr. Lamin Nyangado	Head of Policy and Advocacy, Action-Aid International The Gambia

PANEL 4 PUBLIC LAND MANAGEMENT – (27th March 2013)

Mr. Mahtarr Jobe	Private Consultant – Surveyor- Former Director of Physical Planning - (panel moderator)
Mr. Alhagie Fatty	Estate Manager, Social Security & Housing Finance Corporation
Mr. Adama Cham	Former MP – Kombo North
Mrs. Binta Sidibeh	NGO

PANEL 4 LAND VALUATION AND TAXATION – (16th March, 2013)

Mr. Francis Jones	Francis Jones & Associates, Quantity Surveyor & Member of the Royal Institute of Chartered Surveyors (MRICS) - (panel moderator)
Mr. Ebrima Barry	Senior Land Valuation Officer, Department of Lands and Lands and Surveys. Also acts as adviser to the Local Government Municipal and Area Councils
Mr. Lamin Comma	Investment Service International Independent Consultants, Country Program Co-ordinator for Support for Decentralized Rural Development – SDRD (8 th EDF European Commission 1998-2002) former Director of Lands Surveys (1982-1988) and former Valuation Officer
Mr. Maari Sarr	Tax Manager, Gambia Revenue Authority (GRA)

PANEL 6 PUBLIC PROVISION OF LAND INFIRMATION – (12th March 2013)

Dr. Henry D Carrol	Lawyer and current Chairman of the Gambia Law Reform Commission, and Deputy Solicitor General. He was Registrar General and in charge of the land registry from 2005-2007 - (panel moderator)
Mr. Demba Jack	Independent Consultant and former Director of the Department of Lands and Surveys, 1995-2000
Mr. Salieu Taal	Private Legal Practitioner
Mr. Stanley Adams	GIS Specialist, National Water and Electricity Corporation (NAWEC)
Mrs. Jainaba Badjan	Principal Registrar – officer in charge of the Registry for over 20 years, Ministry of Justice.

PANEL 7 DISPUTE RESOLUTION – (16th March 2013)

Mr. Borry Touray	Legal Practitioner, former Magistrate with extensive involvement in land disputes - (panel moderator)
Ms. Penda Gibril	Executive Secretary, Alternative Dispute Resolution Secretariat
Hon. Cadi Alhgie. O. Secka	Chairman Cadi Appeal Panel

Mr. Dembo S. Bojang	Former Chief and former Chairman of the District Tribunal - Kombo Central, West Coast Region
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PANEL 8 FORESTRY - (5th March 2013)

Mrs. Janet Sallah Njie	Environmental Law Expert Private Practitioner Torodo Chambers
Mr. Abdoulie Danso	Forestry Expert, Deputy Permanent Secretary Ministry of Agriculture

Mr. Sambou L. Kinteh	Agricultural Economist/Natural Resources Expert, Independent Consultant
Mr. Ismaila Jarjue	Programme Manager, Concern Universal – NGO
Mr. Sambou Nget	Acting Director, Department of Forestry, Office of The President

ANNEX 9. POPULATION DISTRIBUTION BY LGA

Distribution of population by LGA 1993 to 2003

L.G.A	Population		Annual Growth Rate 1993-2003
	1993	2003	
Banjul	42,326	35,061	(1.87)
Kanifing	228,214	322,735	3.5
Brikama (WCR)	234,917	389,594	5.2
Mansakongko (LRR)	65,146	72,167	1.0
Kerewan (NBR)	156,462	172,835	1.0
Kaur	67,774	78,491	1.5
JangjangBurreh (CRR)	88,247	107,212	2.0
Basse (URR)	155,059	182,586	1.6
Total	1,038,145	1,360,681	2.7

Source: Gambia Bureau of Statistics (GBOS)

Distribution of population by Ethnic group 1993 to 2003

	POPULATION	
	1993	2003
Mandinka/Jahanka	353,840	446,937
Fula/Tuklor	168,284	272,354
Wolof	130,546	179,890
Jola/Karoninka	95,262	141,360
Sarahule	79,690	101,347
Serere	24,710	37,979
Creole/AkuMarabout	16,550	6,556
Manjago	7,458	24,492
Bambara	6,194	13,043
Other Gambian	2,578	2,520
Ethnicity NS	11,023	17,418
		1,243,896

Source: Gambia Bureau of Statistics (GBOS)

Population Density by LGA

L.G.A	Population	Area/km ²	Density/km ²
	2003		
Banjul	35,061	12.23	2867
Kanifing	322,735	75.55	4272
WCR –Brikama	389,594	1,764.25	221
LRR –Mansakongko	72,167	1,618.00	45
NBR –Kerewan	172,835	2,255.50	77
CRR - Kaur¹¹⁶	78,491	1,466.50	54
CRR –JangjangBurreh	107,212	1,427.75	75
URR –Basse	182,586	2,069.50	88
Total	1,360,681	10,689	

Source: Gambia Bureau of Statistics (GBOS)

¹¹⁶ CRR has a minor Council in Kaur, and is often listed in the name of both councils.

Administrative Areas of The Gambia

Local Government Area	Regions (formerly Divisions)	Area Councils	Districts	Projected Population 2012	Area ¹¹⁷ SQ, KMA
Regions (Formerly Divisions)	West Coast (WCR) (Formerly Western)	Brikama	Foni Jarrol	6,244	80
			Foni Bondali	7,814	167
			FoniKansala	15,282	182
			FoniBintangKarenai	19,253	277
			Foni Berefet	13,422	128
			Kombo East	35,507	292
			Kombo Central	115,144	176
			Kombo South	86,635	281
			Kombo North	265,856	180
	North Bank (NBR)	Kerewan	Lower Niumi	54,629	359
			Upper Niumi	27,973	419
			Jokadu	20,999	277
			Lower Badibu	15,852	198
			Central Badibu	15,051	254
			Upper Badibu	51,098	359
	Lower River (LRR)		Jarra East	13,531	217
			Jarra Central	6,811	154
			Jarra West	27,591	177
			Kiang East	6,359	129
			Kiang Central	8,439	162
			Kiang West	15,759	698
	Central River (CRR) (formerly MacCarthy Island) ¹¹⁸	Georgetown	Janjanbureh	3,491	11
			Fulladu West	86,301	467
Niamina East			2,315	383	
Niamina West			968	127	
Niamina Dankunku			5,456	127	
Kuntaur		Lower Saloum	12,105	156	
		Upper Saloum	17,721	274	
		Nianija	1,347	136	
		Niani	2,921	427	
		Sami	22,385	498	
Upper River (URR)	Basse	Sandu	21,948	330	
		Kantora	32,570	298	
		Fulladu East		332	
		Wuli East		346	
		Wuli West		254	
		Tumana		302	
		Jimara		333	
Banjul Municipality		Banjul City		28,361	10
Kanifing Municipality		Kanifing		421,758	13

¹¹⁷Source NEA Aerial Mapping

¹¹⁸ After the 2nd Republic (1997) MacCathy Island was renamed Jangjangbureh

ANNEX 10. LIST OF KEY LEGAL AND POLICY DOCUMENTS RELATED TO LAND

Legislation¹¹⁹

Substantive Law	Subsidiary legislation	Statutory Instruments
Constitution of The Gambia (Chapter 24 & 25)		
State Lands Act, 1991(Cap.57:02)	Designation of State Land Order, 1994 (L.N.2 of 1994) State Lands Regulations, 1995 (L.N.17 of 13 Of 1995)	
Land (Regions) Act, 1945 (Cap. 57:03)	Regions' Lands Protected Trees Regulations Declaration of Forest Parks	
Real Estate (Liability for Debts) Act, 1913 (Cap.57:04)		
Land Acquisition and Compensation Act 1991 (Cap.57:06)		
Lands Commissions Act, 2007 (Cap.57:07)		
Physical Planning and Development Control Act, 1991 (57:08)	Land Use Regulations 1995 (L.N 11of 2995) Development Control Regulations, 1995 (L.N 15 of 1995) Draft Plans Regulations, 1995 (L.N.12 of 1995)	
Survey Act, 1991 (Cap.57:05)	Surveys Regulations (L.N.14 of 1995)	
Local Government Act, 2002 (Cap. 33:01)	Local \government Areas (Demarcation into wards order L.N 6 of 2002	
Rating Valuation Act 34 (Cap.34:01)	Rating Valuation Regulation 1986 LN4 of 1986	
Lands (Registration of Deeds) Act, 1880 (last amended in 1972)		
The Gambia Tourism Board Act, 2011		
Forest Act (Cap. 61:02)	Forest Regulations 1998 Model Preliminary Community Forest Management Agreements (PLFMA) Model Community Forest Management Agreements Forestry(Designation of Reserved Community Forests):	Community Forest Management Agreements Preliminary Forestry Management Agreements

¹¹⁹ The title of the legislation listed includes the amendments as all have now been incorporated in the 2009 Revised Edition of the Laws of The Gambia.

	<ul style="list-style-type: none"> • L.N.5/2003-23 community forests • L.N.1/2004 – 50 community forests • L.N.10/2004 – 29 community forests • L.N.23/2004 -22 community forests • L.N.24/2004 – 29 community forests • L.N.5/2005 -20 community forests • L.N.11/2005 -16 community forests • L.N.13/2005 – 18 community forests • L.N.10/2006 -32 community forests 	
National Environment Management Act Cap 72:01		
Bio Diversity and Wildlife Act Cap.62:02	Wildlife Conservation (Alteration of Boundaries Order) L.N.5/1991 Tanji and Bijilo Islands National Bird Reserve Order L.N5/1991 L.N.15/1993	
Mines and Quarries Act (Cap. 66:01)		
Petroleum (Exploration Development and Production) Act (Cap.66:02)		
District Tribunals Act, 1933 (Cap.6:03)	District Tribunal Regulations	
Mortgages Act Cap. 97:02		
	High Court Rules for enforcement of judgments on immoveable property	
The Housing Corporation Act, 2010		

Policy Documents

The Gambia Programme for Accelerated growth and Employment (PAGE) 2012 – 2015 – MoFEA

The Gambia's Programme for Accelerated Growth and Employment (Page 2012-2015) – Introducing the PAGE and Role of the Gambia's Insurance Industry within the PAGE Framework – Directorate of Development Planning - MofFEA

MLRG

- Physical Development Plan for the Greater Banjul Area and 3 Growth Centres of Brikama, Farafenni and Basse 1985-2000
- Feasibility Study for the establishment of a Housing Finance Institution
- Priority Infrastructure, Urban Management and Housing Finance – Feasibility Study – Urban
- Reorganisation of the Technical Departments of the Ministry for Local Government and Lands (German Urban Development Planning Project)
- Environment Project – Di Zitti Associates
- National Housing Policy
- Local Government Policy¹²⁰

Agriculture

- Agriculture and Natural Resources (ANR) Policy (2009 – 2015)
- Gambia National Agricultural Investment Plan (GNAIP) 2011-2015

Forestry

- Draft Forestry Bill 2010
- National Forestry Inventory 1997/98
- National Forestry Inventory 2008/2010
- Forest Policy 2010-2019
- The Gambia Forest Management Concept 2000 (GFMC)
- Joint Forest Park Management Concept (JFPMC)
- Community Forest Implementation Guidelines 2002 (CFIG)

Others

- Mining and Quarries Act (Cap. 64:01)
- Petroleum (Exploration, Development and Production) Act (Cap.65:02)
- Responsible Governance of Tenure of land Fisheries and Forests in The Context of National Food Security – FAO
- Integrated Household Survey Income and Expenditure Poverty Assessment – 2010
- The Gambia Atlas of 2003 Population and Housing Census – GBOS
- Report of the Inquiry into Land Allocation in The Gambia Vol. 1 – Main Report
- UA-MTIP Final Report, Vol. 1
- UA-MTIP Development Proposals Report Vol. 2
- Population and Housing Census -2003 – Compounds and Buildings/Structures – Vol. 1 – GBOS
- The Gambia Tourism Development Master Plan in July 2006 ADB and Department of state for Tourism and Culture, republic of The Gambia.

¹²⁰ A copy of this document could not be found up to the time of submitting this report.

**ANNEX 11. PARTICIPANTS- TECHNICAL VALIDATION WORKSHOP
MAY 28-29, 2013**

No	Name	Institution
1.	Dr. Saihou Sanyang	Permanent Secretary, MoLRG
2.	Mr. Habib Touray	Regional Director of Agriculture, CRR
3.	Mr. Mustapha Drammeh	Regional Director of Agriculture, , CRR North
4.	Mr. Mbemba Dahaba	Regional Director of Agriculture, URR
5.	Mr. Ousman Jammeh	Regional Director of Agriculture, WCR
6.	Mr. Ebrima M. L. Saïdy	Regional Director of Agriculture, LRR
7.	Mr Falalo Touray	Deputy Director of Agricultural Services
8.	Mr. Jewru Saïdy	Regional Director of Agriculture, LRR
9.	Mr. Kebba Jammeh	Regional Forestry Officer, URR
10.	Mr. Famara Dampha	Ministry of Fisheries
11.	Mr. Alieu Jallow	MoJ
12.	Mr. Benjamin Roberts	Director General, GTBoard
13.	Mrs. Fatou Beyai Raji	GTBoard
14.	Mr. Hammeÿ Minteh Krubally	Fulladu East (Basse) – DT President URR
15.	Hon. Justice Awa Bah	Judge
16.	Mr. Omar Sey	KMC/Rent tribunal
17.	Mr. Futa Barry	BAC / Rent Tribunal
18.	Mr. Tamba Kinteh	CEO, BAC
19.	Mr. Yankuba S.K. Barry	BAC/Rent Tribunal
20.	Mr Yusupha Manneh	CEO Banjul
21.	Ms. Nyima Camara	KMC
22.	Dr Jainaba Saho-Kah	Academia / Urban Planning
23.	Mrs. Kumba Conateh -Nam	DPS MoFEA (Deputising for PS)
24.	Mr. Bakary Krubally	MoFEA
25.	Mr. Pa Sait Ceesay	CEO, BAC
26.	Hon Justice. Basiru V. Mahoney	High Court Judge
27.	Mr. Omar Sonko	Consultant
28.	Mr. Borry Touray	Lawyer, Crown Chambers
29.	Mr. Francis Jones	Chartered Quantity Surveyor, Francis Jones Associates
30.	Dr Roddie Cole	Architect/Planner, GAP Consultants
31.	Mr. Omar Gaye	Technical Director, GAMWORKS
32.	Mr. Mahtarr Jobe	Chartered surveyor, Gam Tech
33.	Mr. Lamin Comma	Valuation Expert
34.	Mr. Abdoulie Danso	DPS Agriculture
35.	Mr. Stanley Adams	(NAWEC
36.	Mrs Amie Jallow	Programme Manager, Food Security through the Commercialization of Agriculture, FAO, Banjul
37.	Mr Fafanding Fatajo	Planning Service Unit, Dept. of Agriculture.
38.	Mr. Momodou L. Njai	Depart of Forestry
39.	Mr Mahtarr Bah	Deputising for Director of Forestry
40.	Mr. Momodou Kassama	AG Director, Department of Forestry
41.	Mr Saiwana Lewis	DPW
42.	Mr. Kawsu Jammeh	DPWM
43.	Mr. Abba Jammeh	DPPH
44.	Mr. M.S. Jobe	Tourism and Urban Planner
45.	Mr. Ebrima M. L. Saïdy	DOA, LRR

46.	Mr. Manga Sanyang	MoLRG
47.	Mr. Salmina E. Jobe	NEA
48.	Mr Ousman Jarjusey	Consultant Surveyor
49.	Mr Kebba Njie	Sahel Investments Land Admin Expert
50.	Mr Saul Frazer	Managing Director, Global Properties
51.	Mr. Almamy F. Taal	CEO, GCCI
52.	Mr. Alhagie Tafsirr S.A Njie	Gambia Bankers Association (Agricultural Economist)
53.	Mr. Tamsir Manga	PC GCP
54.	Dr Kujejatou Manneh	Action Aid
55.	Fanta Jatta-Sowe	Land Use (Action Aid)
56.	Dr Yves M. Lamour	UTG
57.	Mr. Ismaila Jarjue	Concern Universal
58.	Mrs. Fola Allen	Land Registries
59.	Mrs. Hawa Sisay- Sabally	Land Tenure
60.	Mrs. Janet Sallah Njie	Torodo Chambers Environment
61.	Mr Salieu Taal	Temple Practitioners
62.	Thea Hilhorst	Global LGAF Coordinator World Bank Office in Washington
63.	Jean-Philippe Tre	World Bank Regional Office responsible for The Gambia in Dakar

ANNEX 12: POLICY RECOMMENDATIONS, PROPOSED ACTIONS, AND MONITORING INDICATORS

Recommendations on Thematic Area 1 - Legal and Institutional Framework					
No	Policy issue	Proposed action	Short or medium term	Implementing agency	Monitoring indicator
1.	<p>The absence of a clearly articulated and holistic national land policy covering key land agencies – MoLRG and Agriculture and the ANR sector- resulting in policy gaps weak coordination on the sharing of resources, and technical capacities.</p> <p>Most laws and policy instruments emanating from them are outdated including the Land Regions Act, the GBA national Master Plan and Growth Centre Master Plans which cover only the most densely populated urban areas as at 1985.</p>	<p>(i) Develop comprehensive and holistic national land policy</p> <p>(ii) Institutional mandate review covering all land agencies on cross cutting issues affecting land</p> <p>(iii) Reactivate ANR Working Group (which includes personnel from agriculture, forestry wildlife, environment, water resources, NEA and ALRG) to coordinate the development of a harmonized strategy to implement the ANR and sector policies</p> <p>(iv) Design strategy for extensive public consultation</p> <p>(v) Prepare detailed plan of action to guide policy development and implementation.</p>	Short	MoLRG & ANR Sector agencies	<ul style="list-style-type: none"> - Multi Sector Policy Development Committee Established - Nationwide Consultation conducted - National Land Tenure Policy Developed and Approved - Communication strategy approved - Plan of action validated.
2.	<p>Land Tenure Reform: The designation of areas in the Regions into State land does not appear to be understood.</p> <p>There has not been any consistent/systematic attempt to implement the policy intention of the State Land Act</p>	<p>(i) A comprehensive review of all land Acts, their implementation and impact with a view to developing laws that address the current challenges and needs of rural and urban population in accordance with subsisting rights, and to implement national land policy.</p>	Short	MoLRG, ANR Sector, AGC & MoJ	<ul style="list-style-type: none"> - All laws that affects land reviewed & Legislative Plan Developed - Regulatory mechanisms Drafted - Nationwide Sensitization on draft legislation conducted

<p>The 2011 Commission of Inquiry into Land Allocation (CILA) revealed significant abuse of authority by public officers¹²¹ because of such designations.</p> <p>The Land Regions Act remains a colonial Act with little substantive change since 1968. Some of its provisions have become meaningless. The Act is inconsistent with the Agriculture and Natural Resource Policies.</p> <p>There is no subsidiary legislation. All processes under the Act are entirely administrative including the processes for the registration of rights.</p> <p>The vesting of provincial land in district authorities has made it possible for leases of rural land to be granted without the consent of traditional owners.</p>	<p>(ii) development of comprehensive subsidiary legislation to ensure that the laws are fully implemented</p> <p>(iii) Pending such review:</p> <ul style="list-style-type: none"> • Sensitization of public officers about the purpose and effects of the State Lands Act. • overhaul and streamline of all processes • Review/draft regulatory mechanisms processes and procedures for the formalization/registration under State Lands Act and Land Regions Act and remove all discretionary action 			<ul style="list-style-type: none"> - Validations conducted - Final Drafts enacted - Officers and traditional rulers sensitized - Processes reviewed regulations and guidelines published
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¹²¹ The 2010/2011 Commission of Inquiry into Land allocation was headed by Justice Mahoney a member of this panel.

3.	<p>Women Land Tenure Rights/ Low ownership of land by women.</p> <p>Women in the rural areas are generally marginalized and generally cannot own land.</p>	<p>(i) Select National Consultative Committee on Women’s land rights to develop national policy on women’s land rights</p> <p>(ii) Enact legislation to implement national policy</p>		<p>Ministry of Women’s Affairs in collaboration with MoLRG</p>	<ul style="list-style-type: none"> - Appointment of select committee - Drafted policy on women’s land tenure right - Drafted policy shared - Policy on women land right available - Legislation on women land tenure rights enacted
4.	<p>Customary law is too informal. It is based on traditional practices which are not written.</p> <p>Separation of adjudication role from executive roles of district tribunal members for constitutional legitimacy on the separation of powers.</p>	<p>(i) Codification/restatement of customary law principles.</p> <p>(ii) Customary law review/reform undertaken</p> <p>(iii) District chiefs to be incorporated into ADR structure/system.</p> <p>(iv) District Tribunals Act amended to reconstitute district tribunals and transfer their administration to Judiciary.</p>	Short	<p>MoJ, Law Reform Commission in collaboration MoLRG</p>	<ul style="list-style-type: none"> - Consultants recruited for the review and codification of customary land law - Draft report on customary law and practices affecting land produced - Nationwide consultations on customary law conducted - Customary land law codified/formalized. - Alternative Dispute Resolution Act amended - District Mediation Committees established

					- District Tribunals Act amended.
5.	Most communal land is not mapped. Only leaseholds are mapped and registered.	<p>(i) Map all land, determine ownership and demarcate and formalize land titles.</p> <p>(ii) Establish system of 'Land Adjudication' to accompany ownership identification and demarcation.</p> <p>(iii) Enact Registration of Titles Act/system to guide the process of registration of all land titles.</p> <p>(v) Prepare comprehensive Register of Titles.</p>	Short	MoLRG, ANR Sector	<ul style="list-style-type: none"> - Comprehensive mapping of all lands types in The Gambia conducted - Registration of Land Titles Act Enacted - Ownership of land identified and recorded - Electronic registration system

Recommendations on Thematic Area 2 - LAND USE PLANNING, MANAGEMENT & TAXATION					
Policy issue		Proposed action	Short or medium term	Implementing agency	Monitoring indicator
LAND USE PLANNING					
1.	Data on current land-uses in urban and rural areas required as a basis for land-use planning	<p>(i) Study to collate all relevant data on land-use nationwide including from MLRG, Agriculture, Forests and Parks, Gamworks, NEA, GBoS, NAWEC, Water Resources, etc.</p> <p>(ii) Launch exercise to document land uses nationwide including aerial photography and other techniques.</p>	<p>Short</p> <p>Short</p>	MLRG & GAMWORKS	<p>Study ToR Circulated, Consultant recruited, Study outputs ratified by Stakeholders</p> <p>Up-to-date digital land use maps on GIS (or similar) for urban and rural areas produced</p>
2.	<u>Build Sustained Land-Use Planning Capacity</u> - Capacity for land-use activity should nurtured AND sustained (high staff retention)	<p>(i) Commission study on inputs for establishing sustained capacity for land use planning including the following components:</p> <ul style="list-style-type: none"> <u>Institutional</u>: analyze procedures, organizations, actors currently engaged in land use planning and related activities, assess resources available; <p>(ii) Clarify mandates of existing and proposed organizations as they overlap with each other: DPPH, Area Councils, NEA,</p>	Short		Programmed series of interventions to fund, train, equip, and other-wise capacitize organizations and actors in the sector carried out

		<p>GTBoard, SSHFC, traditional authorities, etc.</p> <ul style="list-style-type: none"> • <u>Skills Survey</u>: assemble inventory of skills available for land-use planning and related fields inside (DPP&H, SSHFC) and outside (UTG, MDI, GTTI, private sector) govt.; determine training requirements. <p><u>Economic Assessment</u>: Assess the revenue generation potential of land-use / urban planning activities; assess actual costs of activity and evaluate public “willingness-to-pay” for identified services.</p>			
		<p>(iii) Operationalization of recommendations from studies including the commissioning of new and capacitating of existing organizations with clearly defined, non-overlapping, mandates with respect to land-use planning in urban and rural areas</p>	Medium		<p>Programmed series of interventions to fund, train, equip, and other-wise capacitate organizations and actors in the sector carried out</p>

3.	<p>(i) Develop land-use processes and procedures that are appropriate, transparent, and fully participatory.¹</p> <p>(ii) Develop manual of procedures with respect to land-use planning in urban and rural areas for new and existing institutions emanating from Intervention No. 2 above</p>	<p>Commission study to assemble and analyze current legislative and regulatory framework for land use planning and the processes applied in formulating and ratifying land use plans; identify constraints and bottlenecks; out-line strategies for stream-lining procedures based on best practice in the sub-region. Process should be: *</p>			<p>Circulate Study ToR, Recruit Consultant, Circulate Study outputs Stakeholders Ratify</p> <p>Conduct annual performance review of new and existing institution</p>
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Policy issue	Proposed action	Short or medium term	Implementing agency	Monitoring indicator
DEVELOPMENT CONTROL				
4.	(i) Formalizing the Informal land and Housing Sectors (ii) Affordability of Formalization	<u>Land</u> Offer “fast-track channel” to securing leases for plots held under customary tenure for limited time frame; <u>Housing Units</u> Launch DPPH-GTTI joint projects where GTTI students (under supervision) visit designated neighborhoods and provide “as is” drawings of residential units as well as upgrading activities required to bring units to standards required for certification Identify spontaneous (slums) settlements and examine options for relocation or on site slum upgrading and the provision of affordable housing	Short or medium	No of leases issued within period No of development permits issued within period. Increased affordable housing.
		Conduct study to: <ul style="list-style-type: none"> • assess “real” cost of leasing with regard to cash and time; • assess minimum technical and planning requirements for 		Increased Number of leases and development permits issued

		<p>issuance of development permits for simple, low-cost and traditional construction;</p> <ul style="list-style-type: none"> • assess costs and affordability of technical documentation (construction drawings) for low cost buildings; • examine strategies for linking low-income prospective home owners owners to (GTTI) technicians for production of (prototype) technical documentation for simple housing units 			
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PROPERTY TAX & VALUATION

5.	Up-to-date and Efficient Property Valuation System	<p>(i) Conduct exercise to review outputs of 2003 PACAB study including valuation rolls, property database, software billing system and so forth.</p> <p>Review general valuation practices, especially the impact of using “unit cost” as opposed to market value as basis for valuation; introducing the issue of location.</p> <p>(ii) Develop a proper system for property identification using GIS including street naming</p>	Short	MoLRG & GAMWORKS	Studies done on valuation rolls, property database, software billing etc.
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		<p>and compound numbering – <u>ADRESSAGE</u> (bearing in mind the absence of street names in most localities).</p> <p>(iii) Conduct exercise to update Valuation Roll allowing for public participation and feedback</p> <p>(iv) Review and propose procedures for public sensitization and information on matters of property valuation.</p> <p>(v) Conduct institutional analysis to determine capacity of Area Councils to maintain and manage property taxation system; identify skills required for proper system management.</p> <p>(vi) Suggest alternative institutional arrangements (outsourcing) for various components of property valuation: identification, valuation, billing, collection of taxes (incentives for collectors), and so forth.</p> <p>(vii) Plan for and launch property identification and valuations exercised in Year 2014 (after 2013 Census data is</p>			<p>Up-to-date Valuation Roll</p> <p>Increased revenue from property taxes</p> <p>Outsourcing strategy approved</p> <p>Increased Number of surveyors</p>
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		available) (viii) Training of additional surveyors			
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- Participatory: research and propose strategies for informing the public on proposed land uses and change of land uses including in local languages and through mass media; establish clear channels for capturing public feedback;
- Equitable: prescribe strategies to ensure land use changes provide public benefits especially to immediate communities, and that changes are directly linked, and seen to be linked, to such benefits;
- Transparent: provide firm guidelines and criteria for assessing and deciding on requests for changes to land uses emanating from categories of applicants, individuals, real estate firms, government and quasi-government units, non-Gambians, and so forth;
- Sustainable: explore strategies for building sustainability into land use planning activities through, for example:
 - assess fees for direct services provided;
 - appropriate part of change of use fees;
 - appropriate part of revenues generated by: SSHFC (sale of serviced plots), GTA (allocation of land for tourism); MoLRG (allocation of plots); etc.;

Recommendations on Thematic Area 3 - Management of Public land					
	Policy issue	Proposed action	Short or medium term	Implementing agency	Monitoring indicator
1.	Absence of Sector Policies	<ul style="list-style-type: none"> • Implement the Land Commission Act • Develop shelter delivery policy • Develop Land Administration policy • Develop Land use and development Control policy 	Short Short Short Short	MoLRG/DLS MoLRG/DPPH MoLRG/DLS MoLRG/DPPH	Policy created and in place
2.	Review of Sectoral Legislations	Review implementation of: <ul style="list-style-type: none"> • Surveyors Act • State lands ACT & regulations • Land acquisition & compensation ACT • Physical planning & Development Control ACT and all other associated regulations • Land use regulations 	Short Short Medium Medium Medium	MoLRG/MoJ MoLRG/MoJ MoLRG/MoJ MoLRG/MoJ MoLRG/MoJ	Legislations reviewed & being implemented
3.	Development of integrated land info. & mgt. system	<ul style="list-style-type: none"> • Identification, collation & integration of all land related information into central data base • Updating of existing maps 	Medium Medium	MoLRG/DLS MoLRG/DLS	LIS in place & being used
4.	Inadequate HR personal	<ul style="list-style-type: none"> • Comprehensive staff audit • Recruitment to fill HR gaps • Comprehensive staff training 	Short Short Short	PMO/MoLRG	- Adequate & qualified staff in place - Improved level of service delivery
5.	Inadequate Budgetary allocation & donor support (TA)	<ul style="list-style-type: none"> • Review of revenue generating sources from land transactions • Institute statutory license/user fees for funding purposes • Seek donor support/build TA network with relevant international partners 	Medium	MoLRG/MoFEA	Adequate funds available

Recommendation on Thematic Area 4 – Public Provision of Land Information					
	Policy issue	Proposed action	Short or medium term	Implementing agency	Monitoring indicator
1.	Comprehensive and Accurate/updated cadastral map of the entire country	(i) A comprehensive mapping of land in the whole country using Geographical information system (GIS) (ii) A street naming exercise so that land can be registered and identified by parcel should be undertaken.	Medium	DLS	Available Digitized cadastral map/Data Streets in GBA named and numbered
2.	Legislative Frame work	(i) Review, revise and harmonise existing legislation relevant to mapping, street naming, registration of land title, the land registry and cadastre. (ii) Include in relevant legislation processes for essential services required, including need for all encumbrances to be registered to ensure that interests in all registered land are recorded up to date and apparent. (iii) Put in place Institutional procedures to guide the recording of public charges re-entry of leases, change of land use, compulsory acquisition etc. (iv) Implement Survey Act	Medium	DLS/AGC	Amended, harmonized and revised laws enacted. Subsidiary legislation guiding all processes published. Regulations for the registration of charges published Surveys Board appointed and operational
3.	Capacity Building and Outsourcing	(i) Build capacity staff/technical department at DLS Cadastre (ii) Outsource/contract independent contractors to provide support services to Cadastre under supervision/regulation	Medium	DLS/AGC	Framework for Outsourcing designed Technical Assistance to strengthen Institutional capacity.

4.	Quality and Standard of Service	<p>Create Conducive environment:</p> <ul style="list-style-type: none"> • Proper storage/archiving of documents; • Customer service training orientation for staff; • Design and develop customer service material - pamphlets, notice boards, internet and other media outlets. • Establish Complaints procedure –hotline, drop box and via email. • Set turn- around time for all services 	Medium	AGC	<p>Electronic archive established.</p> <p>Training programme for staff developed.</p> <p>Customer services materials published</p> <p>Registry internet service line.</p> <p>Legislation for the establishment of autonomous one stop shop land registry.</p>
5.	Cost Effective Pricing of Services	<p>(i) Establish One stop shop Registry.</p> <p>(ii) RGD./ Land Registry made autonomous and self-financing</p> <p>(iii) Modern land registry services established.</p>	Medium		<p>Automated registry system.</p> <p>Revenue retention/sharing arrangement in place</p> <p>Publication of new tariff that is sustainable and fair</p>

Recommendation on Thematic Area 5 - Dispute Resolution					
Policy issue		Proposed action	Short or medium term	Implementing agency	Monitoring indicator
1.	<p>Perceived lack of independence of district tribunals because of their composition and appointment and public perceptions of partiality in matters before them.</p> <p>Incorporate Sefolu and Alkalo into ADR</p>	<p>(i) Bring District tribunals under the administrative supervision of the judiciary and their appointment by the Judicial Service Commission</p> <p>(ii) Review jurisdiction and reconstitute by independent persons of undoubted integrity in and knowledge of customary law.</p> <p>(iii) Remove review jurisdiction of Governors over tribunal decisions.</p> <p>(iv) Review ADR structure and create mechanism for all district for mediation</p>	<p>Medium</p> <p>Medium</p>	MoJ & AGC	<p>District reconstituted under JSC</p> <p>District Tribunal Act and rules reviewed</p> <p>ADR Act amended District ADR Committees</p>
2.	<p>Level of awareness of avenues for land dispute resolution not high.</p> <p>Underlying disputes are never resolved.</p>	Public Sensitization using different avenues for settling land disputes both informally and formally.	Short	MoJ & AGC	<p>Sensitization Campaign designed and approved.</p> <p>Sensitization campaign launched</p>
3.	<p>Lack of recognition of decisions reached at ADR Secretariat. Perception that ADR (mediation) none binding.</p> <p>Enforcement of ADRS decisions.</p>	Review ADR Act to ensure that decisions reached after mediation once reduced into writing and signed are binding and a party to the mediation may apply to court for judgment on the basis of the decision.	Medium	MoJ & AGC	ADR Act Amended
4.	<p>2. Uncertainty in the jurisdiction of Magistrates' courts over land ownership disputes</p>	<p>Reviewed laws:</p> <ul style="list-style-type: none"> • to remove all jurisdictional overlaps in land matters • to clearly remove magistrate court jurisdiction over land disputes and limit same to ejectment only. 	Short	MoJ & AGC	District Tribunal Act amended Subordinate Courts (Civil Proceedings) Act amended.

5.	No appeals lie from decisions of rent tribunals except by way of judicial review.	Statutory right of appeal should be given to litigants against decisions of the Rent Tribunals.	Short	MoJ & AGC	Rent Tribunals Act amended to create a right of appeal
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Recommendations on Thematic Area 6 –Forestry					
	Policy issue	Proposed action	Short or medium term	Implementing agency	Monitoring indicator
1.	Improve the human and institutional capacity for the ANR sector to ensure a coordinated approach to sustainable natural resource management	(i) Training needs assessment including the training staff of the Forestry school (ii) Training (iii) Review of staff remuneration package To control rate of attrition (iv) Establish a semi-autonomous statutory body for the management of forest resources (v) Rehabilitate and upgrade the forestry school	Short Short to Medium Short to Medium Medium Short to Medium	DoF DoF MoF & PMO & DoF MoF DoF	Gaps identified Number to be trained Retention Rate Commission established School rehab. and Curriculum upgraded
2.	Development of Action Plan for the implementation of the Forest Policy 2010 - 2019 and Forestry Bill	(i) Stakeholder consultations (ii) Development of action plan (iii) Validations and popularization (iv) Capacity building of the stakeholders (v) Enactment of the Bill	Short	DoF	National Forest Action Plan
3.	Improve gender main streaming in the sustainable conservation and management of Forest resources (Natural Resources)	(i) Awareness raising (ii) Ensure gender balance in decision making processes at all levels	Short to Medium	DoF/Women's Bureau	Gender balance

4.	Promote Public Private Partnership (PPP) in sustainable conservation and management of natural resources	(i) DOF to work with GIEPA to capture PPP issues in the policy through MOU Creation of investment incentives for the private sector	Medium	DoF/GIEPA	Private sector investment
			Short to Medium	GIEPA/DoF	
		(ii) Sensitization of private sector on incentive schemes and benefits	Short to Medium	DoF/GIEPA	Number of stakeholders sensitized GAUIDE LINES
		(iii) Development of guide lines on private sector involvement in NRM and benefit sharing	Short to Medium	DoF/NGOs/CBOs	
		(iv) Enhance the capacity of local communities and representatives and Non-state actors and CBOs	Short to Long	DoF/NGOs/CBOs DoF/NGO/CBO	
		(v) Build and raise awareness of general public on rational utilization of forest and natural resources	Short to Medium	DoF/NGO/CBO	Number of publicity for campaign
		(vi) Facilitate access to finance to SME	Short to Long		Number of SME accessing finance
		(vii) Skills development in value addition of forest resources, access to markets including basic financial procedures			Improved Products
(viii) Research on alternative energy sources			Research Results published Valuation Report shared		

		(ix) Valuation of Forest resources to ensure accountability			
5.	Strengthening the existing incentive scheme on sustainable forest management and to in cooperate the relevant incentive schemes related to climate change (PES, REDD+ MBI)	Review the current forestry incentive with a view to expanding its scope Institutionalized the coordination and facilitation for accessing climate change related incentive schemes	Short Short to Medium	DoF DoF	Revised Incentive Mechanism in place
6.	Development of Action Plan for the implementation of the Wildlife Policy and Bill 2013-2022	Enactment and popularization of the Wildlife Bill		DPW	Bill enacted Nation Action Plan