



SECURING WOMEN'S
RESOURCE RIGHTS
THROUGH GENDER
TRANSFORMATIVE
APPROACHES



Investing in rural people

EMPOWERING RURAL WOMEN: A GUIDE TO LAND RIGHTS IN THE GAMBIA



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Editing, design and layout: KANDS Collective | hello@kandscollective.com

ABOUT THE INITIATIVE

SECURING WOMEN'S RESOURCE RIGHTS THROUGH GENDER TRANSFORMATIVE APPROACHES



In 2020, the International Fund for Agricultural Development (IFAD) invited a consortium of the Center for International Forestry Research and World Agroforestry (CIFOR-ICRAF), the International Food Policy Research Institute (IFPRI) and the Alliance of Bioversity International and the International Center for Tropical Agriculture (CIAT) to work with selected IFAD projects to promote and strengthen women's land rights through the integration of gender transformative approaches (GTAs) in rural development interventions by improving policies, tools and practices.

Following the detailed gender analysis to identify contextual factors across projects and geographies, as well as bottlenecks and opportunities for promoting women's land rights, the initiative used collaborative learning and design approaches to develop and test innovative gender transformative approaches (GTAs) and complementary methods that can support the achievement of WLR through rural development interventions. This co-creation process ensures that each tool is fit-for-project purpose and endorsed locally, while at the same time contributing to a GTA toolbox that can be adapted for land-based rural transformation projects across the IFAD portfolio.

This collection of tools include GTAs already developed and applied by IFAD projects and partners across targeted countries, as well as a suite of new tools to integrate land rights more explicitly and further the gender transformation agenda. These tools entail different strategies to address inequalities at the individual, household, community, policy and institutional domains, as well as to catalyse and transform harmful and discriminatory norms, perceptions and attitudes, and behaviours and practices at the identified levels across targeted countries. We share this toolbox with the IFAD community to continue testing, contextualization and sharing learnings across countries.

<https://www.cifor-icraf.org/wlr/>

https://www.ifad.org/en/gender_transformative_approaches

Initiative contacts



Anne M. Larson,
Theme lead for Governance,
Equity and Wellbeing

a.larson@cifor-icraf.org



Marlène Elias,
Gender Lead

marlene.elias@cgiar.org



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Tshering Choden,
Technical Specialist
for Gender and Social
Inclusion, Gender Team

t.choden@ifad.org

Rikke Grand Olivera,
Lead Technical Specialist,
Tenure Team

r.olivera@ifad.org

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OVERVIEW OF FLAG

FLAG is a non-political, non-sectarian, non-governmental and not-for-profit Association, comprised of female members of the Gambian legal profession established since 2006.

The Association aims to procure changes to the laws of The Gambia for the protection and well-being of women and children, with the objectives of: Eliminating gender-based violence and violence committed against children; promoting freedom of expression; and, educating and enabling women and children to participate effectively in the development process of The Gambia and its wider community.

In line with our vision, we uphold three main objectives:

- To lobby for gender equality in the Gambia through legislative reforms, public education and advocacy;
- To enhance and promote the welfare and legal status of women and children;
- To promote the principles and aims of the United Nations and the African Union, especially those regarding women and children.

Contact

Female Lawyers Association- Gambia (FLAG)
Kanifing Institutional Layout

Tel: +220 3424702

Mob: +220 234702

E-mail: info@flag.gm

Web: www.flag.gm



FOREWORD



Welcome to the Empowering Rural Women Guide, designed to raise awareness about women's land rights and empower rural communities in The Gambia. This Guide provides essential information on why women's land rights matter, summarizes the legal framework governing land rights in The Gambia, addresses common hindrances faced by women in enjoying their land rights, and provides clarity on the legal processes for both rural men and women to acquire land rights.

The approach to land administration is rooted in the Gambia's colonial past. The country has three tenure types: freehold, leasehold, and customary tenure.

Customary tenure applies to most of the country's land and is administered by district authorities (Seyfor) and village heads (Alkalo) drawing on Indigenous traditions. Customary tenure is largely determined by land management practices based on kinship or lineage which have evolved over time. The village Alkalo, administers land and together with descendants from other founding families holds the highest status and tenure security. Customary tenure distinguishes between clan (Kabilo) household holdings (managed by the clan head) and communal land ownership (managed by the Alkalo and the council of elders).

Freehold land covers about 10% of all land and includes Banjul and Kanifing Municipality, acquired public land, designated state land (alienated customary land), forest parks and nature reserves, and Tourism Development Areas. Leaseholds cover subleases and tenancies, licenses, 99-year leases of state land, and deemed leaseholds.

Conflicts do arise from overlapping customary land and state leasehold grants allocated to third parties. District tribunals are responsible for dispute resolution regarding customary land with the regional governors holding the power to review the tribunals decisions. The continuing issue of land disputes has led to a lack of public trust in the country's administration system and intensified conflicts between Indigenous communities and the government as well as private land conflicts. Consequently, both in rural and urban areas, one quarter of the adult population feels tenure insecure.

There are various legislations enacted to protect the rights of women as it relates to land. These legislations include the 1997 Constitution and Women's Act 2010 including its amendments. The Gambia's legal system also recognises Sharia Law in matters of divorce, inheritance and marriages to those that it is applicable (Muslims). Despite the various Government interventions to ensure women have rights and access to land, the nature of our legal systems including the land tenure system continue to pose a barrier to the full realization of women's rights and access to land.



FLAG with support from the International Fund for Agricultural Development (IFAD) through a consortium of the Centre for International Forestry Research and World Agroforestry Centre (CIFOR-ICRAF), the International Food Policy Research Institute (IFPRI) and the Alliance of Bioversity International and the International Centre for Tropical Agriculture (CIAT) developed this Guide in response to the increasing demand for knowledge on how to secure women's property and land rights in The Gambia.

The Guide contains four training modules, information for facilitators and training organizers, to be used as a tool for capacity building during training events. It targets a broad group of stakeholders, such as local authorities, government representatives, community members and elders, women's groups, religious leaders, and other relevant actors involved in advancing women's property and land rights. This Guide is not only for women's empowerment and improved participation and representation in decision-making but also for the social and economic development of communities.

Anna Njie

President

Female Lawyers Association Gambia (FLAG)

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- To International Fund for Agricultural Development (IFAD) for funding the development of this Guide through the consortium of the Centre for International Forestry Research and World Agroforestry Centre (CIFOR-ICRAF), the International Food Policy Research Institute (IFPRI) and the Alliance of Bioversity International and the International Centre for Tropical Agriculture (CIAT);
- To Amie N. D. Bensouda, Haddy Dandeh Jabbe, Anna Njie and Mariatou J Newlands, the consultants and authors of this Guide;
- To Hanna North and Ana Maria Paez-Valencia of Alliance of Bioversity International and the International Centre for Tropical Agriculture (CIAT) for their support in the development of this Guide;
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OVERVIEW OF THE TRAINING GUIDE



PURPOSE

FLAG with support from the International Fund for Agricultural Development (IFAD) through a consortium of the Centre for International Forestry Research and World Agroforestry Centre (CIFOR-ICRAF), the International Food Policy Research Institute (IFPRI) and the Alliance of Bioversity International and the International Centre for Tropical Agriculture (CIAT) developed this Training Guide (Guide) in response to the increasing demand for knowledge on how to secure women's property and land rights in The Gambia.

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CONTENT

This content is based on the field experiences of FLAG; Land Governance Assessment Report (LGAF) 2013 (World Bank)¹; Gender Analysis Report²; Office of the United Nations High Commissioner for Human Rights and United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) 2nd Edition of Realizing Women's Right to Land Publication; CIFOR Social-legal review of the Gambia³ and domestic legislations on land rights in The Gambia.



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¹ Land Governance Assessment Report (LGAF) 2013 (World Bank) by Amie Bensouda

² Gender Analysis to inform the development of GTAs to enhance women's land and resources rights in The Gambia. Report by Hanna North, (Alliance of Bioversity and CIAT)

³ SECURING WOMEN'S RESOURCE RIGHTS THROUGH GENDER TRANSFORMATIVE APPROACHES- https://www.cifor.org/publications/pdf_files/Books/Socio-legal-review-Gambia.pdf

MODULES

The guide is organized into 4 (four) training modules, each of which covers a different topic, including information on the rights of women to land and property, training exercises, and best practices.

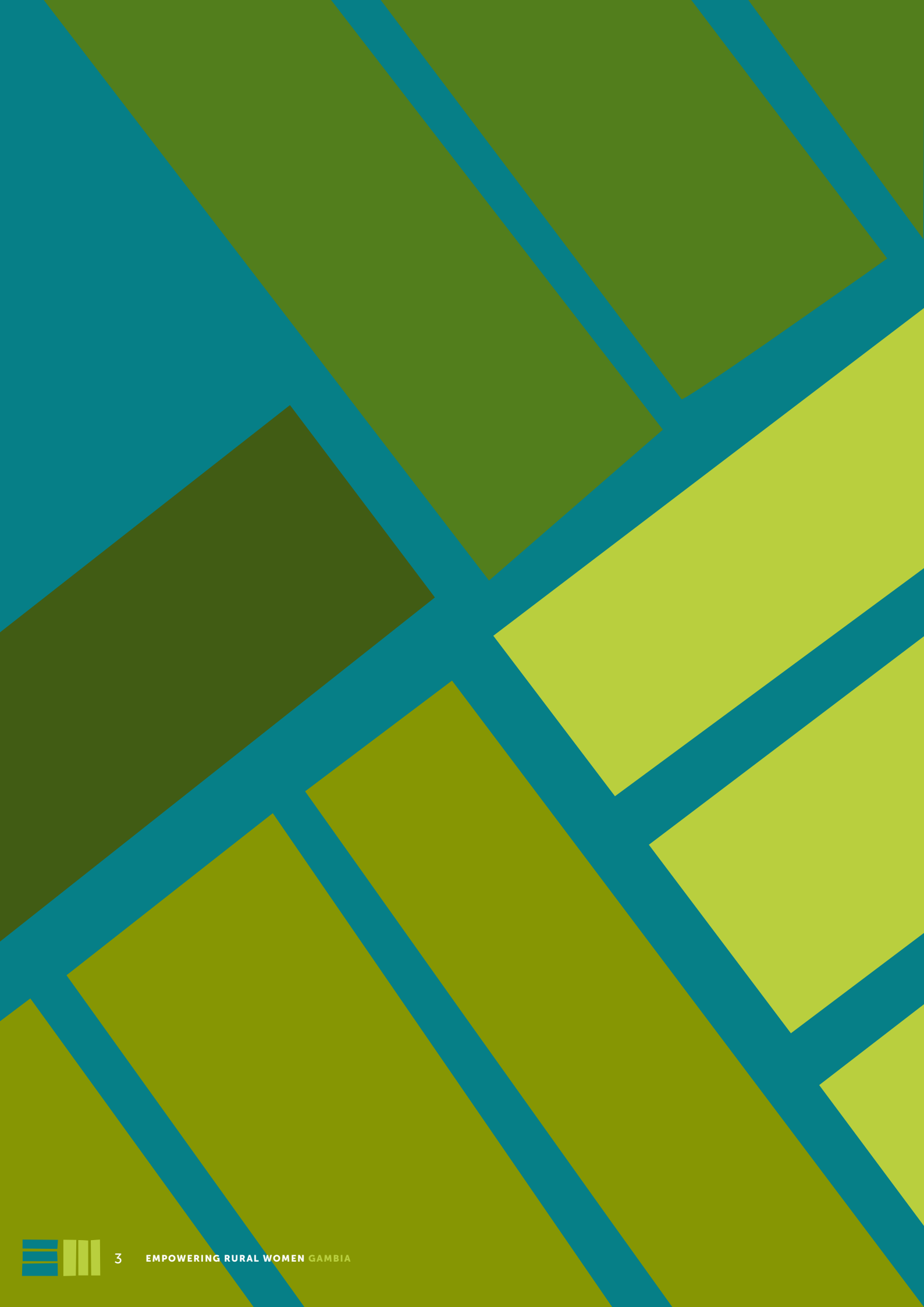
MODULE	1	WHY WOMEN'S LAND RIGHTS MATTER
MODULE	2	PROTECTING WOMEN'S LAND AND PROPERTY RIGHTS
MODULE	3	HOW WOMEN ACCESS LAND: CHALLENGES AND OPPORTUNITIES
MODULE	4	CREATING AN ENABLING ENVIRONMENT: HOW CHANGE CAN HAPPEN

The modules can be used as reference tools and as source material for training workshops or discussions.

TARGET GROUPS

This Guide is intended for a broad audience including the Resilience of Organisations for Transformative Smallholder Agriculture Project (ROOTS) staff, government representatives, civil society organizations, non-governmental organisations, women and youth organisations, cultural and religious groups, community elders and religious leaders, and land professionals, among others. The content is relevant for both humanitarian and development actors. The inclusion of all these groups, especially women, and the combination of skills are fundamental for advancing and securing women's land and property rights.





MODULE 1

WHY DO LAND RIGHTS MATTER FOR WOMEN IN THE GAMBIA?



INTRODUCTION

This module outlines why women's land and property rights matter everywhere given their economic and social roles. The module identifies how in the fragile context of The Gambia, improving women's land and property rights would positively impact socio economic development.



OBJECTIVES

The objectives of this module are to broaden the understanding of the importance of securing women's land and property rights and to provide compelling arguments that can be used by participants in the training course, or by other stakeholders, to raise awareness and push for gendered land reforms in The Gambia.



LEARNING OUTCOMES

At the end of this module, participants will be able to:

- Identify social context-specific reasons for emphasizing the securing of women's land and property rights;
- Advocate for women's land and property rights using compelling arguments; and
- Discuss and use gendered considerations concerning land and property rights.



TOPICS

Topics to be covered under the module:

- **Topic 1:** Why do women's land rights matter
- **Topic 2:** Summary of women land rights in The Gambia
- **Topic 3:** Hindrances to the enjoyment of women's land and property rights



ACTIVITIES

The trainer may facilitate a pre and post training activity to:

- Gauge participants' understanding of what is meant by women's land and property rights;
- Explore why ensuring women's right to property is important; and
- Explore how land rights impact men and women differently.



Key Takeaways from Module 1

01



The significance of women's land rights holds particular relevance in The Gambia. In the Gambian context, understanding why women's land rights matter involves a comprehensive exploration of social, economic, political, and human rights dimensions.

02



The sources of law in relation to women's land rights in The Gambia include the 1997 Constitution, Statutes, Customary Law and Practices, Sharia Law (as it relates to inheritance) and international legal frameworks The Gambia has ratified.

04



Customary practices and Islamic principles on women's land rights, traditional and religious norms have a significant influence and impact on how land rights are allocated and enforced, particularly for women.

03



A comprehensive approach that takes into account mechanism including utilising domestic laws, international and regional frameworks, customary practices, and Islamic principles is needed to effectively advance and safeguard women's land and property rights.

05



Inheritance laws are based on personal laws. The country's religious and ethnic diversity means that there is no consistent body of law and practice on inheritance. The predominance of Islam means that for over 90% of the population the Sharia guides inheritance.



TRAINERS INSTRUCTIONS

Pre-training Activity: Icebreaker

The trainer may facilitate an icebreaker exercise to commence the training.

Suggested steps to carry out the Pre-Training Exercise:

1. The trainer can ask the participants the following:
 - *What is your understanding of the concept "Women land and property rights"?*
 - *In your communities and experience, how do land rights impact men and women differently?*
2. The participants may respond by raising their hand. The responses of the participants are subjective.
3. Trainer may use the Facilitation Guide - Activity 101 annexed to this Guide for more detailed steps of this activity.



(10 mins)

Note to trainer:

- After the brainstorming session the trainer starts with the topics incorporating relevant discussion outcomes from the brainstorming session to create more context and a more personal perspective for participants.
- Participants should be encouraged to utilize social, economic, political, and human rights arguments to articulate the importance of women's land rights at the individual, familial, and societal levels. These arguments should then be incorporated into Topic 1 below.
- Participants should be encouraged to raise questions or provide additional information to foster a comprehensive understanding of the topic.



TOPIC ONE

WHY DO WOMEN'S LAND RIGHTS MATTER?

INTRODUCTION

The significance of women's land rights holds particular relevance in The Gambia where women constitute 50.25% of the population. Below are some justifications on why women land rights matter:



01 ECONOMIC CONTRIBUTION

- Securing women's land rights is essential for maximizing agricultural productivity and enhancing food security.
- Women make up the majority of the agricultural labour force in The Gambia, contributing significantly to food production and rural livelihoods. According to the United Nations Fund for Population Activities (UNFPA) women constitute approximately 70% of the agricultural workforce in the country.
- Studies have shown that increasing women's access to land and productive resources could increase agricultural output by up to 30%, leading to substantial gains in GDP and rural incomes.

engaged in agriculture, yet only about 9% of women own land.

- Studies have shown that women with secure land rights are more likely to invest in their families' education, health, and well-being, leading to improved socio-economic outcomes.

03 GENDER INEQUALITY

- Securing women's land rights is essential for addressing gender disparities and promoting women's empowerment.
- Gender disparities in land ownership and control perpetuate inequalities between men and women in The Gambia. According to UN Women, women in rural areas of The Gambia own only 7% of arable land, compared to 23% owned by men.
- Research indicates that women with secure land rights are more likely to participate in decision-making processes, exercise agency over their lives, and challenge traditional gender roles.

02 POVERTY REDUCTION

- Secure land rights can serve as a pathway out of poverty for rural women by enabling them to invest in productive activities, access credit, and build assets.
- Despite their significant contribution to agricultural production, women in The Gambia face persistent challenges in accessing and controlling land. According to the Gambia Bureau of Statistics, approximately 70% of rural women are

04 POLITICAL RIGHTS

- When women own land they gain recognition as yard owners with the right to vote in selecting local leaders like the Alkalo and to compete for positions.
- Land is an asset that gives identity in a variety of settings. Land gives women power to represent themselves in disputes and access to participation at the political level where policy is made.

05 SOCIAL STATUS AND INFLUENCE

- Land ownership enhances women's social status and prestige within their communities, increasing their visibility and influence as respected landowners and community leaders.
- Women who own land may be accorded greater respect and recognition by their peers, elders, and traditional authorities, enhancing their credibility and influence in not only political but social spheres. This enhanced social capital can be leveraged to advocate for women's rights, challenge discriminatory practices, and promote inclusive development initiatives.

06 SUSTAINABLE DEVELOPMENT

- By recognizing and protecting women's land rights, The Gambia can enhance the resilience and sustainability of its rural communities.
- Women play a critical role in promoting sustainable development and environmental conservation in The Gambia. According to the United Nations Development Programme (UNDP), women are the primary managers of natural resources in rural communities, responsible for tasks such as water and fuelwood collection.
- Secure land rights empower women to participate more effectively in natural resource management, land-use planning, and climate change adaptation initiatives.



CONCLUSION

Securing women's land rights in The Gambia is therefore not only a matter of social justice and human rights but also a strategic imperative for promoting economic development, poverty reduction, gender equality, and environmental sustainability. By addressing gender disparities in land ownership and control, The Gambia can unlock the full potential of its women and build a more inclusive and prosperous society for all.



TOPIC
TWO

SUMMARY OF WOMEN'S LAND RIGHTS IN THE GAMBIA

INTRODUCTION

Land rights in The Gambia are determined by the existing laws which by the 1997 Constitution (which is the framework law for rights recognition) comprise:

- the provisions of the Constitution itself;
- laws passed by current and preceding national assemblies and parliaments;
- the colonial laws that extended to Gambia during the colonial period and have been preserved by domestic law;
- customary law of members of communities to which it applies; and
- Islamic law (Sharia) relating to marriage, divorce and inheritance of members of members of the communities to which it applies.



Thus, the scope of rights in land and property that are available to both men and women is what is accorded by the legal framework in terms of ownership rights, inheritance rights, access rights and the means of protection of such rights.

LEGAL FRAMEWORK FOR LAND RIGHTS

The legal framework governing women's land rights in The Gambia includes both statutory laws and customary law. Sections 28 and 33 of the Constitution guarantees equal rights for women and protection against discrimination based on gender.

Two key statutes seek to deepen and enforce these rights. The Women's Act 2010 which aims to promote gender equality and protect women's rights, including land ownership and inheritance, and the Matrimonial Causes Act which seeks to ensure that spouses have equal rights to property acquired during marriage, including land. The Constitution and these two key statutes provide the foundation for the protection of women's land rights under the law.

The two land statutes: the State Lands Act, 1991 which applies to land in Banjul, Kanifing Municipality, and declared state land in West Coast Region do not contain provisions specific to women. The law is equally applicable to both men and women. The Land Regions Act 1945 while also not making specific provision for women is the basic law on rural land rights by prescribing customary law as the law applicable to land rights in the Regions. As a result, women's land rights in the 5 Regions of The Gambia (which include all rural areas) are determined by customary law/practices except to the extent limited by the provisions of any statute, and the Sharia rules of inheritance.



LAND OWNERSHIP



Women have the right to own land whether individually, jointly with spouses or family members, or as members of a group, under Gambian law. The extent to which they can do so and the extent to which these rights can be enforced depends on the system of law that directly affects them, and processes and mechanisms in place for their enforcement.

Women have equal rights with men to own and acquire land from the state or state institutions by allocation. They have a right to acquire land by purchase wherever such land is situated, or to access land by leasing, renting, or borrowing.

Women have a right to own land situated in the Regions in accordance with customary law applicable to the land, since all land is held under customary tenure which governs land ownership and management. Customary law is not written. Generally, Customary law vests ownership in the extended family group or the communities, unless such land can be individually claimed or has been individually allocated by the traditional owners. Women's rights to such family land are generally limited to access and usage as determined by the family group.

INHERITANCE RIGHTS

Women are entitled to inherit land from their parents and spouses in accordance with their personal laws, this is:

- Sharia for Muslims;
-  statute law and the English common law for persons of the Christian faith; and
-  customary rules of inheritance for persons of neither of the foregoing faiths.

For land under customary tenure, the Sharia rules of inheritance only apply to land that has been individualized and not to family land. Inheritance practices vary, with most communities following patrilineal systems where land is inherited through the male lineage.

SECURING TITLE

Women can hold land in their individual name or as a group and formalize title to such land at local level in the register of yard owners in the custody of each local council or by leasing at district authority or state level.

The registration obtainable is dependent on their proven rights over the land based on documentation in their possession proving title. Such registration is essential for securing women land rights and protecting them against disputes or manipulation.

Traditional authorities, in particular the village Alkalo, and the district tribunal play a significant role in land rights recognition and dispute resolution, influencing women's ability to formally assert their rights.



**TOPIC
THREE**

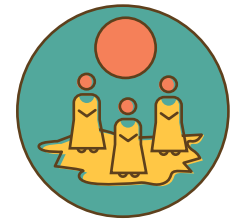
HINDRANCES TO THE ENJOYMENT OF WOMEN'S LAND AND PROPERTY RIGHTS - IDENTIFYING BARRIERS

INTRODUCTION

Despite legal provisions aimed at protecting women's right to property, serious limitations on land rights for women in The Gambia persist hindering women's ability to own or access and control land and creating major obstacles to the realization of equal property rights for women.

Pervasive traditional and customary practices which shape customary law, limit women's rights to own or inherit customary land whether from their parents or their husbands. Inadequate legal protection, enforcement mechanisms, and access to justice for women's land rights hinder their ability to secure and defend their land rights, however limited.

Some critical hindrances are identified and discussed in this section.



PATRIARCHAL TRADITIONS AND CUSTOMS: DEVOLUTION IN CUSTOMARY LAW

- According to customary law, land devolves based on the traditions and customs of the community. By prevailing patriarchal norms and custom, devolution is generally through the male lineage for most productive land thus vesting and maintaining control in male family heads with women having little say.
- The rationale for the prevalent practice of male being preferred over women is rooted in the belief that sons typically remain and carry on the family name and preserve family land, whereas daughters marry and join other families. Even for special crops farmed by women like rice, access to land is usually through the husband.

...serious limitations on land rights for women in The Gambia persist hindering women's ability to own or access and control land and creating major obstacles to the realization of equal property rights for women.



DEVOLUTION AFTER DEATH OF CUSTODIAN OF CUSTOMARY LAND RIGHTS

- Upon the death of a father as custodian of the customary land control over the land may automatically transfer to the eldest brother in the extended family until that line is exhausted then to the eldest son of the family.
- Upon the death of a husband, wives frequently face the reality of losing the land accessed through the husband rights to such land. In such circumstances, a woman may find herself compelled to remarry, often to the late husband's brother or a close relative, in order to retain access to land. Attempts to challenge these entrenched traditions result in family conflict and may even expose women to violence and other forms of aggression.
- In terms of inheritance of customary land under Sharia Law a female beneficiary can only inherit her rightful share and portion if there is evidence to show that the land has been partitioned or distributed and the person through whom she claims (whether parent or husband or child) has individual ownership title. If the land is still jointly owned by the family, customary law will prevail, and the Sharia Courts will not be able to distribute and vest any share in her.



INADEQUATE LEGAL PROTECTION

- Existing land laws are not gender sensitive and have contributed towards entrenching discrimination against women land and property rights.
- The 1997 Constitution while seemingly advocating for equal rights for men and women, at the same time, recognises customary law without modification. It also subjects rights of inheritance to personal law which for the vast majority of women is Islamic Law, again without modification.
- This has the effect of institutionalizing and perpetuating discriminatory practices against women through customary law. For effective change, the substance of customary law must be reformed.

LIMITED AWARENESS AND EDUCATION

- Lack of awareness by women is a significant hindrance. Many women and men, particularly in the rural areas, have limited awareness of their land rights and the legal mechanisms available to protect them.
- Lack of education and information about the land tenure system, inheritance laws, land transaction and dispute resolution processes, impede women's ability to assert or enforce their rights effectively, or at all.
- When widowed, women struggle to navigate the complex succession procedures generally through the Cadi courts, or dispute tribunals. This makes them vulnerable to exploitation by spouses and male relatives, who may take advantage.

EXPENSIVE AND CUMBERSOME LEGAL PROCEDURES

- The legal process is expensive both in terms of time and money and cumbersome, and therefore a hindrance to accessing justice through the courts. Court cases take too long to be heard and determined. Court fees, travel costs, witness expenses, among others, are prohibitively expensive for most women.
- Even where judgment delivered is favourable to a woman, enforcement procedures especially in a rural setting among communities who may be hostile may be an insurmountable obstacle.

STRUCTURAL DISCRIMINATION

- Cultural discrimination or bias significantly shape how authorities address women's property rights. Women often encounter challenges in seeking remedies for violations of their property rights. Traditional authorities, like the district tribunals and officials of government land agencies influenced by prevailing cultural practices, may be reluctant to interfere in disputes affecting women land or property rights which are often not considered enforceable.
- There are simply no systems in place that enforce women's statutory rights or that are designed to address their needs.
- Given that all chiefs who preside over the district authority are men, there is a perceived reluctance to interfere with the status quo which favour their own gender, resulting in effectively and simultaneously silencing women whose rights are infringed. These responses collectively have a disempowering effect on women seeking protection for their property rights, reinforcing existing gender discrimination within the system.



LAND REGISTRATION CHALLENGES

Land registration processes may be cumbersome, costly, and inaccessible to many rural women. Lack of awareness about the importance of land registration and bureaucratic barriers may prevent women from formalizing their land rights, leaving them vulnerable to dispossession and disputes.



URBANIZATION AND LAND GRABBING

Rapid urbanization and land grabbing in peri-urban areas may further marginalize rural women's access to land. As demand for land increases, women face pressure to sell or relinquish their land rights, particularly in areas like the West Coast Region undergoing extensive infrastructure development and projects.

ACCESS TO RESOURCES AND DECISION-MAKING

Women in The Gambia limited participation in decision-making processes related to land use and management within households and communities because they are not regarded as important players in matters relating to land.

WAY FORWARD

Addressing these limitations requires a multi-faceted approach, including legal reforms, awareness-raising initiatives, capacity-building programs, and support for women's empowerment.

Efforts to promote gender-responsive land policies, strengthen legal frameworks and institutional structures and systems, while empowering women economically and socially are essential for advancing women's land rights and achieving gender equality in The Gambia.

This effort must be led through the agency of women to be effective.

In summary, while progress has been made in recognizing and protecting women's land rights in The Gambia, challenges remain.

Sustained efforts to address legal and customary barriers, raise awareness, and empower women are essential for achieving meaningful gender equality in land rights and ensuring women's full participation in land-related decision-making processes.

- Efforts should address legal provisions and customary norms to promote gender equality in land rights.
- Awareness-raising, education, and capacity-building programs can empower women with knowledge about their land rights.
- Legal reforms and policy interventions are needed to address discriminatory practices and strengthen women's land rights protections.
- Collaboration between government agencies, civil society, and traditional leaders is crucial for advancing women's land rights and promoting gender equality.

Post training Activity: Group Exercise

At the end of the module, the trainer may facilitate a group exercise.

Suggested steps to carry out post-training exercise:

1. Depending on the size of group, trainer may divide participants in groups and ask each group to share their thoughts on the following:
 - *What are the main challenges that women might face when accessing the legal and customary tenure systems in The Gambia? Are they different from men?"*
2. Each group may be given 10 minutes to brainstorm their responses.
3. Participants may reconverge and each group share their thoughts with the larger group by raise of hands.
4. Trainer may use the Facilitation Guide - Activity 102 annexed to this Guide for more detailed steps of this activity.



(15 mins)

MODULE 2

PROTECTING WOMEN'S LAND AND PROPERTY RIGHTS



INTRODUCTION

This module will provide an overview of the land tenure system in The Gambia including more details on the national legal framework that guides the allocation, alienation, occupation and use of land. The module outlines the relevant domestic laws, international and regional frameworks, customary practices, and Islamic principles that influence women's land and property rights and how these may be leveraged to effectively protect and promote women's land and property rights in the Gambia, in a context of legal pluralism.



OBJECTIVES

The objective of the module is for stakeholders to gain an understanding of the existing legal instruments that protect women's land and property rights in the Gambia, how they relate to each other and how to leverage them in the prevailing context of legal pluralism.



LEARNING OUTCOMES

At the end of this module, participants will be able to:

- Acquire an understanding of the basis of the land tenure system.
- The different tenure types and how they relate to each other.
- Identify and discuss the advantages and disadvantages of different tenure arrangements.
- Identify the applicable land laws both statutory, personal and customary.
- Build strong arguments and define actions based on international human rights instruments.
- Demonstrate an understanding of the legal context in which women's land and property rights are governed.
- Understand the context of The Gambia legal pluralism.



TOPICS

Topics to be covered under the module:

- **Topic 1:** Overview of the Land Tenure System [30 mins]
- **Topic 2:** National Legal Framework on Land [20 mins]
- **Topic 3:** International and Regional Legal and Policy Frameworks [20 mins]



ACTIVITIES

The trainer may facilitate a pre and post training activity to determine the approach to commence the training and to assess the level of understanding of the participants of the content of the module at the end of the training.



Key Takeaways from Module 2

01



Colonial history shapes The Gambia's land tenure system.

02



The Gambian land tenure system encompasses four distinct types: Customary, Freehold, Leasehold, and Deemed Leasehold, each with unique characteristics.

04



The Constitution does not contain provisions on land rights or the land tenure system. This is left to statute law which is made by the National Assembly. The National Assembly can make law relating to land so long as its provisions do not conflict with the any constitutional provisions.

03



There are significant challenges in the Customary land ownership such as the lack of registration; undefined or ambiguous boundaries; and limited administrative regulation.

05



The Gambia committed to various international and regional legal frameworks aimed at safeguarding human rights, including land and property rights, and advancing women's land rights.



TRAINERS INSTRUCTIONS

Pre-training Activity: Brainstorming & Group Exercise



(10 mins)

The trainer may commence the module by asking participants to share what they know about the domestic laws on women's rights to land and property.

Note to trainer:

- This is important as it will help the trainer determine the participants' levels of understanding and inform the entry level with a particular group.

Trainer may use the **Facilitation Guide - Activity 201** annexed to this Guide for more detailed steps of this activity.

TOPIC ONE

OVERVIEW OF THE LAND TENURE SYSTEM

BACKGROUND

The land tenure system in The Gambia is based on our colonial history. The territories/ lands which comprised the colony were claimed to have been acquired, and directly ruled, by the British Government, while the protectorate was acquired under the Anglo- French Conventions and the subject of indirect rule.



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 kilometres up-river) was acquired in 1823. A tract of land on the North Bank of the river 1 mile (1.6 kilometres) wide and 23 miles (58km2) long was ceded by the king of Niumi in 1826.¹ 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 18572. 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. The Colony and Protectorate were unified by the Independence Act of 1964.

Two different systems of law were applied to land in the territory which became The Gambia in 1965 depending on whether the territory was part of the colony or the protectorate:

- the received English law; and
- customary law.

Islamic law was also specifically recognised³ as the personal law of persons of the Islamic faith in matters of marriage, divorce and inheritance.

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¹ Became commonly known as the Ceded Mile.

² Land Governance Assessment Report (LGAF) 2013 (World Bank)

³ Mohammedan Law Recognition Act



LAND IN THE REGIONS

- The Protectorate comprised all the now five administrative areas that were called the provinces and subsequently Regions (2007). These areas during the colonial period were indirectly ruled through traditional rulers.
- Each province was divided up into districts headed by the Chief/Seyfo who also presided over the district authority and administered the district under the supervision of a commissioner appointed by the British Government.
- Each district was made of villages or distinct communities headed by a local traditional leader called the Alkalo appointed by the Chief usually from the founding family of the village.
- The land Act which applied to protectorate land - the Land (Provinces) Act (now renamed Land (Regions Act) - has changed little since it was enacted. It vests all land in a district in the District Authority to be held and "administered for the use and common benefit, direct or indirect of all the communities concerned."
- It also provides that "the occupation and use of provinces lands by indigenes shall be governed and regulated by the customary laws obtained in the localities in which such land is situated."
- For non-indigenes, the lease (which was hitherto unknown) was introduced as a form of tenure which could be granted to non-indigenes only.



LAND IN THE COLONY

- The colony was treated as British territory referred to as Her Majesty's dominions. It was administered directly by a Governor General appointed by the Crown.
- Land in the colony was subjected to English land law. The rights of the indigenous people, which was hitherto customary, was now recognised as a right to continue to occupy land at the discretion of Her Majesty's government.

The State after independence in 1965 inherited all the colonial territories.

"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."⁴

The citizens of Banjul and Kanifing Municipality, unless they already held a freehold grant from the Governor General, or a lease either from the Governor General or after independence, from the State, were regarded as tenants of the state and could be dispossessed at any time.

In practice, citizens of Banjul and Kanifing Municipality who do not have a freehold grant or lease are treated as tenants from year and may apply to lease the lands which they occupy from the state for 99 years.

⁴ Section 4 State Lands Act.



GAMBIAN LAND TENURE SYSTEM

The land tenure system comprises four tenure types whose characteristics are described in this section.



Customary



Freehold



Leasehold



Deemed Leasehold

Customary tenure applies exclusively to the Regions and therefore the rural areas of The Gambia. The estimated land area held under such tenure is some 9,084 square kilometres.

Evidence of customary ownership is an Alkalo Certificate of Ownership and rate receipts showing that rates are being paid over the land at the local area council.

Freehold tenure applies exclusively to what was colonial land. Of these, only the land records for Banjul seem to have survived. The freehold as a land title was discontinued in 1945 and can no longer be granted without approval from the National Assembly. The grants which were made before 1945 continue to exist. Most of Banjul city is held under freehold grants from the colonial government.

Evidence of freehold title is a deed of conveyance issued by the Governor General over a parcel of land with a registration number, a survey description and sketch plan showing the geographical coordinates of the land.

Leasehold tenure was introduced subsequently in 1945 when freehold grants were discontinued. Leases may be granted by the State over state land through the Minister.

Leases may also be granted by the private owner of a freehold title.

This tenure was extended to the Protectorate, where district authorities are conferred with power by the Land (Regions) Act to grant leases to non-indigenes for a limited period with the approval of the Minister. Leases are processed through the commissioner's office, now the Governor's office. Although the Act provides for the granting of leases to non-indigenes in practice and currently leases can be applied for and obtained by indigenes.

Evidence of leasehold title is a Lease issued by the Lessor who may be the State or a District authority over a parcel of land with a serial registration number, a survey description and an attached survey sketch plan showing the geographical coordinates of the land. The Lease must state a fixed period for its duration and must state the use for which it is being granted.



Deemed leasehold

From 1984 to 1991, the government embarked on land administration reform and introduced the deemed leasehold as a means of encouraging Indigenous landowners to apply for formal titles and at the same time grant the state more control over land resources customary land.

The State Land Act which was introduced in 1991 gives the Minister power to designate any region land as state land for the purpose of transferring the administration of the land from the district authority to the State.

The Act provided that once such designation is made, the occupiers of all land in the area are "deemed" to hold a lease of the land which they occupy from the state for a period of 99 years. Such occupiers may apply for formal leasehold titles from the Minister.

Certificate of occupancy: As a first step towards applying for a lease a deemed lessee may apply for a certificate of occupancy to prove their customary

title over the land. The certificate of occupancy is issued by the district authority and endorsed by the Seyfo, the Alkalo and the area council. It is accompanied by a Physical Planning Clearance with a sketch plan.

Usage Control: Leases are limited to specific uses controlled by physical planning laws. The land Acts recognise the following uses: residential, agricultural, industrial, commercial, tourism development and mixed uses. The owner cannot deviate from the usage specified in the lease without permission of the lessor.

Ownership Term: The period of ownership of state and district authority leases varies according to usage. Residential leases are for 99 years. Other uses are for more limited terms ranging from 21 – 50 years depending on sector policy and ministerial discretion. The term can be renewed provided there is no breach. In practice renewal is almost automatic.

Lessor's control: Lessees contain restrictions which subject the right to deal with the land to ministerial control. This includes sale, mortgage, use, modifications to its terms.

Covenants: Leases are subject to covenants which are set out in the lease or the Act, and failure to comply with these or other restrictions is a breach which may entitle the Minister/lessor the right to re-enter and regain possession.

Registered title: All leasehold titles are registered and have a unique identity separate from the ownership by way of a serial registration number.

Secure Property Rights: Provides the second most secure and stable form of property rights with legal protection.

Collateral for Loans: Attractive to lending institutions as collateral for loans, offering financial flexibility to the owner.

Women commonly own leasehold properties in urban areas and can access leasehold grants from the state.

Deemed Leases (Customary Tenure)



Deemed Leases, lasting for 99 years, are legal titles granted to all lawful occupants of designated state land areas, vested in the state for community benefit by the State Lands Act 1991.

As stated above, the deemed lease was created by the State Lands Act. It applies to only designated state lands. Administrative authority is transferred from the district authority to the Minister of Lands. The land is treated as it was a leasehold.

Ownership: Automatic conversion of customary tenure to a leasehold title for 99 years.

Opportunity for formalisation: The deemed lessee can apply for a formal lease from the Minister. The procedure is spelt out in regulations. Procedure is much shorter than leasing customary land. Once converted to a formal lease the advantages and disadvantages of a leasehold title will apply to the land.

Recognition: Instead of a lease, a deemed leasehold can apply for a certificate of occupancy signed by the Alkalo, the district authority and the local area council. Difficulty in legal recognition due to the absence of a registry for deemed leases.

Limited collateral for loans: Banks do not generally accept the certificate of occupancy because it is not considered as secure as a registered title. However, some microfinance and credit institutions accept it for lending purposes.

Ministerial control: Subjects the land to ministerial control. For example, user change has to be approved. Implied covenants in the State Land Act also apply to the deemed lease.

The deemed leasehold title presents an opportunity for:

- Formalisation of ownership by applying for a certificate of occupancy in the name of the landowners.
- Unitization of land by removing it from family or communal ownership to individual ownership.
- A formal title in a less cumbersome and costly process.

CUSTOMARY LANDS IN THE REGIONS

Beneficial interest in customary land is vested in the family or community. Family land can only be transferred out of family ownership with the consent of the head of the family who may or may not consult family members depending on the decision making structure within the family. Community land is under the control of the Alkalo who must now consult with the Village Development Committee to manage such lands.

Indefinite Ownership: *Ownership is indefinite and akin to freehold ownership and is vested in the family which is usually extended or the community.*

Control: *Control vested in the family head for the time being. Control of community land is in the Alkalo who is required to consult the community elders. Most communities have a VDC instead.*

Unregistered and Undocumented: *Ownership is undocumented, relying heavily on traditional oral history.*

Unmapped: *Boundaries undefined leading to boundary disputes and conflict.*

Customary rights unrecorded: Customary law is based on tradition and custom. Most Gambian communities are patrilineal and apply patriarchal norms. These are unwritten and unrecorded.

Non-transferable rights: *Land cannot be transferred unless distributed and partitioned among members of the family. Cannot be inherited as well unless partitioned.*

Individual rights: *Limited to cleared virgin land. This is now rare.*

Collateral for loans: *Not accepted as collateral for loans.*

Usage control: *Family heads (men) determine usage access. Land for cash crop production assigned to men. Rice fields and land for horticulture assigned to women.*

Unregulated: *Absence of regulation has created a great deal of informality. Unregulated authority is vested in traditional leaders like the Alkalo and the district Seyfo.*

Advantages of Customary Land Ownership:

- 1 Traditional titles contribute to the preservation of cultural heritage.
- 2 Communal ownership fosters sustainable land management practices.
- 3 Encourages communal land conservation.
- 4 Facilitates land use planning.
- 5 Can be converted into a leasehold from the district authority (Note: this results in a loss of rights akin to a freehold to a term of years).

Challenges in Customary Land Ownership:

Ownership: Customary ownership of family or communal land is generally undocumented, relying heavily on traditional oral history. Customary land is not surveyed or mapped. Best proof of ownership is Alkalo ownership certificate, an informal document which may or may not indicate size and does not identify the land.

Collateral: Without secure proof of ownership, customary land is not accepted by lending institutions as collateral and cannot be leveraged to raise credit for any economic activity.

Ambiguities in customary land titles such as undefined boundaries, lead to numerous disputes or conflicts among individuals or groups regarding ownership or usage of the land and particularly in the rural areas. A significant percentage of all cases in high court relate to land disputes.

Patriarchal norms often result in the exclusion of women from fair land ownership. In societies where male dominance is deeply rooted, women have limited rights to access and control land. This gender-based discrimination hampers women's economic empowerment and overall autonomy.

Even where women rights are recognised, men traditionally hold primary decision-making roles, often **limiting or excluding women entirely from the decision-making process**, so that their interest is not represented in key decisions including:

- partitioning among family members;
- alienation of the land to third parties;
- sharing proceeds of family land sale;
- joint ventures with investors

Costly and cumbersome registration/leasing process which can take years.

Lack of proper regulations of customary land has created a great deal of informality and resting unregulated authority in traditional leaders like the Alkalo and the district Seyfo.



TOPIC
TWO

NATIONAL LEGAL FRAMEWORK ON LAND



The laws which constitute the national legal framework for land resources are presented in this section.

CONSTITUTION OF THE GAMBIA

- The 1997 Constitution serves as the fundamental law of the land, embodying principles of human rights and freedoms for all individuals without discrimination. The Preamble emphasizes the perpetual commitment to respecting and upholding these rights, irrespective of ethnic, gender, linguistic, or religious considerations.
- Section 22 provides protection for the compulsory deprivation of property unless it is for public purposes (defined in the Land Acquisition and Compensation Act) without prompt payment of compensation.
- Section 28 further mandates the equal treatment of women and men, ensuring women's full and equal dignity and opportunities in political, economic, and social spheres.
- Section 33(1) reinforces equality before the law, prohibiting discrimination based on various factors, including gender. However, despite this constitutional safeguard, Section 33(5)(c) and (d) outline exceptions where the non-discriminatory clause does not apply, particularly in matters of personal and customary law such as adoption, marriage, divorce, burial, devolution of property on death (inheritance) and other related issues.
- Section 192 provides for the establishment of a land commission.
- The Constitution does not contain provisions on land rights or the land tenure system. This is left to statute law which is made by the National Assembly. The National Assembly can make law relating to land so long as its provisions do not conflict with the above constitutional provisions.

Land Laws

The statutes that determine rights in land are two - State Lands Act 1991(as amended) with the State Lands Regulation made under it, and the Land Regions Act 1945(as amended). These two Acts together with:

- the body of customary land practices applicable to each community; and
- the English common law and rules of equity applicable to freeholds and leasehold land, constitute the national legal framework for land.

State Land Act

Determines title to land in Banjul and Kanifing Municipality. It prohibits the granting freehold title without national assembly approval. It regulates state land and prescribes the leasehold as the form of title granted by the state and the terms and conditions on which leases may be granted and taken back. It provides a mechanism for administering state land. It limits the acquisition of land by foreigners.

It provides for the re-designation of customary land to state land by declaration. So far land in Kombo North, South, Central Has been declared state land. Thus, transferring control over such lands from the district authority to the Minister.

The State land Regulations made under the Act regulate the granting of leases and certificates of occupancy for deemed leases and the covenants which apply to all leases. All leases extended to 99 years subject to provisions limiting ownership rights of non-Gambians.

Lands Regions Act

The Act determines title to land in the regions. It vests all land in the Regions in the district authorities presided over by the Seyfo of the district to be held and administered for the use and common benefit, direct or indirect of all the communities concerned. Thus, the district authorities are trustees of all region land and the communities are the beneficiaries.

It also prescribes that the customary law obtained in the locality of the land as the law that governs and regulates such land. Non-indigenes may be given rights of occupancy of not more than 3 years. (This has not been amended but is no longer followed) Leases can only be issued by the district authority with the Consent of the Minister. The statutory term limit of a lease in the Regions (excepting deemed lease areas) is 50 years.

Land administration and management

A series of other statutes provide for the administration and management of land resources. An awareness of the existence of such laws facilitates the navigation of the land sector in the enforcement of rights.

Lands (Registration of Deeds) Act⁵

Makes provision for the registration of deeds and instruments including transactions affecting lands and related property. Only land that is surveyed, mapped and given a unique identity can be registered. This excludes all customary land and deemed leasehold land.

.....

⁵ 1880, Cap 57: 01



Land Acquisition and Compensation Act⁶

Makes provision for the procedure for the compulsory acquisition of land for public purposes. It defines what a public purpose is. It also provides a guide for payment of compensation:

- Value of development; and
- For customary land, usufructuary rights only will be compensated. This is determined by the department of land and surveys.
- For freehold land the value of the land.

It provides a process for settlement of disputes.

Physical Planning and Development Control Act⁷

Provides for the systematic planning of all land by creation of local plans, development plans, and national plans by which land may be zoned for different uses. Zones that have been created include tourism development areas, industrial areas, residential and commercial areas. It also makes provision for the control of developments on land through a system of granting permits e.g. the building permit.

The Gambia Tourism Board Act 2011⁸

Makes provision for the creation, development and management of areas reserved for tourism activity.

Forests Act

Provides for the designation of forest parks and sets up mechanisms for the management of forests, protection of forest resources, regulation & monitoring community & private forests, and the preparation of 10 year action plans for management of forest resources.

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⁶ 1991, Cap 56:01

⁷ 1991, Cap 57:06

⁸ 2011

Women's Act 2010 and Women's Amendment Act 2021

Section 11 provides:

"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 43 provides:

"1) Every woman shall enjoy equitable right as men in case of separation, divorce annulment of marriage, subject to personal law and

...

4) In the case of separation, divorce or annulment of marriage, a man and a woman have the right to an equitable sharing of the joint property derived from the marriage."

In the case of Dawda Jawara v Matty Faye (Unreported) SC CA 023/2016 a suit was filed for the following orders:

- A declaration that the Applicant Matty Faye is entitled to an equitable share of the Joint Matrimonial Property in accordance with Section 43 of the Women's Act 2010.
- An order declaring the said share of the matrimonial property.

The Court of Appeal of The Gambia in interpreting section 43 held that in considering Section 43 of the Women's Act 2010 the parties be jointly entitled to the property in a 50 – 50% share ownership. Further, each of the parties owns an equal share to the other of the matrimonial property situated at Kanifing East Layout, The Gambia.

Section 44 provides that:

“..."

(2) A widow has the right to an equitable share in the inheritance of the property of her husband, subject to personal law.

(3) A widow has the right to continue to live in the matrimonial home, subject to personal law..."



Women's Amendment Act 2021

Amendment of Section 43(1) (5) provides that:

"In determining the equitable share of joint property derived from a marriage under sub-section (4), a court shall take into consideration

- i. property accumulated by joint industry of husband and wife during marriage;*
- ii. contributions made by a woman in developing and improving upon property acquired prior to the marriage; and*
- iii. contributions made by a woman in raising and caring for the family throughout the marriage."*

Conveyancing and Law of Property Act 1881

An English Act provisions of which apply to transactions relating to the freehold and leasehold title and other legal instruments.

Mortgages Act

Provides for the use of immovable property (land and fixtures to land) as security/collateral for lending. It regulates all mortgages of such property and seeks to balance the rights of the borrower and lender. Only distinct rights in land may be mortgaged. Lending institutions do not accept customary land as security. Only micro finance institutions accept deemed leasehold land if the borrower has a certificate of ownership.

Land Commission Act

Establishes a land commission to advise on land administration policy; Investigate land disputes and occupation; Assessment of land rent and premium; monitor registration of properties; Inspect property registers. Members appointed but not implemented.



Dispute Resolution System

The district tribunals are primary courts for dealing with all land disputes concerning customary land. They are presided over by the district Seyfo who sits with 5 members. If a litigant is not satisfied with their decision he or she can appeal to the high court. Lawyers cannot appear before the district tribunals.

Instead of going to the district tribunal at first

instant, litigants have the choice of starting their case in the High Court. They must however be represented by a lawyer. The cost of this can be significant.

The formal court system provides for a 2-tier appeal system from the high court. Any decision by the high court can be appealed to the Court of Appeal and thereafter to the Supreme Court as the final court.

TOPIC THREE

INTERNATIONAL AND REGIONAL LEGAL AND POLICY FRAMEWORKS

The Gambia is party to a series of international legal instruments (treaties, protocols and conventions) and policy statements both at international and regional levels which seek to set standards for the protection of human rights, including the right to land and property and the enhancement of women land rights. Some of these are set out in this section.



Convention on Elimination of all forms of Discrimination Against Women (CEDAW)

This Law can be said to be unique among existing human rights laws as it is concerned exclusively with promoting and protecting the rights of women. CEDAW was introduced to reduce the global patriarchy that exists and currently it is the most important legally binding international instrument concerning the human rights of women. CEDAW is referred to as the international bill of rights for both public and private spheres by bringing together all conventions and treaties that protect and promote the rights of women. Most States including the Government of the Gambia have ratified CEDAW and The Gambia has further domesticated it into law by enacting the Women's Act 2010.

- Under Article 14 (2) (g) of the CEDAW, States are obligated to ensure equal treatment of men and women in land and agrarian reforms as well as in land resettlement schemes.

- Under Article 16 of the CEDAW, States are obligated to ensure that land tenure reforms include women's property rights during marriage and by extension divorce for consideration.

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly in 1948 and represents the first global expression of rights to which all human beings are inherently entitled. Under the UDHR, provisions relating to land and property include:

- Article 7 of the UDHR states, the rights to equality before the law and to equal protection of the law meaning that men and women are protected against any discrimination in violation of the Declaration;
- Article 17 of the UDHR states, Everyone has the right to own property alone as well as in association with others and that no one shall be arbitrarily deprived property.



All member states therefore are under an obligation to ensure that women and men have equal rights to property and land.

Beijing platform for Action,1995,

The Beijing Platform for Action (BFA) is an agenda for women’s empowerment which aims at accelerating the removal of all the obstacles to women’s active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making.

The BPA calls upon Governments to “Undertake legislation and administrative reforms to give women equal rights with men to economic resources, including access to ownership and control over land and other properties, credit, inheritance, natural resources, and appropriate new technology”

Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa

(Maputo Protocol). (The African Charter on Human and Peoples’s Rights is also known as the Banjul Charter signed in 1986.

This addition to the African Charter on Human and Peoples’ Rights the Protocol explicitly protects women against discrimination and stipulates that women have the right to inherit equitable shares from their parents and from their husband as well as the right to buy and manage their own land.

Article 19. Right to Sustainable Development.

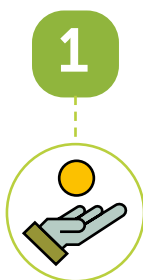
“Women shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to:

- a. *introduce the gender perspective in the national development planning procedures;*
- b. *ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes;*
- c. *promote women’s access to and control over productive resources such as land and guarantee their right to property;*

The 2030 Agenda for Sustainable Development Goals

The 2030 Agenda for Sustainable Development Goals adopted by all United Nations Member States in 2015, reflects the urgent need for strengthening tenure security for all, particularly women and vulnerable groups, through Sustainable Development Goals.

Women’s secure access to, use of and control over land is emphasized in three of the Goals:



End poverty in all its forms everywhere



Achieve food security



Achieve gender equality and empower all women and girls



African Union Framework and Guidelines on Land Policy in Africa was adopted by the Assembly of Heads of State and Government in July 2009.

On November 5th, 2013, the African Commission on Human and Peoples' Rights deliberated on its mandate to uphold human and peoples' rights in Africa as outlined in the African Charter on Human and Peoples' Rights (the African Charter) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

During their discussions, the Commission acknowledged that women's rights, founded on the principles of equality and non-discrimination, are safeguarded by various regional and international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol, the African Charter, and the Maputo Protocol. **They also reflected on the Framework and Guidelines on Land Policy in Africa adopted by the African Union in 2009, particularly the sections concerning the reinforcement of women's land rights.**

The Commission emphasized that women's access to, control over, and utilization of land and productive resources play a vital role in advancing gender equality and serve as a firm foundation for enhancing women's social, political, and economic standing.

Recognizing the significant contributions made by women to the efficient utilization of land and their involvement in devising strategies for ensuring food security, community development, and sustainable agricultural practices across the continent, the Commission underscored the importance of empowering women in matters related to land ownership and management.

The Commission expressed concern that despite the majority of State Parties ratifying the Maputo Protocol and other global instruments on women's rights, women remain deprived of their land and property ownership rights and persistently encounter discrimination and detrimental social norms due to gender inequality;

Acknowledging that State Parties bear the principal obligation to guarantee and safeguard women's right to land and property in Africa;

The Commission urges international institutions and regional economic communities to offer technical and financial assistance to African governments in their efforts to uphold women's rights to land and property across all levels, aligning with the principles delineated in the Maputo Protocol and other pertinent international agreements⁹.

The Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (Voluntary Guidelines) endorsed by the Committee on World Food Security (CFS) in 2012.

In 2012, the Committee on World Food Security endorsed the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the Guidelines) to guide governments on land issues. Coordinated by the UN Food and Agriculture Organization (FAO), this initiative is country-driven and rooted in sustainable development principles, recognizing the pivotal role of land in development. The Guidelines aim to combat hunger and poverty globally and nationally by advocating for secure tenure rights and equitable access to land, fisheries, and forests. Among the ten core principles for implementation, gender equity stands out.¹⁰

⁹ <https://achpr.au.int/index.php/en/adopted-resolutions/262-resolution-womens-right-land-and-productive-resources-achpres262liv>

¹⁰ <https://www.unccd.int/sites/default/files/2022-05/cb9656en.pdf>



A practical guide on implementing gender-equitable land policies frames the issue using five themes:

- Policy Making: Involvement in key decision-making processes
- Legal Issues: Translating policy into law
- Land Tenure Governance: Ensuring women's inclusion in day-to-day land governance
- Technical Issues: Integrating women's needs into administrative activities
- Communication Strategies: Advocating for gender sensitization and long-term attitudinal change

The Guidelines serve as a valuable platform for discussing land and gender issues. Technical guidelines on land and gender provide neutral suggestions for incorporating gender considerations into land projects:

- Understand the local tenure system
- Assess gender equity limitations in laws, policies, and regulations
- Target women as project beneficiaries
- Establish a gender-sensitive monitoring system with indicators
- Employ a gender adviser to assist implementation teams
- Provide gender awareness training for stakeholders
- Engage in public outreach campaigns and education
- Implement gender-sensitive evaluation systems and collect disaggregated data.

These recommendations aim to promote gender equality and ensure women's inclusion in land governance and development.

In conclusion, the wealth of international and regional legal instruments, policies, and frameworks discussed underscores the imperative of promoting and protecting women's land rights. From CEDAW to the Maputo Protocol, from the Universal Declaration of Human Rights to the Sustainable Development Goals, these documents emphasize the fundamental principle of gender equality in land ownership and management. The recognition of women's crucial role in sustainable development and food security further underscores the urgency of empowering women in matters related to land rights.

However, despite these commitments, challenges persist. Limited steps have been taken to give effect to these commitments. Women continue to face discrimination and unequal access to land and property. Thus, the call for international institutions, regional economic communities, and state parties which includes The Gambia to provide technical and financial support in upholding women's land rights is crucial. This will involve not only law reform but extensive recalibration of our land institutions, and decision-making procedures and processes concerning land resources.

Advocates for reform must ensure that the ongoing development of the land policy addresses these issues.





Post-training activity: [20 mins]

At the end of the module, the trainer may facilitate a group exercise to answer the below listed questions:

- *What are the primary statutes, regulations, and policies related to land management and land tenure in The Gambia?*
- *Identify the different land tenure systems and their characteristics*
- *What role do customary laws and traditional authorities play in governing land tenure and land management in rural communities?*

Note to trainer:

- This exercise is to assess the level of understanding of the participants of the content of the module.
- Trainer may use the **Facilitation Guide - Activity 202** annexed to this Guide for more detailed steps of this activity.



(20 mins)

Suggested steps to carry out the Post-Training exercise:

1. Depending on the size of the group, participants can be divided into 3 groups and each group is allocated a question to answer.
2. Each group may be allocated 10 mins to discuss their responses.
3. Share flipchart paper and marker with each group and each group may identify a rapporteur and presenter.



MODULE 3

HOW WOMEN ACCESS LAND AND PROPERTY: CHALLENGES AND OPPORTUNITIES



INTRODUCTION

This module outlines the most common methods women use to access land and property in The Gambia and describes the characteristics, advantages and disadvantages of each method. The module will provide the step-by-step process to perfect title to land¹ under each tenure arrangement.



OBJECTIVES

The objectives of the module are to broaden the understanding of different land tenure arrangements through which women access and control land and property in The Gambia and to provide recommendations on how to use such arrangements and provisions as entry points for increasing women's access to and control over land and property and to ensure perfection of title to land.



LEARNING OUTCOMES

At the end of this module, participants will be able to:

- Identify fit-for-purpose tenure arrangements for securing women's access to land and property;
- Identify and select preferred entry points and opportunities for protecting and promoting women's access to land;
- Understand the steps involved in perfection of title under each tenure arrangement; and
- Understand the importance of promoting right to inheritance and marital property as a means to rebalance gender roles inside the household and empower women.



TOPICS

Topics to be covered under the module:

- **Topic 1:** Methods of Acquisition of Land by Women
- **Topic 2:** Perfection of Title of Land Acquired
- **Topic 3:** Opportunities



ACTIVITIES

The trainer may facilitate a pre, mid and post training activity to determine the approach to commence the training, to stir conversation amongst the participants on the realities of their context and to assess the level of understanding of the participants of the content of the module at the end of the training.

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¹ This is the process of obtaining legal title to land including registration of the title through the appropriate structures and process.



Key Takeaways from Module 3

01



Women can acquire land through conventional methods like purchase, inheritance, or gifts. State-owned land may be allocated for residential purposes, benefiting women in urban and peri-urban areas.

02



Traditional leaders primarily allocate to male heads of households, who may then distribute it to female family members. Group land ownership is common in rural areas, and may involve discretionary distribution among households, potentially including women.

04



Islamic marriage principles emphasize individual property rights, with women entitled to manage their wealth independently and have a share in matrimonial property based on contributions. Generally, the process of acquiring land varies depending on the tenure type, whether it's Freehold, Leasehold, or Customary Land/ Deemed Leased, each with its own set of procedures.

03



Women can also acquire land through marriage, with legal recognition of matrimonial property rights and joint ownership. Legislations such as the Women's Act and Matrimonial Cause Act provide avenues for fair division of matrimonial property upon divorce or separation.

05



Governed by received English law, including common law principles and statute law, Christian inheritance entails distribution based on intestate succession or the terms of a Will. Sharia law governs inheritance for Muslims in the Gambia, with distribution outlined in the Quran. Sharia emphasizes fair distribution, with specific shares designated for different relatives.

06



Informal distribution in sharia is common and managed by the deceased's family or Islamic leaders. Formal distribution, the Islamic Court handles formal distribution to ensure assets are fairly distributed among eligible beneficiaries. The Women's Act 2010 (as amended), recognises joint contributions to marital property, ensuring fair distribution.

TRAINERS INSTRUCTIONS

Pre-training Activity: [10 mins]

Facilitate a plenary discussion to understand the perception and context of the participants. The trainer may ask the participants the following questions:

How do women access land? Do women own land?

If women own land, what evidence do they have to prove ownership of land?

What process exists in your communities to ensure women register their ownership of their lands?



(10 mins)

Participants may respond by raising their hands.

Trainer may use the **Facilitation Guide - 301** annexed to this Guide for more detailed steps of this activity.

“

In principle, and legally, land in The Gambia is accessible to both men and women.

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TOPIC ONE

METHODS OF ACQUISITION OF LAND BY WOMEN

INTRODUCTION

The land tenure system that exists in The Gambia is outlined in Module 2 to be Customary, Leasehold/Deemed Leasehold and Freehold. Flowing from each of these tenure types are a bundle of rights which exist by law and vest in the owner. In principle, and legally, land in The Gambia is accessible to both men and women.



Methods of Acquisition of Land by Women

Conventional Methods - The method of acquisition of land is largely governed by the tenure system of the land sought to be acquired. Under the Leasehold and Freehold Tenure, land can be acquired by **purchase, inheritance or transfer gratis (gifts) from the owner.**

However, under the customary tenure system, **there exist unique methods of acquisition in addition to the conventional method.**

Allocation by State

Directly owned state land may be allocated by the state to individuals for residential or other purposes. The State has also created residential estates in designated state land areas which it allocates. The policy basis for this allocation is not clear. However, individual women from the urban and peri urban areas have been known to benefit from such allocations.

Allocation by Traditional Leaders, Alkalo, Council of Elders, Kabiloo

Under the customary tenure system, land can be acquired through allocation from traditional leaders, the Alkalo, or the

council of elders, or a Kabiloo to individuals or families. Most of these allocations are specifically to male heads of households who may allot parcels for use by female family members.²

Distribution of or partition of Group Land

Group land ownership occurs when land is collectively owned by a group of people rather than by individuals. In this setup, the group members share responsibility for managing the land together. This type of ownership can be seen in different ways, like when a community collectively owns land (communal land), or when organisations such as cooperatives, associations, or local indigenous groups (commonly known as kafos) own land as a group. In the Gambia, rural group land rights (i.e., non- communal) are not officially acknowledged. To get legal recognition, groups must register formally as associations (Bensouda 2013, LGAF).

In the rural areas, a group of women can also acquire land by clearing virgin land or forest for farming.³ Similar to the peri-urban areas, women in the rural areas may also acquire land as a group through women’s kafos from Alkalos or district authorities mainly for cultivation of vegetable or staple food.⁴

² Gender Analysis Report to inform the development of GTAs to enhance women’s land and resources rights in The Gambia, Prepared by: Hanna North (Alliance of Bioversity and CIAT) Pg. 14

³ Gender Analysis Report to inform the development of GTAs to enhance women’s land and resources right in The Gambia, Prepared by: Hanna North (Alliance of Bioversity and CIAT) Pg. 14 (Example of Dampha Kunda, Upper Region River, The Gambia)

⁴ Gender Analysis Report to inform the development of GTAs to enhance women’s land and resources right in The Gambia, Prepared by: Hanna North (Alliance of Bioversity and CIAT) Pg. 19

“As new project sites for GALS, this has the potential to shift in line with the pattern seen in Marakissa and Toniataba. The ROOTS Social Inclusion Officer noted that “they recognise their rights and through the engagement with the project they are gradually exercising their rights through the land transfer initiated by the project. “The land that belongs to the garden group is registered in the group’s name, however, women from the communities are not directly involved in this process at present so this could be a good opportunity for raising awareness as the actual process of registering land is not well understood amongst the communities”⁵

Matrimony

Women may also acquire land through marriage. In Islam, the term “matrimonial property” includes wealth acquired during the marriage, with contributions from both spouses in its acquisition and development. This encompasses direct or indirect contributions and extends to property obtained through gifts, such as real estate bequeathed to the spouses (Sahid, 2016). In certain situations, spouses may jointly own property, including a purchased house or a shared investment in a business. Joint ownership extends to cases where one spouse contributes to the other’s trade or the landed property. This mode of acquisition of land is recognized by common law and statute⁶ but is mainly practiced in in Urban and Peri-urban areas.

Similar to inheritance, the two primary legal systems, Islam and Christianity, also govern the institution of marriage and, consequently, impact matters related to matrimonial property.

Additionally, the legal system acknowledges civil marriages. A civil marriage is a lawful union between individuals that is solemnised under the Civil Marriage’s Act Cap 41:02. Civil marriages are not religious. They are monogamous. The Registrar of Marriages perform the marriage. This form of marriage grants entitles the couple to specific rights and responsibilities, particularly concerning property and inheritance.

CHRISTIAN AND CIVIL MARRIAGE

Common Law Principles and Statute

Under common law, “matrimonial property” lacks precise definition and is not recognised as a distinct legal category.

- The common law generally upholds the principle of individual ownership of property, known as separate or personal property.
- Section 6 of the Married Women’s Property Act Cap 41:05 recognises a woman’s right to her personal property acquired before marriage.

Division of Assets in Divorce and Family Law

- In divorce and family law, courts consider the division of assets between spouses.
- The process involves identifying and valuing assets, including property, finances, and possessions acquired during the marriage.
- Courts aim for a fair and equitable distribution of these assets upon divorce.

⁵ Gender Analysis Report to inform the development of GTAs to enhance women’s land and resource rights in The Gambia, Prepared by: Hanna North (Alliance of Bioversity and CIAT)

⁶ S.43 of the Women’s Act 2010 and Amended in 2021.

Matrimonial Cause Act 1986 (as amended):

- This statutory provision reinforces common law principles of Matrimonial property. Its applicable to only monogamous marriages,
- Section 22 empowers the court to order payments or property transfers for property rights or financial provision.
- Section 23 of the Act mandates the court, upon a decree of divorce or nullity, to order the transfer or conveyance of property if one party holds the title to assets rightfully belonging to the other. The transfer occurs on terms deemed appropriate by the court.
- Court orders are made based on just and equitable considerations such as:
 - ✓ The court considers various factors, including the financial needs of each party and contributions made by each spouse (financial and non-financial).
 - ✓ Agreements or arrangements between spouses are taken into account.
 - ✓ The overarching principle is to achieve a fair outcome, not strictly adhering to a predetermined division of assets.

Women’s Act 2010:

- Section 43(4) of the Women’s Act 2010 emphasises that, in cases of separation, divorce, or annulment, both men and women are entitled to a fair division of jointly acquired marital property.
- Additionally, Section 44(3) and (4) of the Act outline that a widow possesses the right to stay in the matrimonial home.
- Even in the circumstance of remarriage, a widow retains the right to live in her previous matrimonial home, provided it is her property or if she inherited it, as stipulated by the Women’s Act 2010.

Women’s Act 2010 (Amended Act 2021)

- The Women’s Act 2021, in Section 44(5), has broadened the consideration of entitlement to matrimonial property.
- This expansion involves taking into account property accumulated through the joint industry of both husband and wife.
- Contributions made by a woman in developing and enhancing the property are now factored into the determination of entitlement.
- Additionally, contributions made by a woman in raising and caring for the family throughout the marriage are recognized as relevant considerations under Section 44(5) of the Women’s Act 2021.

ISLAM

Islamic Marriage Principles:

- The marriage contract in Islam does not require spouses to establish a shared estate.
- Each spouse maintains a distinct and independent estate, allowing them individual management according to their preferences.
- This principle was officially affirmed by the International Islamic Fiqh Academy during its 23rd session in 2018 (The Gambia has been a member since 1983).

Women’s Entitlement in Islamic Marriage:

- A wife is entitled to her individual wealth and has the right to own and manage her property independently.
- The husband has no control over her possessions, as specified in the resolution by the Islamic Fiqh Academy (Resolution 144).
- The marriage contract does not affect the separate financial responsibilities of each spouse.

The husband is not granted any jurisdiction over the wife’s property, especially when she is a mature adult.⁷

Matrimonial Property in Islam:

- In Islam, the term “matrimonial property” includes wealth acquired during the marriage, with contributions from both spouses in its acquisition and development.
- This encompasses direct or indirect contributions and extends to property obtained through gifts, such as real estate bequeathed to the spouses⁸.
- Matrimonial property can take the form of visible or invisible, fixed or movable assets.
- The concept also covers property obtained and possessed by spouses through gifts, such as inheritance or other forms of giving.
- Matrimonial property is versatile, existing in various forms such as fixed or movable assets⁹.

⁷ Ibn Al-Mundhir (1408 AH).

⁸ (Sahid, 2016)

⁹ (Yeates, 1999).

Joint Ownership in Marriage:

- In certain situations, spouses may jointly own property, including a purchased house or a shared investment in a business.
- Joint ownership extends to cases where one spouse contributes to the other’s trade.
- The entitlement to a share in the property is determined by individual contributions, and each spouse must provide evidence of their respective ownership share.

This principle is historically supported by the judgment of Caliph Umar in the case of ‘Amr bin al-Harith and his wife Habibah bint Zuraiq.

The couple, engaged in businesses of tailoring and trade, accumulated considerable wealth, as noted in studies by Gbaguidi & Allagbe (2018) and Romdhani (2020).



“
A wife is entitled to her individual wealth and has the right to own and manage her property independently.
”



Wife's Authority in Property Claims:

- In Islam, the marriage contract alone does not empower the wife to claim a share in her husband's property (except where joint ownership can be established).
- The wife is only entitled to what Shariah specifies for her, which includes maintenance and other expenses during the marriage. In the event of a divorce, the wife may be entitled to mut'ah (consolatory gift payment from the man to a wife he has divorced without any justifiable cause) and iddah maintenance.

Wife's Indirect Contribution:

- A wife's indirect contributions, such as caring for the household and children or providing advice and encouragement to her husband's business, do not entitle her to a share in the property (Suryasa, 2019).
- Islam considers advice and service as part of the kind treatment spouses owe each other. Such advice or service does not confer on the wife a right to claim a share in her husband's business.
- This principle is akin to any person claiming a share based on offering advice or consultation to a friend's business, as highlighted by Siraji and Halim (2021).

Challenges in Matrimonial Property Implementation:

- Section 44 of the Women's Act 2010 (as amended) incorporates principles from both common law and Islamic law in relation to the sharing or distribution of matrimonial property.
- A potential controversy may arise concerning the contribution of caring for the family, which is typically not considered in Islamic tradition, as mentioned earlier.
- The law is yet to undergo testing, particularly concerning a Muslim woman's contribution to taking care of the family.
- In rural areas, matrimonial homes are predominantly owned by the man or his family, and individual ownership by women is rare.
- Both the common law, statute law and Sharia acknowledge financial contributions as providing a legal basis for women to claim a share in the matrimonial home. However, customs and traditions usually overshadow these laws.
- Despite progress in statutory and personal laws related to matrimonial property, the practical implementation reveals that while showing improvement in urban areas, women often lack evidence demonstrating their contributions to the development of joint matrimonial properties.
- However, when supported by accepted evidence, women are likely to secure a portion of the matrimonial home based on their contributions, if pursued¹⁰.

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¹⁰ See the case of *Dawda Jawara v Matty Faye* (Unreported) SC CA 023/2016

**TOPIC
TWO**

PERFECTION OF TITLE OF LAND ACQUIRED

Distribution, Group Acquisition, and Allocation of Customary Land

Distribution, Group Acquisition, Allocation, Inheritance or Purchase



Obtain confirmation of ownership from Alkalo¹ or Alkalo Transfer²



Obtain Land Use Report, Physical Planning Clearance & Sketch Plan for Transfer from Department of Physical Planning



Purchase of Area Council Form from the Area Council Office³



Area Council Endorsement confirmation of entry of name in Register of yard owners⁴



Apply for Certificate of Occupancy from Department of Lands⁵



Obtain Land Use Report, Physical Planning Clearance & Sketch Plan for Occupancy from Department of Physical Planning⁶



Certificate of occupancy⁷



NOTES

¹ If the property is acquired through Distribution, Group Acquisition, Allocation or Inheritance

² If the property is purchased

³ The form is purchased from the Area Council of that Municipality.

⁴ The person seeking to register will require an affidavit from the head of the family or Alkalo that distributed or allocated the land to confirm that it was distributed or allocated and there was no consideration. A deed of assent or order from the Cadi will also be relevant if the property was inherited. This is to justify that non-payment of capital gains tax. The person will be required to submit the confirmation of ownership, land use report and physical planning clearance. The endorsement of the alkali, Seyfo and CEO of area council will be required on the area council transfer form along with their seal and stamp.

⁵ The person will be required to purchase a form from the Department of Lands, fill the form and enclose the Alkalo Certificate of Ownership, Land Use Report, Physical Planning Clearance & Sketch Plan for Transfer, and Endorsed and Stamped Area Council Form.

⁶ An application is submitted to the Physical Planning office of the area, for the issuance of Land Use Report, Physical Planning Clearance & Sketch Plan for the occupancy. Physical Planning will conduct another survey to issue a physical planning clearance for occupancy before issuance of certificate of occupancy.

⁷ If the application of the Certificate of Occupancy is approved, the Department of Lands will send it for endorsement of the alkali, Seyfo and CEO of area council along with their seal and stamp.

Tenure Type	Authority to Sell	Proof of title	Due Diligence Process	Sale Transaction	Completion Transaction
FREEHOLD	The owner of the land; Attorney/ representative;	Original Grant; Conveyance; Vesting assent (inherited land)	Instruct lawyer; Visit and identify the property; Confirmation from neighbouring landowners; Search of the conveyance from Registry of Deed at Ministry of Justice and/ or Register of Yards Owners Registry to confirm registration of seller's title and existence of any encumbrance ¹ ; Confirm land use at the Department of Physical Planning; Confirm payment rates; If sale is by Attorney, confirm if the Power of Attorney is registered against property.	Instruct lawyer (if none instructed); Preparation and execution of Sale Agreement (if needed) ² ; Land Use or survey Report (If needed); Execution of Deed of conveyance by parties; ³ Seller must pay capital gains tax on that sale of land to the Gambia Revenue Authority, according to the Income and Value Added Tax Act 2012 ⁴ ; The buyer must Pay Stamp duty ⁵ ;	Register Deed of Conveyance at the Attorney General's Chambers; Register new owner in the Banjul City Council Register by the Purchaser;

NOTES

¹ To verify registration and claims against the property (e.g., whether a mortgage or caveat is registered against the property) Status of the Property i.e., whether it is an empty plot, partially developed or fully developed. Confirm if there are any third parties with rights to occupy the property; Confirm any pending litigation connected or related to the suit land.

² These are the agreed-upon terms and conditions for the sale, covering aspects such as the sale price, how payment will be made, any required deposit, conditions that must be met beforehand, and the responsibilities of each party this includes: settling overdue taxes or rates; handling capital gains tax; providing original documents; ensuring the property is vacant; specifying the completion date of the sale; and any warranties.

³ This type of document of transfer is used for the transfer of freehold land and only lawyers are permitted to prepare them. The Seller or his attorney must sign the document and; The document must be witnessed by an adult; It must be prepared and endorsed by the lawyer.

⁴ However, the buyer can agree to handle this payment. The amount of CGT depends on whether the seller is an individual (5% of the purchase price or 15% of the gain (whichever is higher) or a company 10% of the purchase price or 25% of the gain (whichever is the higher). All assessed land rents (to the Ministry of Lands and Survey) and municipalities rates.

⁵ (2% of the purchase price) to the Gambia Revenue Authority according to the Income and Value Added Tax Act 2012

Tenure Type	Authority to Sell	Proof of title	Due Diligence Process	Sale Transaction	Completion Transaction
LEASEHOLD	The freehold owner of the land or the leasehold owner (lessee); Attorney/ representative;	Registered Lease and/or Deed of Assignment indicating the serial registration number; Rate and rents receipts;	Instruct lawyer to visit and identify the property; Confirmation from neighbouring landowners; Search Register of Deed at Ministry of Justice to confirm sellers title and any existing encumbrance ¹ ; Confirm the payment of up-to-date rates and rents; If sale is by Attorney, confirm if the Power of Attorney is registered against property in the register of deeds.	Instruct lawyer (if none instructed) Preparation of Sale Agreement ² (if needed); Application for Consent to Transfer by the Seller from the Minister of Lands; ³ Execution of Deed of Assignment; ⁴ Seller must pay capital gains tax on that sale of land to the Gambia Revenue Authority, according to the Income and Value Added Tax Act 2012 ⁵ ; The buyer must Pay Stamp duty ⁶ ; Registration of Deed of Assignment at the Registry of Deed at Ministry of Justice by the Purchaser;	Register Deed of Assignment ⁷ ; Change of property owner at the local area council register ⁸

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¹ See note 10.

² These are the agreed-upon terms and conditions for the sale, covering aspects such as the sale price, how payment will be made, any required deposit, conditions that must be met beforehand, and the responsibilities of each party this includes: settling overdue taxes or rates; handling capital gains tax; providing original documents; ensuring the property is vacant; specifying the completion date of the sale; and any warranties.

³ The State Land Act provides that the Minister’s consent is required for any sale of state land. An application for the Minister’s consent to transfer the land is sent by the seller with the required fees.

⁴ This is a document of title from the state on areas of land owned and held by the state and which is allocated. It is from the state to the person(s) (including a corporation or company). When the state allocates land, it issues a Letter of Allocation which is followed with a lease document.

The state usually charges an allocation fee instead of sale price.

The parties are the State/District authority (in the case of Lands in the Regions) and the person (Lessee) with the Governor’s endorsement.

The parties or their representative must sign the document;

The document must have the proper dimensions with an approved sketch plan identifying the land

The lease is for 99 years and 50 years (for lands in the Regions)

The lease has obligations which the Lessee agrees to and enters into with the State upon signature.

The state can always re-enter the land based on certain breaches of the covenant but with adherence to due process under the State Lands Act 1991

⁵ However, the buyer can agree to handle this payment. The amount of CGT depends on whether the seller is an individual (5% of the purchase price or 15% of the gain (whichever is higher) or a company 10% of the purchase price or 25% of the gain (whichever is the higher).

All assessed land rents (to the Ministry of Lands and Survey) and municipalities rates

⁶ (2% of the purchase price) to the Gambia Revenue Authority according to the Income and Value Added Tax Act 2012

⁷ The Minister may approve or deny the request to transfer; if approved, the buyer proceeds to pay stamp duty on the assignment at the GRA. After paying the stamp duty, the Deed of Assignment is registered at the Deeds Registry against the Original lease, becoming the new title for the buyer.

⁸ This is relevant particularly to ensure rates payments are recorded against name of current owner.



Tenure Type	Authority to Sell	Proof of title	Due Diligence Process	Sale Transaction	Completion Transaction
CUSTOMARY LAND/ DEEMED LEASED	The owner of the land; Attorney/ Representative;	Alkalo ownership Certificate (if original owner) Alkalo Transfer together with Alkalo Ownership certificate of previous owner.; Area Council Transfer ¹ Or Certificate of Occupancy (With above documents) ² Sketch plan approved by physical planning for Transfer and Occupancy; Rate receipts;	Visit and identify the property; Confirm from neighbouring landowners, Alkali, and/or family members of owner; Engage the services surveyor or physical planning officer to confirm the location; Confirm the payment of up-to-date rates; Obtain Physical planning clearance. Pay for area council transfer forms.	Preparation of Sale Agreement (if needed) ³ ; Obtain Alkalo Transfer; Obtain Land Use Report, Physical Planning clearance and sketch plan; Purchase Area Council Transfer ⁴ ; Seller must pay capital gains tax on that sale of land to the Gambia Revenue Authority, according to the Income and Value Added Tax Act 2012 ⁵ ; Both parties sign with witnesses. Obtain Akalo endorsement and stamp. Obtain district authority endorsement and stamp. Obtain Area Council Endorsement and stamp. Obtain Certificate of Occupancy; ⁶	Alkalo Transfers; Area Council Transfer; Land Use Report, Physical Planning Clearance and sketch plan; Certificate of Occupancy

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- ¹ The endorsement of the alkali, Seyfo and CEO of area council will be required on the area council transfer form along with their seal and stamp.
- ² This is not always the case. The seller may only have an Alkalo Transfer and/or Area Council Transfer. If the seller only has an Alkalo Transfer, adequate due diligence must be conducted before sale transaction is commenced.
- ³ These are the agreed-upon terms and conditions for the sale, covering aspects such as the sale price, how payment will be made, any required deposit, conditions that must be met beforehand, and the responsibilities of each party this includes: settling overdue taxes or rates; handling capital gains tax; providing original documents; ensuring the property is vacant; specifying the completion date of the sale; and any warranties.
- ⁴ The Area Council Transfer form is purchased. The endorsement of the alkali, Seyfo and CEO of area council will be required on the area council transfer form along with their seal and stamp.
- ⁵ However, the buyer can agree to handle this payment. The amount of CGT depends on whether the seller is an individual (5% of the purchase price or 15% of the gain (whichever is higher) or a company 10% of the purchase price or 25% of the gain (whichever is the higher).
All assessed land rents (to the Ministry of Lands and Survey) and municipalities rates
- ⁶ The person will be required to purchase a form from the Physical Planning office of the area, fill the required form and submit it along with the Alkalo Transfer. Physical Planning will conduct another survey to issue a physical planning clearance for occupancy before issuance of certificate of occupancy.

Inheritance

- Inheritance is a prevailing method in which women in the Gambia access land, particularly women in rural and peri-urban areas¹¹. It is important for women to have adequate information in respect of how their access to land under inheritance can result in full ownership and control over the land.
- The Gambia is religiously diverse. The majority of the population in The Gambia practices Islam, and the country has a significant Muslim population.
- There are also Christian (2nd biggest religion) and Indigenous religious communities. While Islam is the most widely practiced religion, the constitution of The Gambia protects the right to freedom of religion.
- Inheritance of landed property is regulated by personal law. This applies to both women and men.

For Christians

In the Gambia, the received English law including the common law principles and statute law govern the law of inheritance in the Christian faith. After settling debts and expenses, remaining assets are distributed based on common law intestate succession or the will's terms. The timeline varies, influenced by estate complexity. Legal procedures must be followed in accordance with statute law and court approvals obtained before asset distribution. A valid will expedites the probate process.

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¹¹ Gender Analysis Report to inform the development of GTAs to enhance women's land and resources rights in The Gambia, Prepared by: Hanna North (Alliance of Bioversity and CIAT) Pg. 16

¹² Specified forms in the Courts Act Cap 6:01 Laws of the Gambia are used to prepare Probate / Letters of Administration. Valuation of the deceased's estate occurs at the application. For Letters of Administration, eligible next of kin and Curator of Intestate are notified, and there must be sureties granting the administration double the value of estate. An application filed, is generally approved by the Chief Justice, and the grant issued by the Registrar or the High Court. The validity of both probate and letters of administration can be challenged before or after the grant in accordance with the law.

¹³ Statute of Distribution 1670 applicable in The Gambia by Laws of England Application Act 1953

¹⁴ See note 26

¹⁵ The Curator of Intestate Estate assumes the responsibility of administering an estate of a deceased on the occurrence of the following events: a person has died intestate (meaning they did not leave a will, or some assets are not disposed of by their will); the deceased, having made a will devising or bequeathing his or her estate, has omitted to appoint an Executor; probate or letters of administration with the will annexed has not been obtained within six months from the death of the testator; or the deceased has named the Curator as sole executor of his or her will. Consequently the Curator will then apply to the High Court for an order authorizing him or her to administer the estate of the deceased. This is a department under the Ministry of Justice and Attorney General's Chambers.

Testate Estate (Deceased left a Will) -

Christians often leave a Will, which is governed by the Wills Act 1992, The Will outlines the distribution of the deceased's estate among his or her intended beneficiaries. The executor(s) of the Will applies for a Probate¹² to enable it to administer the estate of the deceased. A legal practitioner may be engaged to apply and provide assistance for the Probate application and administration of the Estate.

Intestate Estate - Where a Christian person dies without a will (intestate), the next of kin are often entitled to inherit the deceased's estate according to the rules of intestate succession under English Common Law, prioritizing the spouse, children, parents, and siblings. The applicable common rules¹³ of distribution provides that:

- If a wife dies, the husband is entitled to the whole estate;
- If a husband dies and there are children, the wife is entitled to 1/3 and the children are entitled to the residue and to be shared equally irrespective of gender; and
- If a husband dies and there are no children, the wife will have 1/2 of the estate and the remaining next- of kin in accordance to priority share the residue.

In cases where a person dies intestate, Letters of Administration (where a person dies without a Will or a named Executor in a Will)¹⁴ are granted to the next of kin, the Curator of Intestate Estates or an appropriate person (usually a relation of friend) to administer the estate. A legal practitioner may be engaged or the Curator of Intestate¹⁵ to apply and provide assistance for the Letters of Administration application and administration of the Estate.



Vesting of Land - Once the estate is administered, a Legal Practitioner may be instructed to transfer the land to the beneficiaries of the estate according to their share. In the case of a leasehold or freehold land, the Executor of the Will signs the deed of transfer prepared by the Legal Practitioner. This is then registered against the lease or conveyance.

If the land is customary or deemed lease land, there is no prescribed procedure but the general practice is the a copy of the probate and a Deed of Assent/Vesting Deed prepared by the Legal Practitioner may be provided to the local area council and district authorities as evidence of inheritance and title may be perfected in accordance with Table A as in the purchase of customary and deemed lease land ¹⁶.

For Islamic Holders

Islam is recognised as the religion of Muslims in the Gambia. Section 7 of the constitution of the Gambia recognises sharia laws as part of the laws of the Gambia as regards matters of **“marriage, divorce and inheritance among members of the communities to which it applies”**.

This therefore means that when a Muslim dies, his property left at death will be distributed according to Sharia. A Muslim is permitted to make a Will of not more than one third of his or her property to strangers (i.e. persons who cannot inherit under the Sharia rules of inheritance. (This includes children born outside the marriage and a wife who is not a Muslim).

Inheritance - “Mirath” means in the Islamic way of distribution of an estate of a deceased person to his or her eligible heirs. The law of inheritance has been laid down by Allah (SWT) in the Holy Quran (Surah 4, Nisa verse 7) as:

“From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large, - a determinate share”

Allah (SWT) also laid in the Holy Quran (Surah 4, Nisa verse 33) that:

“To (benefit) everyone, We have appointed shares and heirs to property left by parents and relatives. To those, also to whom your right hand was pledged, give their due portion. For truly Allah is witness to all things”

In Islamic Law of inheritance, eligibility for inheriting from the deceased is contingent upon being associated with the deceased in one of three ways: a valid marital relationship (constructive or actual) at the time of the deceased’s death, blood relationship (parents, children, brothers, sisters), or Wala (fictitious relationship) where the master of a freed slave inherits from the freed slave.

Before the heir can receive inheritance from the deceased, priority is given to settling burial expenses, mortgages, personal debts, and Wasiyyah (Will).

Below is the distribution process laid by Allah (SWT) in the Holy Quran in Surah 4 (Nisa), verses 11,12 and 176 summarised as follows:

For Children:

- A son receives twice the share of a daughter.¹⁷
- If there is only one daughter, she receives half of the inheritance.
- If there are more than two daughters, they collectively inherit two-thirds.

For Parents:

- Each parent inherits one-sixth if there is a child.
- The mother, in specific circumstances, may inherit one-third.
- If there are brothers, the mother inherits one-sixth.

¹⁶ Beneficiaries will be exempted to pay capital gains tax.

¹⁷ The implementation of this rule has been a subject of discussion, and the Islamic rationale emphasises the consideration of greater financial responsibilities assigned to husbands or males. According to Islamic belief, men are seen as primarily responsible for ensuring the safety, security, and future of their families, including the welfare of parents and unmarried female family members. (Siraj, Sait, Lim, Land, Law and Islam, 2006)

For Siblings:

- A brother or sister inherits one-sixth.
- If there are two or more siblings, they share one-third.

Additional Scenario (4:176):

- If a man leaves no child but only a sister, she inherits half.
- If there are two or more sisters, they collectively inherit two-thirds.
- If there are both brothers and sisters, the male inherits the share of two female

Inheritor	Inheritance owned by	Share of Inheritance
Daughter (one daughter and no son)	Father	1/2
Daughter (more than one and no son)	Father	2/3
Daughter (with son)	Father	Residuary, one daughter gets 1/2 share of one son
Mother (if there is a grandson)	Son	1/6
Mother (if there is no grandson)	Son	1/3
Wife (If there is no son)	Husband	1/4
Wife (If there is son)	Husband	1/8
Half-sister from the mother's side (one only and there is no descendants and parents of the deceased)	Brother	1/6
Sister (more than one and there is no descendants and parents of the deceased)	Brother	All get 1/3 of the property
Uterine sister (one only and there is no descendants and parents of the deceased)	Brother	1/2
Uterine sister (more than one and there is no descendants and parents of the deceased)	Brother	1/3

Table Source: Surah al Nisa,4:11:12:176 (Khan, Abdullah, Rahman,Nor & Yusoff 2016).



Women's inheritance

The above distribution mechanism laid down in the Quran is obligatory and must be applied accordingly and any Muslim woman entitled to inherit under Islam must receive her rights in accordance with the above distribution criteria without discrimination.

Below is a general distribution process in Islamic Law in the Gambia:

Informal Distribution:

The family of the deceased, often assisted by Islamic leaders or elders, handles the distribution of personal properties like clothes, household items, and money. This approach is generally acceptable and informal.

Distribution by the Islamic Court (Cadi Court): Mirath Proceedings

- When landed property is part of the estate, the distribution must be handled by the Islamic Court. Established under the 1997 Constitution, the Islamic Court is designated to handle the application of Sharia law as recognised in the constitution. Even if initially distributed informally, endorsement by the Islamic Court is required. The Court summons eligible beneficiaries or their representatives when a distribution claim is presented.
- The eligibility of beneficiaries and the assessment of assets in the deceased's estate are scrutinised by the Islamic Court. Upon being satisfied, the court confirms the rightful beneficiaries of the estate and the assets that form part of the estate of the deceased.
- For land property, the court typically conducts a valuation. If the property is shareable, it will be distributed among the beneficiaries. If not, it may be sold (with beneficiaries given the first option), and the proceeds are shared in accordance with Islamic law.

Vesting of Land

- The Islamic Court facilitates the transfer of title to beneficiaries. Upon the conclusion of the distribution, the Cadi (Judge in Sharia Court) vests title upon the beneficiary based on the tenure type of the land.
- If the land is a leasehold or Conveyance, the Cadi may execute a Deed of Assent/Vesting Deed which is registered against the lease to stipulate title of new owner.
- If the land is customary land or deemed lease land, the Cadi will issue an Order to the local area council and district authority responsible for the registration of the land in the name of the beneficiary. There is no prescribed procedure to ensure perfection of title in such an event. However, the general practice is that the procedure to ensure perfection of title when a customary land or deemed lease is purchased under Table A above is followed.

Appeal or Referral Process:

A woman dissatisfied with the Islamic Cadi Court's decision may appeal to the Cadi Appeal's panel, serving as the final court for resolution. In cases where there is a disagreement regarding the ownership of the landed property that belonged to the deceased, the matter must be brought before the High Court. This court possesses the jurisdiction necessary to adjudicate and make a determination on ownership.

Formalization of customary title

Majority of landowners in Gambia do not have any document to prove title. This is not problematic for residential land ownership of which is usually proved by proving possession. Formalisation/recognition of title becomes extremely important in instances when the land owner is required to leverage title to gain any economic benefit i.e., raise, loans, investment, or provide collateral.

Below are steps required to formalize customary title:



Below are steps required to formalize customary title:



NOTES

¹ If the property is acquired through Distribution, Group Acquisition, Allocation or Inheritance

² If the property is purchased

³ The form is purchased from the Area Council of that Municipality.

⁴ The person seeking to register will require an affidavit from the head of the family or Alkalo that distributed or allocated the land to confirm that it was distributed or allocated and there was no consideration. A deed of assent or order from the Cadi will also be relevant if the property was inherited. This is to justify that non-payment of capital gains tax. The person will be required to submit the confirmation of ownership, land use report and physical planning clearance. The endorsement of the alkali, Seyfo and CEO of area council will be required on the area council transfer form along with their seal and stamp.

⁵ The person will be required to purchase a form from the Department of Lands, fill the form and enclose the Alkalo Certificate of Ownership, Land Use Report, Physical Planning Clearance & Sketch Plan for Transfer, and Endorsed and Stamped Area Council Form.

⁶ An application is submitted to the Physical Planning office of the area, for the issuance of Land Use Report, Physical Planning Clearance & Sketch Plan for the occupancy. Physical Planning will conduct another survey to issue a physical planning clearance for occupancy before issuance of certificate of occupancy.

⁷ If the application of the Certificate of Occupancy is approved, the Department of Lands will send it for endorsement of the alkali, Seyfo and CEO of area council along with their seal and stamp.

⁸ The person will be required to purchase a form from the Department of Lands, fill the form and enclose the Alkalo Certificate of Ownership, Land Use Report, Physical Planning Clearance for Transfer & Sketch Plan, Endorsed and Stamped Area Council Form, Land Use Report, Physical Planning Clearance for Occupancy and Certificate of Occupancy.

⁹ The Department of Lands forwards the application for lease to the Department of Physical Planning to conduct a survey and issue a lease plan. The person must pay the survey fees and lease plan cost. Once the lease plan is issued, it is sent back to the Department of Lands for approval.

¹⁰ The Department of Lands forwards the application for lease with all enclosures for approval.

¹¹ Once the lease application is approved, the person must purchase the lease document and facilitate the preparation of the lease.

¹² The lease is signed by the relevant parties and their witnesses.

¹³ Once a Lease is approved and issued, the person is obligated to pay land rent on the land to the Department of Land in advance annually. The land rent amount is assessed based on the size of the land and location of the land.



“ Encouraging the enforcement/application of inheritance rules presents an important opportunity for changing gender dynamics and empowering women. ”

Mid-training Activity 1: [10 mins]

The trainer may facilitate a breakout session after completion of Topic 2 of this module. The purpose of this exercise is to stimulate the participants mind and prepare them for Topic 3 of this module. This exercise also aims to stir conversation amongst the participants on the realities of their context and to highlight the factors that differentiate women’s and men’s customary land tenure status.

Suggested steps to carry out the Mid-Training Activity 1:

1. The trainer may ask participants to share their thoughts on the following:
 - When a male head of household passes away, how are the land rights of his wives, daughters, mother, and sisters affected in your customary land area?
 - Why do some women hold smaller pieces of land than others in customary land tenure areas?
 - What are the factors that help a woman to secure the inheritance of land after she has been widowed?
 - Can an individual woman obtain land directly from the Alkalo or another family member by allocation or purchase?
2. Participants may share their thoughts with the larger group by raising hands.

Trainer may use the Facilitation Guide - Activity 302 annexed to this Guide for more detailed steps of this activity.



(10 mins)

Mid-training Activity 2: [15 mins]

The trainer may facilitate a breakout session after completion of Topic 2 of this module.

Suggested steps to carry out the Mid-Training Activity 2:

Depending on the size of group, trainer may divide participants in groups and facilitate the activity based on the Facilitation Guide - Activity 303 annexed to this Guide for more detailed steps of this activity.

Note to trainer: Trainer may select which mid-training activity to use, considerations include time, type of participants and literacy level of participants.



(15 mins)



TOPIC
THREE

OPPORTUNITIES

Inheritance

Inheritance rules facilitate the transfer of wealth, providing women with access to resources and financial autonomy, contributing to economic empowerment, and enabling active participation in decision-making processes within households.

Both Legal systems, guided by Islamic principles and common law, stress the importance of property inheritance, promoting rights for both men and women, although in different ways. Thus, **encouraging the enforcement/ application of inheritance rules presents an important opportunity for changing gender dynamics and empowering women.**

Legal provisions, such as the Women's Act 2010, empower women by providing for equal rights to acquire, possess, and manage property, irrespective of religious affiliations lays an important foundation that can be leveraged for the enforcement of inheritance rules that are favourable to women.

Marital property rights

Advocating for marital property rights is a crucial step towards achieving gender equality and women's empowerment, and promoting economic independence.

In Christian and Civil marriages, the law empowers courts to order fair distribution of marital property, considering various factors for equitable outcomes. Islam recognises individual estates in marriage but allows for joint ownership in specific situations, emphasising financial cooperation.

The Women's Act 2021 expands entitlement considerations, recognising joint industry, property enhancement, and family contributions in marital property.

Case law support women's claims to a share in the marital home based on financial contributions exemplified by cases like the Supreme Court case of Dawda Jawara v Matty Faye (2016), showcasing the application of women's rights in contribution in the development of the matrimonial property.

Promoting the application of Islamic inheritance rules with respect to land would:

- 1 foster a cultural shift in societal attitudes towards women; and
- 2 contribute to broader community transformation by dismantling systemic gender inequalities and fostering a more inclusive society.



Conclusions

Finally, to enable women to identify and select the preferred entry points and opportunities for protecting and promoting women's access to land, it is important to:

- Promote awareness and understanding of deemed leasehold rights among women in rural regions and the need, at a minimum, of formalising their title to property.
- Enact measures to enhance loan accessibility for women by facilitating the use of the certificate of occupancy for deemed lease

properties owned by women's groups, either acquired through family grants or from communal lands.

- Establish a centralised registry for deemed leases to provide legal recognition for customary land titles. This registry should facilitate transparent and accessible documentation processes.
- Facilitate outreach programs to encourage and guide communities in documenting their customary land ownership especially for women farmers groups. This includes obtaining certificates of occupancy or leases, enhancing security and legal recognition.

Post-Training Activity: [20 mins]

Scenario 1: Fatou lives in Kundang and her uncle is the Alkalo of the village. She has been cultivating vegetables on a small portion of land measuring 10m x 10m next to the school for over 15 years. She heard rumors from the village market that her uncle is allocating the land next to the school to a charitable organization and it includes the portion she cultivates on. She approached her uncle and he agreed to allocate the portion she cultivates to her. Please advise Fatou on how she can perfect and formalize her title.

Scenario 2: Nyima is a widow with 2 boys (Lamin 5 years and Wurry 4 years) and 1 girl (Isatou 9 months). Nyima's late husband's parents died 10 years before he died. Nyima's late husband has a surviving elder brother, Momodou. Since Nyima's husband's death, Momodou has been threatening Nyima that she will inherit his brother's house in Kerewan.

Nyima was advised by FLAG that Momodou is not a beneficiary of her late husband's estate and cannot inherit the house in Kerewan. Nyima was represented by FLAG at the Kerewan Cadi Court and Mirath of her late husband's estate was conducted. Nyima wants to vest the title of the property unto her and children.

Scenario 3: Nyima is a businesswoman and wants to purchase a property in Tabokoto. The property is leased and the seller is in America. Please advise Nyima on the due diligence steps to follow and how to transfer title.



(10 mins)

Suggested steps to carry out the Activity:

1. Depending on the size of the group the trainer may divide the participants into two groups to work on the identified instructions
2. Each group may be allocated 10 mins to discuss their responses.
3. Share flipchart paper and marker with each group and each group may identify a rapporteur and presenter
4. The outcome of the discussion and presentation should highlight the following:
 - Emphasize and highlight the main tenure systems applicable in each scenario;
 - The steps involved in the processes to perfect title;
 - The various institutions and administrative bodies involved in the process;
 - The type of documents to be obtained as proof of title.

Trainer may use the **Facilitation Guide - 304** annexed to this Guide for more detailed steps of this activity.



MODULE 4

CREATING AN ENABLING ENVIRONMENT: HOW CHANGE CAN HAPPEN

INTRODUCTION

The limited participation of Gambian women in land governance and land administration structures in both urban and rural has a negative impact on women's land and property rights and women's empowerment. Elected local structures and land agencies consisting of mostly men perpetuates a patriarchal system which makes decisions without taking specific account of women's needs.

Women have limited input in discussions and decisions concerning land, even where collective forms of tenure are in place to protect women's land and property rights.

The limited participation of women in decision-making processes, including land-related matters, derives from their generally inferior social status and lack of education and awareness and limited representation in the political structures, like area councils and the national assemblies.

The consequences are profound, affecting not only women's economic empowerment but also their social and political

OBJECTIVES

This module aims to challenge and change the status quo by advocating for increased awareness, participation, and representation of women in land governance. Drawing lessons from other Commonwealth countries in Africa, where reforms have significantly improved women's land rights, this module will explore strategies and approaches aimed at creating a more equitable and responsive environment for securing women's land and property rights in the Gambia.

LEARNING OUTCOMES

At the end of this module, participants will be able to:

- Understand the benefit of including women in decision-making processes, especially those related to land governance and administration;
- Draft effective strategies to increase women's participation and representation in land matters;
- Understand the challenges that women face in accessing land dispute resolution mechanisms;
- Compare the legitimacy of different dispute resolution mechanisms; and
- Identify effective ways for improving women's access to justice.

TOPICS

Topics to be covered under the module:

- **Topic 1:** Education and Awareness-Raising
- **Topic 2:** Increasing Women's Participation in Decision-Making
- **Topic 3:** Supporting Women's Organizations
- **Topic 4:** Promoting Legal and Administrative Reforms
- **Topic 5:** Developing Gender-Responsive Land Policies
- **Topic 6:** Increasing Women's Access to Justice and Land Dispute Mechanism

ACTIVITIES

The trainer may facilitate a pre-training session to assess the appropriate entry points and topics to focus on in the module.



Key Takeaways from Module 4

01



Gender inequality in education and land ownership exist in The Gambia. Making people aware through campaigns and access to legal aid are essential for promoting gender equality in land ownership.

02



Women not being included enough in decision-making groups makes it hard for land to be managed fairly but having them involved is really important for effective land management practices.

04



Women's organisations and grassroots groups play a vital role in advocating for gender equality in land rights. However, there is insufficient funding and limited representation of grassroots groups, but providing them support through funding, capacity-building can strengthen their ability to secure women's land rights.

03



Simplifying land registration processes and ensuring equitable representation are critical in land ownership. Gender-responsive land policies are essential for addressing women's specific needs and challenges to land ownership.

05



Women face barriers in accessing justice and resolving land disputes, including high costs and limited resources. Access to justice protects women's land rights and promotes equal treatment under the law.



TRAINERS INSTRUCTIONS

Pre-training Activity:

The Trainer can commence the session with an exercise to:

Support participants in applying the vision journey activity to issues of land tenure in the communities where they work.

Explore opportunities and challenges associated with long term goals related with women's land tenure.

Trainer may use the **Facilitation Guide - 401** annexed to this Guide for more detailed steps of this activity.

TOPIC ONE

EDUCATION AND AWARENESS-RAISING



Objective

- Deepen awareness of the importance of making people aware of women's rights to land and property in The Gambia.
- To change societal perceptions and promote gender equality in land ownership.

Current Status and Challenges

- 62% of Gambian women lack formal education, whereas the percentage is lower for men at 49%. Additionally, the literacy rate for adult women is recorded at 34.6%¹. This educational gap limits their capacity to engage effectively in land governance and administration and worsens the disparity in land rights².

- Land ownership among women in many areas of The Gambia, is low. In 2020, it was found that 40.6% of men and only 16.8% of women aged 15-49 either owned a home by themselves or with someone else³.
- Women in rural areas usually borrow land from their husbands, their husbands' families, or other men in the community for farming.⁴

Importance of Education and Awareness

- Education is a key factor in empowering women socially and economically. It equips them with the knowledge and skills needed to navigate legal and business matters, such as registering their land titles if they have one and using land as collateral for loans. applying for and benefiting from government projects.

¹ World Bank. (n.d.). Gender Data Portal: Gambia, The Retrieved from <https://genderdata.worldbank.org/countries/gambia-the/> The adult male literacy rate is 51%.

² Ibid.

³ Ibid.

⁴ Land Portal. (2022). Gambia Narratives. Retrieved from <https://landportal.org/book/narratives/2022/gambia>.

- By providing education and information about their rights, societies can create a more inclusive environment where all can benefit from equal access to land and property rights
- Education serves to challenge traditional gender roles and stereotypes, empowering women to engage actively in decision-making processes within their families and communities ⁵.

Strategies

- Design and Launch education campaigns and workshops in identified communities to raise awareness about women’s land rights, the legal framework, and the benefits of gender equality in land ownership.
- Training on legal literacy, recognition of land documentation, advocacy strategies by institutions such as the Female Lawyers Association Gambia to empower women

⁵ Landesa. (2012.). Women and Land: Issue Brief. Retrieved from <https://www.landesa.org/wp-content/uploads/Landesa-Women-and-Land-Issue-Brief.pdf>.

- to navigate legal processes and challenge discriminatory practices and to better equip women to access the decision-making table.
- Legal aid clinics or support services provide women with access to legal assistance, advice, and representation in land-related matters that affect them, especially disputes and communal decisions.
- Establishment of networks and alliances among stakeholders, including government agencies and bodies, civil society organisations, and community leaders, women’s groups to support the collective action required for systemic change.
- Data collection by NGOs and Women’s groups to assess the impact of interventions on women’s awareness, attitudes, and behaviours regarding land rights.

TOPIC TWO INCREASING WOMEN’S PARTICIPATION IN DECISION-MAKING



Objective

Strengthen women’s involvement in decision-making processes related to land governance in The Gambia, recognising the significant gap in gender representation.

Status and Challenges

- Women’s participation in decision-making, particularly in land governance, is limited. Despite comprising over half of the voting population, women hold only a small fraction of leadership positions. For example, out of 58 National Assembly members, only five are women. Similarly, in local government administrations, women’s representation is limited, with just one out of eight local government councils led by a woman. At the grassroots level, women often lack representation in village development committees ⁶.

- While there are no laws stopping women from participating in politics and decision-making, cultural norms, financial limitations, societal roles (such as caregiving), and low involvement in the executives of political parties are major hurdles for them. In 2020, only about 26.6% of women were involved in making significant household decisions.⁷ In certain communities, the prevailing belief is that men should hold more control in land-related decisions within households and enjoy greater land rights compared to women⁸.
- Also, it has been found that women in the rural areas are also not generally involved in decisions on communal resources and even where engaged their participation is minimal⁹.

⁶ North,H. (2023). Gender analysis to inform the development of GTAs to enhance women’s land and resource rights in The Gambia.

⁷ World Bank. (n.d.). Gender Data Portal: Gambia, The. Retrieved from <https://genderdata.worldbank.org/countries/gambia-the/>

⁸ North,H. (2023). Gender analysis to inform the development of GTAs to enhance women’s land and resource rights in The Gambia.

⁹ ibid.



Importance for Women to be part of Decision Making

- Involving women in decision-making regarding land policies and reforms leads to more effective and equitable land management practices, given their substantial presence in the agricultural sector.
- Women’s involvement in land decisions is crucial for fairness and empowerment, ensuring equal opportunities for all.

Strategies:

- Ensure that the national land policy addresses gender equity in land matters.
- Continue the advocacy for a quota in the national assembly¹⁰. (In the case of Uganda, a number of seats for women are reserved equal to the number of districts in the country.¹¹ A similar approach can be advocated for The Gambia).

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¹⁰ Gambia National Assembly. (2020). Constitution Promulgation Bill

¹¹ Constitution of Uganda. (1995). Art. 78(1).

- Advocate for Implementation of policies that reserve seats for women in land-related bodies and committees at various levels of governance i.e., the district authority and district tribunal, village committees of elders and the village development committees, the local physical planning committees. At the national level rural women should be represented in the land commission and on National Planning Boards.
- Training sessions by Government and NGOs to empower women with the skills and knowledge needed to participate in all structures to design, implement and periodically review a national land policy.
- Women groups and NGOs to engage traditional and community leaders with a view to reforming traditional practices limiting women’s participation on land matters given their role in agriculture etc.
- Government and NGOs to monitor and benchmark the progress of women’s participation and evaluate the impact of interventions.

TOPIC THREE

SUPPORTING WOMEN’S ORGANISATIONS AND GRASS ROOT WOMEN’S GROUP



Objective

To empower women’s organisations and grassroots groups in The Gambia to advocate effectively for women’s land and property rights.

Current Status and Challenges

Organisations such as the National Women Farmers’ Association (NAWFA) play a vital role in advocating for gender equality and women’s rights, particularly regarding land and property issues. However, these groups encounter challenges such as limited funding and workforce and insufficient representation in decision-making processes. Local women’s groups known as “Kafoos” can play a more impactful role in the acquisition of rights.

Importance of Supporting Women’s Organisations and Grass Root Women’s Group:

- Supporting women’s organisations and grassroots groups is essential for advancing land rights and gender equality in The Gambia.
- These groups advocate for policy changes and legal reforms that prioritise women’s land rights, addressing challenges women face in accessing and owning land.
- Local women’s groups known as “Kafoos” serve as platforms for women to unite, share experiences, and collaborate to secure farmland locally.
- Supporting these groups enhances their capacity to engage and provide support through training, resources, and technical assistance.
- Investing in Kafoos yields broader socio-economic benefits, including poverty reduction, improved food security, and overall economic development.

Strategies

- Advocate for the Government to establish a fund or make grants (e.g., from the Women Empowerment Fund) to support women's organisations and grassroots groups working on land rights issues.
- NGOs and Women groups to organise events to bring together different women's kafoos and other grassroots groups to share experiences and best practices.
- NGOs and Women groups to engage and expose traditional and community leaders to changing societal norms that loosen and/or remove practices and barriers that limit women's participation¹² and access to land, and international

¹² Agriculture and Food Security Shareweb. (n.d.). Gender Land Governance. Retrieved from https://www.shareweb.ch/site/Agriculture-and-Food-Security/focusareas/Documents/land_sdc_gender_landgovernance.pdf. It was observed, both in Burundi and Niger, that contributions and projects supporting women's economic empowerment had a positive impact on women's access to land. Women had more means to negotiate, or were able to buy land with the profits of their businesses. In Niger, some of these women possess now more land than the average of what men have

TOPIC FOUR

PROMOTING LEGAL AND ADMINISTRATIVE REFORMS



Objective

Promote legal and administrative reforms that support and protect women's land rights.

Current Status and Challenges

The Women's Act of 2010 seeks to empower women by safeguarding their land rights, preventing discrimination, and addressing inheritance and marital property concerns. However, challenges exist in enforcing these rights, because the existing legal framework for land does not address women land rights or traditional practice accepted as customary law which contradict the Women's Act. The land governance institutions and land policy does not address the challenges and issues faced by women to secure access to land.

Rwandan laws provide spouses co-ownership rights to all marital property by default.¹³ Rajasthan, India, incentives are offered to landowners for land that is registered jointly or in the name of the woman head of the household only.¹⁴

Importance of Promoting Legal and Administrative Reforms

Legal reforms to existing laws are needed to ensure that the legal framework in place is adequately responsive and ensures that:

- women's articulated rights in the constitution, as well as in international and regional

instruments to which Gambia is a party, are reflected in the law.

- the limited rights that women enjoy, for example, group rights, have legal backing and support.

Land administration reforms are needed to:

- enhance transparency and accountability in land administration;
- to ensure that equity considerations relating to women are addressed and that women are fully represented in all decision-making processes affecting land.

Strategies:

- NGOs and local women organisations to advocate for constitutional amendments to remove discriminatory customary practices and align laws with international standards.
- Government to work towards aligning customary laws with statutory provisions to protect women's land rights.
- Government to enhance the capacity of institutions responsible for land governance to implement and enforce laws.
- Government to formalise land titles through more simple registration (LTR) processes. This is seen as having potential to significantly contribute to increasing agricultural productivity in Africa (Byamugisha, F. (2013).

¹³ <https://www.landesa.org/wp-content/uploads/Landesa-Women-and-Land-Issue-Brief.pdf>

¹⁴ Department of Planning Government of Rajasthan (DPGR). (2006). Gender Responsive Budgeting for the Department of Social Welfare in Rajasthan



Objective

Gender-responsive land policies are essential for addressing the specific needs and challenges faced by women, ensuring equitable access to and control over land resources.

Current Status

Traditional social norms favour men over women, limiting women's access to land and resources.¹⁵ The Lack of awareness and representation perpetuates discriminatory practices against women in land ownership. The Gambia doesn't have a national land policy, but there are some policy documents¹⁶ focusing on improving women's access to land. However, there hasn't been any effort to reform land laws regarding this issue (Bensouda 2013 (LGAF)).



Importance of developing Gender-Responsive Land Policies

- It has been established that in The Gambia women's access to land resources improves food production and family nutrition, benefiting households and communities¹⁷.
- There is an increasing body of evidence suggesting that women's property ownership in the Gambia has positive implications for their nutritional and health outcomes, as well as the educational achievements of their children¹⁸.
- Gender-responsive land policies:
 - ✓ recognise and protect women's rights to own, inherit, and control land;
 - ✓ enable women to access credit, invest in land improvement, and engage in agriculture and entrepreneurship, contributing to poverty reduction and economic growth; and
 - ✓ integrate women into sustainable land management practices, contributing to climate resilience and environmental sustainability.

Strategies

- Advocate for the integration of gender-sensitive approaches in land laws and policies.
- Strengthen mechanisms for implementing and enforcing gender-responsive land policies.
- Training for relevant government and local officials and the establishment of monitoring bodies to oversee policy implementation.
- Government to regularly assess existing land policies to identify gaps and recommend changes to better serve women's needs.

¹⁵ <https://www.fao.org/3/ca3222en/ca3222en.pdf>-National Gender Profile of Agriculture and Rural Livelihoods – The Gambia

¹⁶ The Gambia's National Gender Policy of 2010-2020.

¹⁷ World Bank. (n.d.). Gender Data Portal: Gambia, The. Retrieved from <https://genderdata.worldbank.org/countries/gambia-the/>

¹⁸ Ibid



Objective

To increase women's access to fair and effective dispute resolution mechanisms for protecting their land rights in The Gambia.

Current Status

While the courts¹⁹ are generally accessible to all citizens, women as well men encounter difficulties in accessing justice and resolving land disputes. These challenges stem from cumbersome bureaucratic processes, and limited legal resources. Factors such as high costs for legal proceedings in higher courts, and inadequate Alternative Dispute Resolution (ADR) mechanisms in rural areas, further exacerbate these obstacles. Additionally, restrictions on legal representation in district tribunals and Sharia courts contribute to women's limited access to justice (Bensouda 2013).

Importance of Increasing Women's Access to Justice and Land Dispute Mechanisms

- Access to justice protects women from violations of their land rights, ensuring dignity and security.
- Access to justice addresses systemic barriers and discrimination, promoting equal treatment under the law.
- Access to justice equips women with the knowledge and skills to advocate for their rights and contribute to community development.
- Legal dispute mechanisms help women seek protection from violence arising from land disputes.

Strategies:

- Government and NGOs to provide free legal aid and support services to women involved in land disputes (Bensouda 2013).
- NGOs Conduct awareness campaigns to educate the public about women's legal rights to land and justice.
- All inheritance matters to be determined only by the Cadi Courts. Sharia jurisdiction to be removed from District tribunals (Bensouda 2013) to avoid the conflating of customary laws with Sharia rules.
- Promote community mapping initiatives, wherein grassroots women interview community members to pinpoint issues concerning women's well-being, especially regarding land and property rights. These processes would encourage the community to become actively involved, in identifying key stakeholders capable of instigating desired changes. Additionally, they could serve as a platform for community members to gain insights into local needs and resources.
- Local authorities promote more informal Alternative Dispute Resolution methods, such as mediation, which are more accessible and less intimidating options for women. This system to be integrated into the formal ADR system and decisions to be written (Bensouda 2013).
- Appoint women to the district tribunals and Cadi Courts.

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¹⁹ District Tribunals, Magistrate Court, High Court, Cadi Court, Rent Court etc.





INITIATIVE CONSORTIUM



The Center for International Forestry Research (CIFOR) and World Agroforestry (ICRAF) envision a more equitable world where trees in all landscapes, from drylands to the humid tropics, enhance the environment and well-being for all. CIFOR and ICRAF are CGIAR Research Centers.



Climate change, biodiversity loss, environmental degradation, and malnutrition. These four interconnected global crises have put at stake the wellbeing of our planet for years. Fueled by COVID-19, their impact on agriculture, landscapes, biodiversity, and humans is now stronger than ever. Reversing this negative trend is a challenge, but also an opportunity for bold choices and integrated solutions. Established in 2019, the Alliance of Bioversity International and the International Center for Tropical Agriculture (CIAT) was created to address these four crises, maximizing impact for change at key points in the food system.



The International Food Policy Research Institute (IFPRI) provides research-based policy solutions to sustainably reduce poverty and end hunger and malnutrition in developing countries. Established in 1975, IFPRI currently has more than 600 employees working in over 50 countries. It is a research center of CGIAR, a worldwide partnership engaged in agricultural research for development.

INITIATIVE CONTACTS



Anne M. Larson,
Theme lead for Governance,
Equity and Wellbeing

a.larson@cifor-icraf.org



Marlène Elias,
Gender Lead

marlene.elias@cgiar.org



Investing in rural people

Tshering Choden,
Technical Specialist
for Gender and Social
Inclusion, Gender Team

t.choden@ifad.org

Rikke Grand Olivera,
Lead Technical Specialist,
Tenure Team

r.olivera@ifad.org

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