

**WOMEN'S
LAND
RIGHTS IN
THE GAMBIA**

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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.

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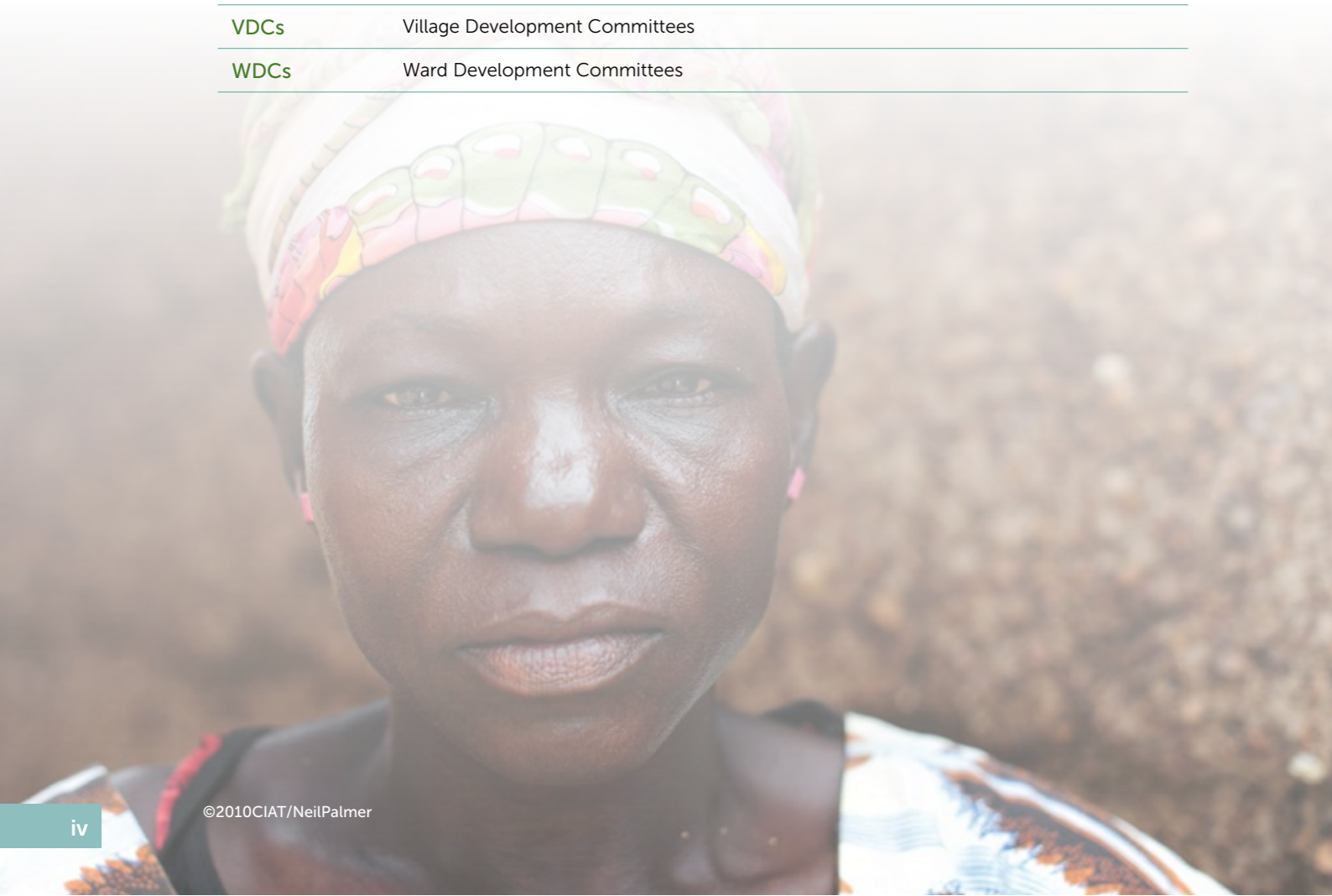


WOMEN'S LAND RIGHTS IN THE GAMBIA



AfDB	African Development Bank Group (AfDB)
CCSF	community-controlled state forest
CEDAW	UN Committee on the Elimination of Discrimination against Women
CIFOR-ICRAF	Center for International Forestry Research and World Agroforestry
DLS	Department of Land and Surveys (DLS)
ECOWAS	Economic Community of West Africa
GBOS	The Gambia Bureau of Statistics
IFAD/ADF	The International Fund for Agricultural Development and the African Development Fund
LADEP	The Lowlands Agricultural Development Program
MLRG	Ministry of Local Governments and Lands
MPs	members of parliament
OECD	Organisation for Economic Co-operation and Development
VDCs	Village Development Committees
WDCs	Ward Development Committees

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Background

This series of socio-legal reviews summarizes the legal and policy documents related to women's land tenure in seven countries: Kyrgyzstan, Uganda, The Gambia, Ethiopia, Niger, Bangladesh and Colombia. These synthesis documents, part of the IFAD Initiative on Women's Resource Rights, are designed for researchers and policymakers seeking to improve women's land and resource rights in these target countries.

WHAT IS A SOCIO-LEGAL ANALYSIS?

A socio-legal analysis focuses on reviewing laws in the context of particular social problems that the law aims to address (Schiff, 1976; Creutzet et al., 2019). Findings draw on the analysis of country legal and institutional frameworks that recognize women's land rights, and information on existing procedures and processes for implementing tenure interventions. These analyses provide the basis for identifying incongruencies, overlaps, gaps that pose barriers to the recognition and enjoyment of women's rights to land and productive resources.

THE REVIEW COVERS:

- ▶ A **general characterization** of land and resource tenure systems at national, regional, and local levels
- ▶ **Existing institutional and regulatory frameworks** for land and resource tenure, and the extent to which these are inclusive of women
- ▶ Implemented **land tenure interventions**, and the extent to which these benefit women
- ▶ **Barriers and constraints** affecting women's ability to access rights
- ▶ Mechanisms for **dispute resolution**, and how these engage women and address their concerns

Introduction

Situated in Northwest Africa, The Gambia is a small country with an area of 10,689 km², located in the coastal zone surrounded by Senegal. The Gambia narrows down into two strips of land that extend along both sides of the river by the same name. The country has two major agro-ecological zones: the uplands, historically used for the cultivation of cereals and groundnuts, both major exports; and the lowlands, mainly riverine wetlands used for rice production (Levien, 2017).

As of 2019, the Gambia's population was estimated to be 2.4 million (World Bank Group, 2020), half of which is highly concentrated in urban areas¹. Ethnicity and religion are important elements of Gambian identity. About 95% of the population is Muslim (The World Factbook, 2021²). According to The Gambia Bureau of Statistics (2013), there are at least nine different ethnic groups, including: Mandinka (the largest group at 35% of the national population), Fula (25%), Wolof (15%), Jola (11%), Sarahule (8%) and Serere, Creole, Manjago and Bambara, which together represent about 7%. The Gambia is divided into five administrative provinces (also referred to as regions) and one city (Banjul), which are further divided into Districts and Wards. Rainfall agriculture plays a key role, both as a source of income (representing 30% of the gross domestic product) and as employment, engaging about 85% of the rural population (GBoS, 2015). Since the 1980s, government policies have supported rural development initiatives, including major irrigation projects, to improve productivity, diversify exports and increase women's engagement.

The Gambia is governed by a complex system of inter-linked statutory and customary regulations and practices, in which religion and ethnicity play important roles in influencing how women and men can access land and resource rights. Existing practices follow a patrilineal property system wherein fathers bequeath land to their sons, and women's access to land is highly mediated by social and marital status, as they must access land through their fathers, brothers, and husbands. In certain localities matrilineal inheritance may be allowed but is rare.



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During the last 30 years important reforms have been promoted to formalize existing land administration systems, differentiating between those implemented in the greater Banjul area and those implemented in provincial (regional) lands. Regulations implemented in 1995 provide an avenue for lands held under customary rights to be formally recognized, but this process requires the land to be converted into deemed leaseholds and designated as state lands; in practice, this means that tenure rights are ceded to the state. Most customary lands (either individually or collectively held) are not currently formalized. In cases where customary lands are formalized, incongruencies and a lack of clear procedures increase conflict and disputes – especially in areas managed as commons and those subject to development interventions, in particular irrigation projects.

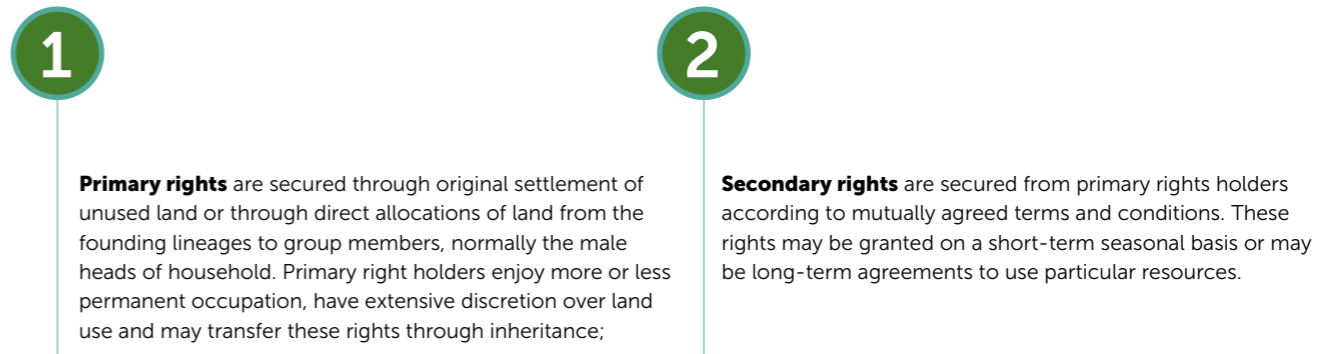
This socio-legal analysis provides an overview of existing land governance arrangements in The Gambia as they relate to women's access to land and resources. It discusses two different types of land tenure interventions: title deeds and certification. These interventions vary according to different types of recognized rights-holders and the area in which rights are being formalized. Despite important progress through legislative reforms, implementation has been slow and prevailing barriers and gaps continue to influence the recognition of women's land rights and their ability to benefit from them.

Characterization of land tenure systems in The Gambia

Access to and control over land and other productive resources in The Gambia is shaped by complex tenure systems. Coexisting and interacting customary systems and statutory regulations are influenced by reform processes, with differentiated effects in rural and urban areas (Bensouda, 2013). Rights to resources are often negotiated across multiple rights-holders, overlapping tenure regimes and resource systems (Freudenberger and Sheehan, 2000).

These tenure arrangements and practices are highly context-dependent and dynamic. Customary tenure arrangements recognized by statutory regulations govern land occupation and resource use, especially in rural areas (ibid). Despite recent efforts to formalize customary rights, regulations have been implemented slowly. In some cases, formalization is further complicated by differing policy interpretations, particularly when trying to clarify the extent of rights across different layers of primary and secondary rights-holders.

According to the FAO's Gender and Land Rights Database³, primary and secondary land rights in the Gambia function as follows:



Tenure rights are recognized through any of the following regimes:



³ https://www.fao.org/gender-landrights-database/country-profiles/countries-list/land-tenure-and-related-institutions/en/?country_iso3=GMB

¹ The Gambia Bureau of Statistics estimated population by 1.9 million (by 2016), of which 55% were living in urban areas.
² Available at <https://www.cia.gov/the-world-factbook/>

Three main systems of land holding exist under the customary law:



Household holdings are usually managed by the family head (kabilo). This land is held by the family unit in a representative capacity for the use and common benefit of members of the family who have usufruct rights.



Communal land ownership is managed by the village chief (alkalo). In this system, restricted portions of land are set aside for the general benefit or use of the community, such as prayer grounds, burial grounds, bantabas (traditional meeting and relaxation spots), schools, seed stores and hospitals.



Individual ownership allows an individual to acquire land based on original discovery or settlement on that land. This individual (almost always a man) can pass such land onto his family or community.

Tenure security is a function of historical precedent and of membership in particular kinship or lineage group through birth, marriage, or residency in the community, especially in rural areas (Freudenberger and Sheehan, 2000). Nearly 95% of The Gambia's population belongs to an Indigenous ethnic group, and thereby governed by customary tenure systems. The Lands (Provinces) Act (1946), later amended as the Lands (Regions) Act (1995), refers to members of these groups as 'indigenes' and defines this term as a "person whose parents are or were members of some tribe or tribes indigenous to the Provinces and any descendant of such a person"⁴. This includes members by birth or by recognition of the Indigenous communities concerned⁵. Customary tenure systems vary considerably across regions, influenced by age, religion, marital status, and geography (Freudenberger and Sheehan, 2000). Furthermore, customary norms and practices have been largely influenced by development initiatives, in particular irrigation projects and schemes promoting vegetable cultivation (African Development Bank Group, 2011).

Existing regulations recognize three types of land tenure: freehold, leasehold, and customary. In practice, overlaps exist across these tenure systems. As specified in the State Lands Regulations, 1995⁶, laid out in the State Lands Act of 1991⁷, customary lands now designated as state land can be formalized as leaseholds⁸. Land tenure under the freehold and leasehold systems follows the statutory laws, based on English law, a legacy of British colonial rule. The freehold system is broken down into private freehold land and state freehold land.

In customary tenure systems, lands are administered and governed by district authorities and local chiefs in the regions. Customary tenure in The Gambia evolved from the traditions and practices of the indigenous communities which are preeminent in rural areas.

Natural resources, including forest parks and wildlife reserves, are recognized as public properties by law⁹ and protected and managed by the Department of Forestry as well as the Department of Parks and Wildlife Management. Indigenous and traditional rights and access to forest resources are provided through the Community Forest Management Agreement. Furthermore, the Forest Act of 1998, the Forest Policy of 1995-2005, and the Biodiversity Policy of 2000-2010 provide regulations for the management and protection of forest lands. Boundaries related to most categories of forest lands and ownership (e.g., forest parks, community forests, and private forests) are usually gazetted, surveyed, demarcated, and mapped by the state, thereby formalizing them as state property (Bensouda, 2013). Community forest identification thus constitutes the first step in participatory village-based land use planning. The Forestry Department developed the concept of community-controlled state forest (CCSF), which aims at bringing the remaining forest on customary village lands under controlled management. However, CCSFs may not always keep the forest cover, as forests may be converted into other land uses.

While different tenure systems coexist and overlap, recent reforms have aimed at formalizing State jurisdiction and authority in resource and land formalization and registration (Freudenberger and Sheehan, 2000).

4 Art. 2

5 While 'indigene' is the official term used in these Acts, this word is not widely accepted in global policy-making spaces and is even considered by some to be derogatory. As such, this review shall henceforth refer to these individuals and communities as Indigenous Peoples.

6 L. N. No. 13 of 1995

7 <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC005421>

8 See: Form 9 in the State Lands Act

9 Section 14 of the Biodiversity and Wildlife Act; Section 6 of the Land Regions Act; Section 39 of the Forests Act

Institutional and regulatory frameworks

Table 1 provides a synthesis of existing legislations, the extent of rights recognized, the government institution in charge of implementation, and their particular impacts on women. Although there have been many important changes in legislation during the last 40 years, two regulations are of particular interest in the analysis of the institutional and regulatory land administration framework (Box 1).

First, legislation governing "state lands" provided in the State Lands Act (1991), vests the authority to allocate rights to the Land Board and Minister, indicating that grants under state lands are restricted to "planned areas only"¹⁰, differentiating between those grants for residential purposes¹¹ and those grants for non-residential purposes¹². The second is legislation governing "province lands"¹³ provided in the Lands (Regions) Act (2003). The authority to allocate rights in province lands is vested in the district authorities where land may be situated, held, and administered for the use and benefit of communities concerned¹⁴. Existing regulations recognize customary governance and tenure systems¹⁵, vesting the authority to administer these rights in customary leaders within local authorities, including the head *seyfo*¹⁶ Chief at the district level and *Kabilo* Headmen, village *alkalo*¹⁷, and elders and advisors at the village level (Smith, 1996).

BOX 1: LAND TENURE REFORMS IN THE GAMBIA

Land administration in The Gambia during the colonial period differentiated between the colony (what is now the greater Banjul area) and protectorate lands (now the five regional provinces) (Bensouda, 2013). In colony lands, land administration authority was vested in the British Crown, from which the State could grant both freehold and leasehold tenure. Under the Lands Act of 1945, all colony lands were converted into state lands; after this, no further freehold rights were granted. Therefore, all existing freehold rights in The Gambia are limited to rights-holders whose tenure was granted prior to 1945 in the Banjul area. While no recording of customary lands has been registered in the Banjul area, in the Kombo North district, communities continue managing their lands under customary agreements. In 1990, the State established a land commission and issued four important legislations related to the reform of land administration: the State Lands Act, which formalized customary lands as state lands; the Land Acquisition and Compensation Act, which allowed the sale of land for public purposes; the Physical Planning and Development, which concerns expanding urbanization; and Control Act and the Surveying Act, aimed at establishing registries of areas and lands. In 1991, an amendment to the State Lands Act introduced deemed leaseholds, allowing State authorities to recognize land titles outside of urban areas under 99-year agreements. This new regulation particularly affected the districts of Kombo North, South and Central, as well as greater Banjul and Growth Centers where urban expansion is taking place, which are now deemed as "designated state land areas". Meanwhile, in the protectorate lands, five administrative divisions were created. The Lands (Provinces) Act of 1946 vested land administration authority into district authorities, called *seyfo*, who could administer land in accordance with customary law, often including the appointment of an *alkalo* (village head or village chief). Under reforms of the Lands (Provinces) Act (1991)—later amended to the Lands (Regions) Act (1995)—and the Local Government Act (2003), this administrative structure remains unchanged. The Lands (Provinces) Act also introduced leaseholds that can be issued by district authorities with the endorsement of Provincial Commissioners. Although the Independence Act of 1964 merged colony and protectorate land administration systems, existing institutions and systems continue to distinguish them as separate entities with different sets of rules and procedures.

Source: Adapted from a review of Bensouda, 2013; Freudenberger and Sheehan, 2000.

10 Art. 3

11 Part I

12 Part II

13 Art. 2

14 Art. 4

15 Art. 5

16 According to the Local Government Act (2002) *Seyfo* refers to district Authorities. However existing references do not clearly specify the difference between district authority and customary authorities at the district level.

17 According to the Local Government Act (2002) "Alkalo" and "Alkalolu" mean a village headperson and village headpersons.

State freehold tenure includes:

- most urban areas of Banjul;
- most forests, wildlife parks and nature reserves on former customary land;
- acquired public land expropriated for public interest; and state freehold land (i.e., Tourism Development Area)¹.

State leasehold tenure includes:

- leasehold grants;
- sublease and tenancy mechanisms;
- deemed leaseholds, wherein land is leased for a specified period (Bensouda, 2013).

1 The Tourism Development Area is the area along the coastline set aside by the Gambia Government for tourist.

The Constitution recognizes the existence of multiple legal systems including the common law, Shari'a law, and customary law, which concerns Indigenous communities (African Development Bank Group, 2011). Shari'a Law governs issues of marriage, divorce, and inheritance among members of the communities to which Islamic law applies¹⁸. Application enforcement of the law thereby varies significantly across different parts of The Gambia, depending on how these different legal systems are interpreted and implemented.

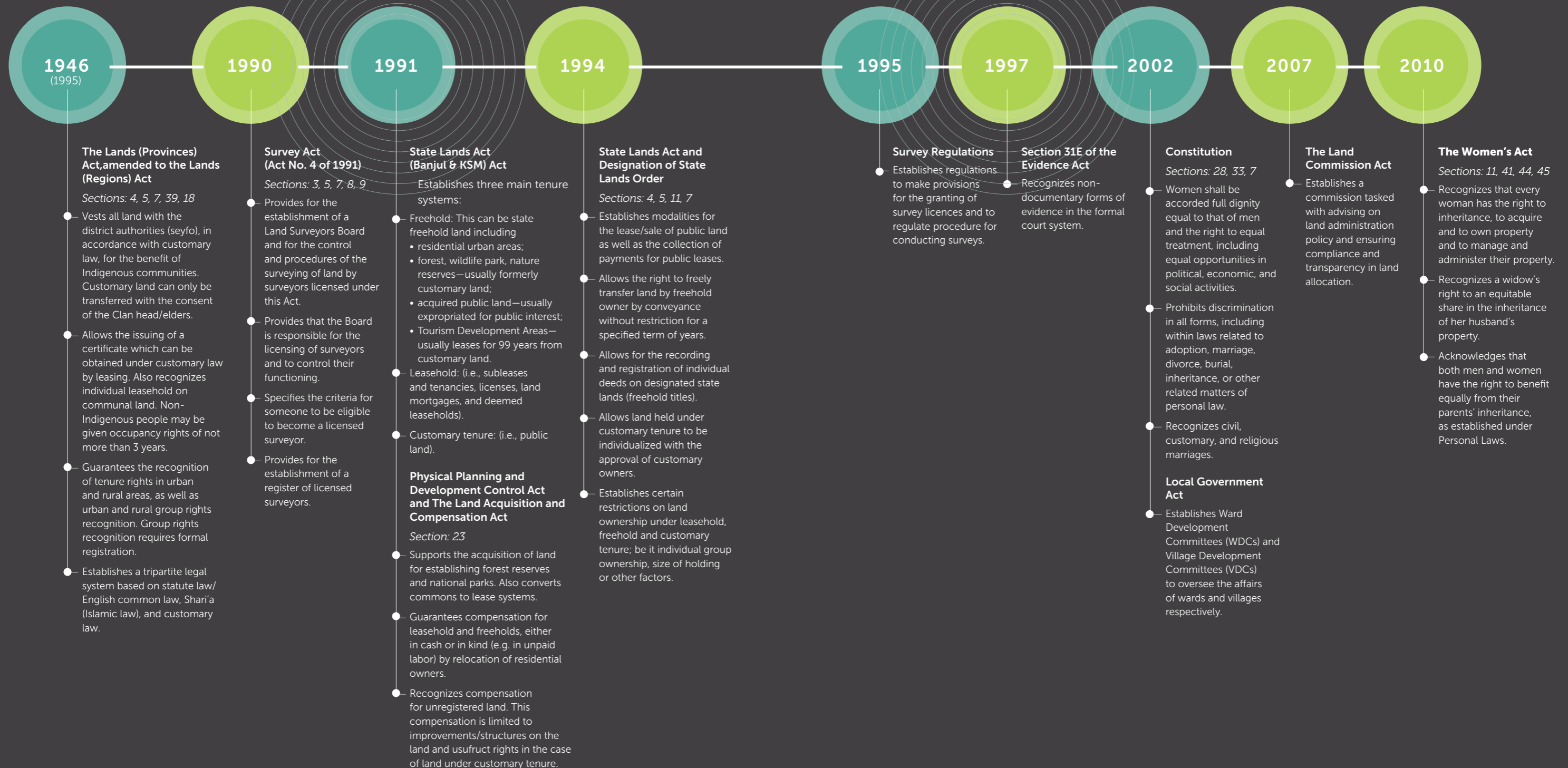
Different forms of land tenure exist and may also vary, depending on whether they are regulated under the State Lands Act or the Lands (Regions) Act. Transfer through sales and leasing is recognized under the State Lands Act (1991)¹⁹ with restrictions on size of holding and a specified term of years based on the tenure system. Both the State Lands Act and the Lands (Regions) Act allow the issuance of land title deeds (both for freeholds and leasehold lands). The Lands (Regions) Act further allows the issuing of a certificate to anyone whose domicile is in the provincial regions and can be obtained under customary law for the purpose of obtaining a title deed²⁰.

Individual leasehold on communal land is allowed to both Indigenous and non-Indigenous people, but the latter may not be given occupancy rights of more than 3 years. The administrative procedure²¹ for allocating deemed lease areas in state lands is generally clear. Nevertheless, the absence of a formal legislation that recognizes long-term, unchallenged possession of land leaves gaps in regulation, resulting in land conflicts.

Formalization of land rights by collectives is also recognized in the Lands (Regions) Act but has been slow to progress, especially in rural communities.

For a group to be legally recognized, formal registration is required, as stipulated in the Lands (Regions) Act. Collective tenure rights over land may exist and be recognized at the local level, but this does not give them secure legal tenure at the state level (Wily, 2011). This affects many rural women's groups organized as *Kafos* (primarily made up of farmers)²² which have not been able to register or formalize tenure rights to the land they use (Bensouda, 2013). Accordingly, a practice has developed whereby women's groups seek formal recognition of their lands by signing agreements with landowners recognized by the *Alkalo*, which can be used in the registration of their lands.

Table 1. Key regulations pertaining to women's land rights in The Gambia



18 Colonial era legislation relating to Muslim personal law, Mohammedan Marriage and Divorce Ordinance 1941, was retained after independence. Legislation is mainly of regulatory nature. Discussion on codification of Muslim personal law not yet resulted in legislation. <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/gambia-republic-of-the/>

19 Sections 4,5,11&7

20 Section 3

Source: Based on the review of the 1997 rev. 2002 Constitution of the Gambia; The State Lands Act 1995; The Lands (Provinces) Act (amended) to Lands (Regions) Act 1995; The Survey Act 1990; The Survey Act 1990, and The Women's Act (2010).

21 Section 31E of the Evidence Act

22 Kafos are organizations or "clubs" with social, cultural, religious, political, or economic functions which revolve around economic activities such as gardening, marketing, crafts, soap making or sheep fattening.

The Gambia Constitution recognizes that all women are to be considered and treated as equals to men with respect to political, social, and economic opportunities²³. Provisions for the protection of women against all forms of discrimination is recognized in laws on issues around adoption, marriage, divorce and inheritance as related to Personal Laws (1997, rev. 2002)²⁴. The Gambia National Development Plan (2018-2021) recognizes women's empowerment as one of the seven critical enablers that crosscut their strategic priorities (2018:9) and proposes the realization of women's full development potential as part of its vision. This is partly the result of the enactment of legislative acts, including the National Women's Council and the Bureau of Integration of Women established in 1980, the National Policy for the Advancement of Women in 1999, the Gambia National Gender Policy 2010-2020 and the Women's Act in 2010. These legislations addressed constitutional obligations and included provisions to implement the national policy.

These regulations led to the establishment of institutional structures in charge of addressing gender issues and overseeing implementation of these policies. These structures include the Ministry of Women's Affairs, which is headed by the Vice President; the National Women's Council, with representation from different ministries including Agriculture as well as local authorities, civil society, private sector, and religious groupings (AFD, 2011). The Women's Bureau acts as the secretariat to the Council and the Gender Focal Points. Its principal mandate is to ensure that gender is embedded and institutionalized at all governance levels. However, despite these important efforts to improve gender parity and equity, important gaps remain. According to the Global Gender Gap Index, Gambian women continue to lag behind men for many indicators, especially in regard to issues of economic participation and opportunity and political empowerment. By 2021, The Gambia was ranked 127th out of 156 countries with a Gender Gap Index of 0.64,²⁵ although the country ranked slightly higher for indicators of women's health and survival (number 93) and economic attainment and opportunity (116), and slightly worse for educational attainment (135) (World Economic Forum, 2021).

To reduce the gender gap, the National Plan stressed that addressing "socio-cultural barriers, strengthening participation in decision-making, as well as better economic opportunities will lead to improved status and wellbeing for families" (2018:24). In terms of access to resources including land, The Women's Act recognizes that every woman has the right to inheritance, to acquire and to own property and to manage and to administer their property. Furthermore, it recognizes a widow's right to an equitable share in the inheritance of her husband's property. Both men and women have the right to benefit equally from the inheritance of their parents as established under Personal Laws (2010)²⁶. However, in practice, the proportion of women able to access land via inheritance is small

(Carney, 1998). For most Gambian women, access to land and resource rights is largely mediated by the social status of their husbands, their own marriage status or, in the case of single or divorced women, through their immediate male relatives (UN-HABITAT, 2006).

Moreover, rights to land and other natural resources under customary tenure systems are determined largely through membership to a recognized group such as a clan, pastoralist community, or an organized group such as a Kafos (through birth, marriage, or political alliance), kinship or lineage groups. In some regions under customary law, a woman is not entitled to the property of her husband unless she agrees to let herself be inherited (as property) by the husband's family (Bensouda, 2013; OECD, 2019).

Customary law also recognizes polygamous marriages, and no statutory restriction exists on the matter (Saidy, 2017). According to the government's report to the Convention on Elimination of Discrimination against Women, as of 2006 about 40% of marriages in The Gambia were polygamous. Despite recent regulations²⁷ prohibiting the marriage of girls under 18 years old, 25% of underage girls are married (OECD, 2019). Husbands are allowed under customary laws to marry subsequent wives with the option of divorce, but they do not necessarily need the consent of their current wife to marry another woman (Montgomery, 1994; Saidy, 2017). In polygamous marriages, first wives have higher social status, but all wives are highly vulnerable in cases of divorce or widowhood. For instance, customary practices grant the wives one-eighth of the joint property; in cases of polygamy where land tenure is recognized, this means dividing that portion among the number of wives (Saidy, 2017).

During divorce, tradition dictates that ex-wives return to their families to seek land for cultivation (Freudenberger and Sheehan, 2000). In some areas, women can inherit land from their mothers, and leave it in turn to their daughters. Traditionally, however, women have only temporary land rights. In many contexts women borrow the land they cultivate from their husbands, their husbands' families, or other village members but are prohibited from planting trees, an action associated with permanent land rights (OECD, 2019). Some argue that women in The Gambia are secondary rights-holders because they do not definitively control the use and allocation of land, as it is often negotiated for a specific, finite period (Bensouda, 2013; Freudenberger and Sheehan, 2000).

23 Art. 28

24 Art. 7,28,633

25 An improvement of 9 points from 2020, when it was ranked in the position 136. At the regional level, The Gambia is ranked 29 out of 35 Sub-Saharan African countries.

26 Sections 11,41,44&45

27 Children's Amendment Act, 2016

Tenure Interventions: Title deeds and certification - objectives and process

This section discusses land tenure interventions recognizing women's land rights in The Gambia (See Table 2). The most important tenure interventions include the granting of title deeds in both leasehold and freehold systems to individuals or groups (e.g., companies) as primary rights-holders (Vadsaria, 2014). The Land Registration Act establishes a title deed registry in the greater Banjul area, or elsewhere in The Gambia before a Justice of the Peace²⁸.

In the case of leasehold rights, the State Lands Act provides for 99-year leasehold rights that require registration of title deeds and the provision of a certificate²⁹. The process for title deed registration is much simpler in urban areas than in rural areas (Bensouda, 2013), where designated state lands held under customary tenure must be converted to formal leasehold. Most of these customary lands remain unregistered as a result of unclear procedures, even when leases and certificates have already been issued for them (ibid).

Table 2. Types of tenure interventions in The Gambia recognizing women's land/tenure rights

CERTIFICATION		LAND REGISTRATION	
GOAL	Title deeds are recognized in both freehold and leasehold systems.	GOAL	Occupancy rights are recognized in two ways: (1) through the issuing of a Certificate of Occupancy for customary lands applying for deemed leasehold title deeds under the State Lands Act (i.e. for the greater Banjul area) and (2) Certificates granted under the Lands (Regions) Act, which can be allocated to non-Indigenous people certifying consent from the indigenous community concerned; lease rights are recognized for up to 3 years ³⁰ .
SCALE	Plot	SCALE	Plot
RIGHTS-HOLDER(S)	Individual Household/family Collective (co-operative society, communities, or religious groups; women's groups – Kafos)	RIGHTS-HOLDER(S)	Individual Collective (co-operative society, communities, or religious groups; women's groups – Kafos)

Source: Based on review of Federal Land Proclamation 2005, Revised Family Code, 2000.

According to Bensouda (2013), the greatest differences in tenure practices emerge not from the difference in tenure regimes, but rather the existing regulations that broadly differentiate jurisdiction between the Greater Banjul area (guided by the State Lands Act), and the five provinces regulated by the Lands (Regions) Act. Under the State Lands Act, the mechanism of 'deemed lease' aims at formalizing customary tenure under leasehold, in the process converting these plots into state lands. The procedure for title deed issuance for a deemed lease under customary lands requires applicants to present a Certificate of Occupancy signed by the village chief (*alkalo*) and district authority. Title deeds over freeholds can also be registered, but these rights are restricted to landholders of colonial freeholds granted before 1945³¹. Regulations also differentiate

28 Art. 10

29 Land Registration of Deeds Act, Art. 6

30 Art. 8

31 Following Bensouda (2013), freehold was granted over colony land prior to 1945 (See Box 1).

between leaseholds granted for residential and non-residential purposes. In all cases, freehold or leasehold title deed holders are considered primary rights-holders.

Freehold title deeds are recorded and kept by land registries as established by the Registration of Deeds Act (1980). Leasehold rights can also be registered, but registration is largely restricted to urban areas, due in part to a lack of clear procedures (Bensouda, 2013:13). It is difficult to determine the number of lands owned and registered to women in The Gambia, because until 2013 the Land Registry did not disaggregate information by gender; however it is estimated that less than 20% of leases were registered to women in the last 10 years, although this has increased more recently (ibid:67). Furthermore, Department of Land and Surveys (DLS) data indicates that at least 34% of residential leases in urban areas were registered under women in this period (ibid:68). In rural areas, women's *Kafos* groups are increasingly seeking to register land for establishing vegetable gardens. However, under existing tenure arrangements, *Kafos* are not considered primary right-holders, despite the fact that land access through leases is possible, especially in customary lands.

Tenancy arrangements through leaseholds differ for primary and secondary rights-holders. Transfer of rights (for either primary or secondary rights-holders) may take place through different mechanisms granted for short periods of time or on a seasonal basis and may include: subleases, loaned/borrowed land, pledging and rental and sharecropping (Freudenberger and Sheehan, 2000; Vadsaria, 2014). However, certain restrictions are placed on secondary rights-holders, including the prohibition of tree-planting, which is seen as a claim to primary-holder rights. Most women gain access to land as secondary rights-holders, with no control over the use and allocation of land (Freudenberger and Sheehan, 2000).

In the case of a joint lease, the names and relationships of those owning or sharing the land, as well as the size of the land, must be included in the application. The application for land for a residential purpose also provides a space for the number of wives to be added, but it is up to the head of household (i.e the husband) whether he wants to include this information. In this way, the documentation requested is based on the idea of men as de facto household heads, while women are rarely considered as primary rights-holders of landholdings.

While the Constitution allows and recognizes rights for both men and women to register land, only the Certificate of Occupancy clearly allocates space for both men and women to register as applicants. Although the application form elicits whether the lease is going to be a joint lease³², the notification of deemed lessee³³ does allow the registration of more than one name.

For most provincial lands, the Lands (Regions) Act³⁴ allows for the issuing of certificates to non-Indigenous men and women once consent is obtained from the impacted Indigenous communities. Registration is also possible, following different tenancies and subleases arrangements. For those under

tenancy arrangements, sale, mortgage, transfer, sublease or bequeath land is not allowed. Tenancy arrangements of more than three years are expected to be documented in writing, with tenancy agreements for non-Indigenous people not exceeding 50 years³⁵. However, lands under customary tenure cannot be registered; they can only be transferred to individuals or groups with consent from the district authority and the *Alkalo* (Bensouda, 2013).

PROGRESS OF IMPLEMENTATION OF TENURE INTERVENTIONS

In the last 30 years, land reforms in The Gambia have focused on formalizing and converting customary tenure to leasehold tenure, centralizing land administration processes under the Land Commission and vesting powers of land administration in the State (Freudenberger and Sheehan, 2000). The State Lands Act also established Land Administration Boards, with members from the Ministry of Local Governments and Lands (MLRG) to manage and oversee land reforms in the greater Banjul area and for each of the country's five provinces (Ouedraogo et al., 2006). While the creation of Land Administration Boards decentralizes management, decision-making power ultimately rests with the state-level Land Commission. The State Lands Act aimed to provide equitable tenure security to landholders through the creation of land markets and opportunities for acquiring formal credit to stimulate investment in residential, commercial, and agricultural land. The State Land Act also gives the MLRG the authority to supersede traditional tenure for any area of land that has been declared to be state land by issuing 99-year leases to landholders and to expropriate any land deemed necessary for public use (Freudenberger and Sheehan, 2000).

Under the Lands (Provinces) Act, district authorities (*seyfo*) are responsible for land administration decisions. Ward Development Committees (WDCs) and Village Development Committees (VDCs) further support the management of land, as established by the Local Government Act enacted in 2002. These committees oversee the affairs of wards and villages and are responsible for the approval of ward and village plans, respectively. At the village level, the village chief, or *Alkalo*, supports the district authority in the administration and mediating land disputes (Bensouda, 2013; Smith, 1996). The *Alkalo*, alongside the *seyfo* and district tribunals, play a critical role in defining and enforcing rules governing the use of the commons. These local authorities act as trustees over community land and guarantee owners' permanent rights to their land (African Development Bank Group, 2011). Statutorily, laws provide the same degree of legal protection for collective ownership of forests and rangelands to be used for construction of houses and farmlands (Wily, 2011), though this may not be the case in practice. Although the Land Commission³⁶ is tasked with advising on land administration policy and ensuring compliance and transparency in land allocation, it has yet to carry out its responsibilities.

Alongside reforms in land regulations, development projects have introduced progressive changes influencing women's land and resource rights. For instance, the Lowlands Agricultural Development Programme (LADEP) of 1997–2005, introduced by The International Fund for Agricultural Development and the African Development Fund (IFAD/ADF), aimed to sustainably improve traditional rice production systems and enhance food security for poor households (IFAD/ADF, 2007). The project aimed to establish community-based organizations to support claims and distribution of lands to individuals, including landless farmers, especially women, to be recognized as landholders through leases in the lowland areas suitable for growing rice (Quisumbing and Pandolfelli, 2009; 2008; Brautigam, 1992). The project involved about 21,000 rice-growing households and 73,000 people, approximately 70% of whom were women (IFAD/ADF, 2007). The extent to which women's high levels of participation resulted in improved access to land or improved income, however, is difficult to measure.

Since the 1980s, rural development initiatives have promoted government policies supporting irrigation schemes. These schemes aim to diversify exports and increase the engagement of women-led agricultural production systems, particularly through the cultivation of rice and vegetables (Carney, 1993). Historically, Gambian women have cultivated rice and vegetables for subsistence purposes in the lowlands and in areas considered as commons under diverse arrangements including loans, pledges and sharecropping agreements (Quisumbing and Pandolfelli, 2009; Carney, 1998). There is historical precedent for such irrigation projects; during the British colonial period, mangrove biomes were drained and irrigation channels were built to expand rice cultivation in wetland areas (Levien, 2017).

After independence, The Gambia continued promoting rice cultivation with support of development project interventions.

These irrigation initiatives have had unplanned negative effects on women's secure access to land and resources. An earlier study by Brautigam (1980) revealed that an intensive Chinese project introducing irrigated rice and vegetables to boost rice production ran into problems due to incompatible interpretations of existing land tenure rights (Brautigam, 1992; Schroeder, 1999). This type of project was shown to increase the value of the lands involved, which, coupled with existing socio-economic and legal barriers, further constrained women's ability to benefit from these lands (Carney, 1992; 1998; 2019; Dey, 1981; Senghore, 2019). For example, women's rights were recognized on their own rice plots, but women who cultivated swamp rice on communal land lost their rights, as irrigation projects assigned control of those lands to households headed by men (See Box 2). Although women benefited from increased economic prosperity because of the irrigation project, they had to give up their usufruct rights and provide labor to male heads of households (Quisumbing and Pandolfelli, 2009; Carney, 1998).

Other development interventions supporting women's gardens opted to convert such gardens into fruit orchards controlled by male landowners. These changes meant women's gardens and lands were opened to competing claims and displaced by fruit orchards and woodlots (Schroeder, 1999). Land development initiatives that primarily target men often result in the loss of women's land use rights on their traditional rice-growing land (Brautigam, 1992).



P. Casier/CGIAR

BOX 2: RECOGNITION OF WOMEN'S LAND RIGHTS: EFFECTS OF RICE IRRIGATION PROGRAMS



Early agricultural development projects in the Gambia, such as the Jahally Patcharr Project (1981-1991), overturned existing land ownership and user rights in order to promote men's cultivation of rice as a cash crop. Allocated land initially controlled by individual women was given over to men who controlled production as heads of household. Women resisted this loss of land rights; as a result, in subsequent projects land used for rice cultivation was reverted to women farmers, primarily by negotiating new land contracts for women project beneficiaries with individual headmen. The Gambian irrigated rice projects have been hailed as a good practice regarding women's land rights, however, the effective "success" of conferring rights to irrigated rice land onto women is merely a reversal of the adverse effects of previous development projects. Presently, most women have long-term user rights to their rice plots. Even in divorce cases where the wife is not from the village, she is entitled to keep using the land. During a meeting with members of the Rice Farmers' Association in the Jahally Pacharr area, women farmers explained that the various irrigated rice projects had improved their work conditions. Before the regulation of the floodplain, they had to be immersed in water all day, often carrying babies in dishes on their heads. Women appreciate their guaranteed user rights of the land, and that their use rights to the fields are no longer tied to the duration of their marriage. They proudly explain that now "the fields are our husbands".

Source: African Development Bank Group, 2011; Carney, 1993; Carney and Watts, 1990; Levien, 2017

32 Form 7

33 Form 10

34 Section 7

35 Section 8

36 Created following the Land Commission Act, 2007

WOMEN'S PARTICIPATION IN TENURE INTERVENTION IMPLEMENTATION PROCESSES

Despite existing statutory laws recognizing the right of every citizen to participate in public affairs and to be freely chosen as a representative, no provisions specifically reserve seats for women in the National Assembly, Electoral Commissions, or at Local Government institutions. Notwithstanding, an African Development Bank Group (AfDB) report (2011) noted that 13% of women have been appointed in the cabinet and 33% of women constitute members of the National Assembly. Similarly, sectoral regulations, including those governing land administration and resource management, do not specify gender quotas for membership.

The Gambia National Gender Policy recognizes the uneven gender distribution of the labor force in the public and private sector (Ministry of Women's Affairs, 2010). As of late 2010, women's representation was highly uneven across private sectors: less than 17% in fisheries, 22% in manufacturing, 41% in hotels and restaurants, less than 3% in financial services, less than 7% in storage and communication, 40% in commercial, social and personnel services and 44% in wholesale and retail. In the public sector, women represent about 25% of total civil servants. As of early 2000, less than 33% of government cabinet staff were women, and less than 15% of Parliament members were women. Out of 147 elected Area Councillors, only 45 are women (ibid). At the local level, women's representation in governing bodies is even lower: of 1,938 villages only five were headed by women according to the 2003 National Population and Housing Census.

The 2002 Local Government Act explicitly provides for equal representation of men and women in Village District Councils and Ward District Councils as an intervention to increase women's participation. These affirmative actions have introduced progress to women's representation in local government areas. For example, in 2008, 20 women became candidates for council and received party

sponsorship, 16 of whom won seats (African Development Bank Group, 2011). This is particularly notable considering that in 2008 only 1 out of 5 Deputy Governors and 4 out of 1,873 village headmen were women, and all 44 chiefs were men. Women's mere presence, however, may not be enough to guarantee their meaningful participation. A stakeholder consultation process organized by the AfDB on the policies, programs and practice areas that have promoted women's empowerment and gender equality in The Gambia found that even when women were given the space to voice their opinions, thoughts, and concerns, they may not always do so due to social norms; women's low socio-economic status, in particular, acts as a constraint preventing women from taking full advantage (ibid).

According to recent data, women's participation in political decision-making or as government officials is still concentrated in certain sectors and at certain levels (Ministry of Foreign Affairs, 2010). Women are rarely politically engaged in the agricultural sector, and even less so in other government institutions administering natural resources including land, forest, or water. Women's involvement in the National Land Commission or Land Board is scarce, and less than 1% of village heads are women (Bensouda, 2013). The limited extent to which women are engaged in the institutional structures that manage land or natural resource issues could constrain the extent to which existing formal structures and arrangements recognize and address gender issues.

OUTCOMES REGARDING WOMEN'S RECOGNITION OF RIGHTS AND IMPROVED TENURE SECURITY

Rights to land under customary tenure systems are determined through membership in recognized kinship or lineage groups. Transfer of rights is often prohibited to people outside of a certain lineage, except in cases of marriage; therefore, inheritance is the most common form of rights acquisition. Smith (1996) describes complex practices of rights transfers in The Gambia which rarely benefit women, with notable exceptions occurring

among Mandika or Jola women that may receive land as a gift for planting rice. However, these practices are becoming less common as population pressure increases and access to land becomes more restricted (ibid). Sales of state land in rural areas have been less frequent until recently (Bensouda, 2013). In the provinces, the recognition of Indigenous inhabitants' existing customary rights guarantees their land access (African Development Bank Group, 2011). The recognition of group rights has been particularly impactful for women who were landless farmers and became landowners of rice fields through group membership (Quisumbing and Pandolfelli, 2009).

The Lowlands Agricultural Development Program (LADEP) of 1997–2005 made some progress in improving women's rights to land. Although the program's focus was on increasing rice production, its activities were able to address gender and land-related issues by enhancing women farmers' access to land leaseholds for rice cultivation (see Case Study). Through the implementation of workshops and community participation and mobilization, the project was able to carry out construction and maintenance work, with more than 82% of the sites successfully maintaining water control structure two years after the program (IFAD/ADF, 2007). Additionally, the total rice production per annum was increased from 1.500 kg/ha to over 2.200 kg/ha, which resulted in an increase in income for about 70% of rural women. Additionally, the program was shown to benefit women through diversified consumption, increased ability to cover expenses related to childrens' schooling and health and the creation of rural employment opportunities, specifically for landless farmers.

About 70% of program beneficiaries were women, or households headed by women, involved in rice cultivation. Program interventions facilitated access to rice fields by constructing bridges and causeways, which, before the program, were primarily accessed by men due to hazardous flooding and muddy conditions. However, this program produced considerable trade-offs, including increased exposure of rice farmers to water borne diseases such as schistosomiasis and malaria, which affected women involved in rice production.



CASE STUDY 1

Land against labor agreement: Improving women's access to fertile land for rice cultivation in The Gambia.

The IFAD-supported Lowlands Agricultural Development Program (LADEP) (1997-2005) in The Gambia aimed at improving land access for women who are traditional rice growers.

In The Gambia, management of rice fields follows traditional systems, whereby men control and distribute user rights to rice land to their wives and daughters. In this way, women rice farmers depend on borrowing rice land, often seasonally with no assurance of availability. Renting or sharecropping of farmland is rare in The Gambia. Addressing the increasing demand of areas for growing rice requires a review of existing practices and mechanisms that women have for accessing land for rice cultivation. Due to the shortage of fertile land with access to freshwater, project managers are increasingly extending the area of tidal swampland for these projects. The program recognized the need among women farmers to access land leaseholds if they were to invest their labor in swamp reclamation.

Thus, women in participating communities who took part in reclamation efforts were given ownership of a piece of land from traditional landowners. Agreements based on the ability to provide labor to convert swamps for rice cultivation were made between landless individuals (mainly women) and customary rights-holders (mainly men), in the presence of the whole community, thereby conferring a traditional legal status to the agreement. This allowed the program to improve women's access to fertile swampland for rice production. About 22,216 landless women farmers, who comprised 90% of the total beneficiaries, gained access to land, thereby increasing the area for farming rice, increasing the yields of rice production and improving food security conditions.

Source: IFAD, 2012.

V. Meadu/CCAFS

Barriers and constraints to the recognition of women's land tenure rights in The Gambia

Tenure arrangements around land and other productive resources in The Gambia are extremely complex, with different overlapping systems. Together, these arrangements influence the extent to which women can access rights to land and resources. While there has been some progress in this regard, meaningful improvement through existing policies and programs on land interventions is limited. Furthermore, a lack of information (e.g. lack of sex-disaggregated data of existing registries) makes it difficult to measure progress on land reform regulations targeting women's land rights.

This section discusses existing barriers and constraints to the recognition of women's land rights. Results are organized around three types of barriers:



Implementation gaps and related lack of resources, awareness and enforcement.



Contradictions and overlaps between customary regimes and formal arrangements.



Social norms and practices that limit the recognition of women's legal rights and their ability to engage in certification processes (table 3).



M. Tall/CCAFS West Africa

Table 3. Characterization of barriers to the recognition of women's land rights in The Gambia

LEGAL BARRIERS EMERGING FROM IMPLEMENTATION GAPS, LACK OF AWARENESS, AND ENFORCEMENT

BARRIER/CONSTRAINING FACTOR	REFERENCE
Lack of capabilities of government agents and existing biases within male-dominated institutional services in the land sector.	Bensouda, 2013; Freudenberger and Sheehan, 2000
Incongruencies in existing provisions that define roles and the institutional structure and procedures to implement, monitor and enforce existing tenure interventions.	Freudenberger and Sheehan, 2000
Resources provided to government institutions in charge of land administration, surveying and registration are inadequate to train and/or retain qualified personnel.	World Bank Group, 2020; Barry, 2019; African Development Bank Group, 2011; Bensouda, 2013
Regulations and laws based on registration processes for regional lands are often unclear. Very little information on land allocation and sale is made public, making it more difficult for women to formalize land rights.	World Bank Group, 2020; Sulle, 2019; African Development Bank Group, 2011;
Lack of regulations that recognize pastoralist women and other seasonal land users, who are often excluded from land formalization processes due to elite capture by dominant ethnic groups with more capacity to influence local land authorities and comply with existing procedures.	Freudenberger and Sheehan, 2000; UN-HABITAT, 2006
Corruption affects land formalization and redistribution processes.	Bensouda, 2013; Freudenberger and Sheehan, 2000
Lack of clarity of the nature of women's rights in polygamous contexts makes these groups vulnerable.	Saidy, 2017
A limited number of women is included in the administration process.	Bensouda, 2013

OVERLAPPING AND CONTRADICTIONARY LEGAL SYSTEMS

BARRIER/CONSTRAINING FACTOR	REFERENCE
Contradictions between the statutory and customary systems make it challenging for women's rights to be implemented and protected.	Ouedraogo et al., 2006; Wily, 2011; Freudenberger and Sheehan, 2000
Management of land disputes by traditional leaders often does not favor women.	Freudenberger and Sheehan, 2000; Bensouda, 2013
All aspects of land ownership handled under the Personal Laws vary widely across regions, often dictated by culture and religious laws and practices.	African Development Bank Group, 2011; Bensouda, 2013

SOCIAL NORMS ABOUT LAND WITH RESPECT TO PRACTICES OF RECOGNITION AND EXERCISE OF RIGHTS

BARRIER/CONSTRAINING FACTOR	REFERENCE
Illiteracy and poverty affect women's knowledge on land rights and widen the information gap on legal provisions.	Sulle, 2019
Existing customary practices limit women's usufruct rights and tie the recognition of land rights to their social and marital status.	Levien, 2017, African Development Bank Group, 2011
Issues of marriage, inheritance for widows, polygamy, divorce, child custody upon divorce and women's rights to parental inheritance are subject to Personal Laws, which are often not favorable to women's land rights.	Carney, 1998; Bensouda, 2013; Freudenberger and Sheehan, 2000
Lack of understanding of how customary practices mediate access to land, especially when access is seasonal (i.e. in irrigated lands) and how that may further exacerbate vulnerability.	Levien, 2017; Carney 1993

V. Meadu/CCAFS



IMPLEMENTATION GAPS

Land formalization processes such as title deeds and certification—and registration of those rights—are subject to gaps in implementation. Existing gaps are largely related to limited resources and capacity to implement existing land regulations, lack of clear procedures, high costs and non-familiarity of gender issues by officials to protect women's land rights.

In addition to a lack of clarity, there are also insufficient procedures to ensure that the registration of regional lands is actualized. As a result, registration is sporadic in urban areas. What is more, legal fees for first time registration of property may exceed 5% of the property value (Barry, 2019; World Bank Group, 2020). Cases of corruption have been reported during the registration process, which may involve discretionary payments to lawyers, unlicensed surveyors, planners, and *alkalos* or district chiefs, which may be higher than standard fees (Bensouda, 2013). Furthermore, some officers from national departments and Land Boards may request to be "tipped" to expedite the process (ibid). Lack of clear procedures as well as a lack of readily available infor-

mation on the process results in elites and dominant ethnic groups having more capacity to formalize land rights, thereby stripping access to resources from pastoralists and other seasonal resource users, such as women (Freudenberger and Sheehan, 2000; Bensouda, 2013; UN-HABITAT, 2006).

Other setbacks affecting the implementation of land regulations are related to ambiguity around certain formal regulations.

For example, the constitution allows anyone to purchase leases, but in practice, women continue to experience difficulties in getting leases titled in their names, and must therefore secure titles through men.

(Freudenberger and Sheehan, 2000)

Furthermore, a limited flow of electricity and technology affects the electronic record system in the Land Registry, causing additional challenges (Vadsaria, 2014).



CONTRADICTIONS AND INCONGRUENCIES EMERGING FROM OVERLAPPING LEGAL SYSTEMS

In The Gambia, contradictions between the formal and customary laws, especially in relation to Personal Laws, affect the security of women's land rights. Two processes emerge: the first is the formalization of customary rights through the leasehold system; the second is ensuring that the formalization process is ultimately carried out by district and village authorities. Despite efforts from statutory regulations to formalize customary rights through the leasehold system, a lack of clear procedures and roles dictating how the different authorities should intervene results in different interpretations of the regulations, which may vary across contexts.

In the Review of the State of Implementation of Praia Orientations (On Land Tenure) in The Gambia report (n.d.), it was noted that the distinction of primary vs. secondary rights-holders under Personal Laws makes it difficult for divorced and widowed women to access land, thereby reducing their production capacity and increasing food insecurity. In most cases, husbands or male relatives serve as primary landholders, as customary laws and tradition prevent women from independently buying land following the Persons and Family Code Law of 1990; this excludes women from the possibility of securing land titles (UN-HABITAT, 2006). Furthermore, women's position as land borrowers under customary tenure systems in the provinces may be weakened by implementing the State Lands Act, since this Act would grant greater rights to male registration holders. Accordingly, the Act raises contradictions, as customary rules obligate men to provide land to their wives and recognize their right to cultivate it, but modern (formal) land law does not recognize women's rights to register land.

Some members of parliament (MPs) argued that having a constitution and laws providing for and protecting women's land rights is not sufficient without clarity on how existing

regulations will ensure to address continued exclusions and vulnerabilities (Sulle, 2019):

"Yes, it is one thing to have equality on women's land rights in papers, but the point is that there is no equity in practice. In Gambia we have a good constitution, but you also have Shari'a Law which stipulates that a woman inherits half of what the man inherits. We are a country dominated by Muslims, so we use Shari'a Law."

Customary practices regulating distribution of assets and land access in marriage are particularly problematic. Under customary law, wives are not entitled to user rights for their husband's property. What is more, during divorce, tradition upholds that a wife returns to her family to seek land for cultivation (Freudenberger and Sheehan, 2000).

Very few laws and practices under the formal and customary system explicitly protect women's rights to control, own, or access land. For instance, the Women's Act does not regulate family matters for the Muslim population (which represents 95% of The Gambia's total population), meaning that issues of marriage, widow inheritance, polygamy, divorce, child custody at divorce and women's rights to inheritance are subject to Personal Laws, thus maintaining the status quo (OECD, 2019). The Act also fails to adequately address women's rights to land, and offers no specific legislation on domestic violence (African Development Bank Group, 2011). Despite these shortcomings, the Women's Act has been hailed as the most progressive piece of legislation passed by the National Assembly; it is believed that its enactment and implementation will uplift and improve the social and legal status of women (Bensouda, 2013).



BARRIERS RESULTING FROM SOCIAL NORMS AND PRACTICES THAT LIMIT WOMEN'S RECOGNITION AND EXERCISE OF RIGHTS TO LAND

Discriminatory cultural, religious, and social norms, as well as intersecting socio-economic factors, have been shown to affect women's land rights in The Gambia. The Constitution recognizes and preserves the application of customary law and practices which, to some extent, are discriminatory against women. Women's access to land is thereby mostly guaranteed through their relationship with men.

For instance, an ECOWAS Learning Exchange in Kigali with members of parliament revealed that besides a complicated, pluralistic legal framework in the Gambia, high illiteracy rates are also an important challenge; as a result, a large portion of women,

especially in rural areas, may be unaware of existing policies and laws. About 73% of women above 15 years of age in The Gambia are illiterate, and most of the female population is based in rural areas and engaged in agricultural production (GBoS, 2015). Low literacy rates therefore act as an obstacle to women's participation in the development process and to their awareness of land rights regulations.

Access to land for women who do not marry into landowning families or who get divorced is complex, as women's access to land is limited to sub-lease, borrowing or share-cropping mechanisms since they are often also excluded from access to credits (Freudenberger and Sheehan, 2000). Collectivity through *Kafos* groups is important not only in terms of access to land, but also in terms of collective negotiation of rights before local authorities (African Development Bank Group, 2011). Access to common areas is particularly important for these vulnerable groups, especially with respect to rice cultivation and access to fuelwood.

Even in cases where women do get access to land, they are frequently granted lands which are less fertile or more distant from villages, constraining their ability to cultivate crops. Although recent development initiatives have facilitated enhanced access to land, inability to secure long-term rights keeps women from investing in improving land fertility or in more sustainable practices.

Deeply entrenched patriarchal attitudes dictating that women cannot own property in their own right has left many women unable to increase production (Carney, 2019; 2017; Tsikata and Amanor-Wilks, 1999).³⁷ According to the Gambia National Gender Policy (2010-2020) by

Violence against women and girls further constrains their ability to exercise their rights to land.

the Ministry of Women's Affairs, women face low nutritional status at household level compared to men. As previously mentioned, women's inability to own and control land makes it harder for them to increase food production. Food and nutrition insecurity and cultural norms also force women to deny themselves food in the right quantity and quality in favor of male adults and children, often seriously compromising their own nutritional status.

Violence against women and girls further constrains their ability to exercise their rights to land. OECD Development Center (2019) data shows that as of 2018 around 20% of women suffered from a prevalence of domestic violence and about 25% of girls under 18 were married. To address this, the government engaged in the African Union Campaign to end child marriage (ibid). Since 2016, the Children (Amendment) Bill declared child betrothal illegal. In 2014, the government launched the National Plan of Action on Gender Based Violence (2013-2017) to coordinate efforts to address violence against women and girls (Replies of Gambia to CEDAW, 2015)³⁸. However, cases of gender-based violence are still considered family matters to be settled in traditional settings (African Development Bank Group, 2011).



Ollivier Gerard/CIFOR

Access to justice and mechanisms to land conflict and dispute resolution in The Gambia

Given the context of multiple overlapping systems and forms of rights allocation, conflicts over land and resources are common. For instance, the extent to which secondary rights-holders may invest in land (such as wells, fencing, and tree planting or establishment of garden orchards) is often seen as a major transgression (OECD, 2019). Lands subject to irrigation interventions or, more recently, horticulture can be particularly prone to conflict, as cultivation depends on a complex set of rights to land, irrigated land, or (in the case of horticulture) tree products (Schroeder, 1999).

This particularly affects women, who depend on share-cropping, sub-lease and leasehold agreements to access land (Freudenberger and Sheehan, 2000). In order to address these vulnerabilities, formalization of rights through leasehold systems is intended to introduce clearer conditions for securing rights of both primary and secondary right-holders.

In other cases, conflicts emerge in the context of marriage, custody, or divorce cases, where access to assets is mediated by a tenuous system of usufruct rights. Conflicts may also emerge between owners of big livestock (usually men) and rice cultivators (usually women) especially in rice fields that are used for cattle passing, where livestock owners are reluctant to pay for damage costs. Other conflicts may emerge from the lack of clear land boundaries and the lack of ability to determine clear access, especially to common areas including forests or mangrove swamps. This type of conflict particularly affects women and other vulnerable groups who depend on these resources for access to fuelwood,

Land disputes in polygamous families are generally resolved at the household level, as the husband is traditionally tasked with allocating land within his household

Land disputes in polygamous families are generally resolved at the household level, as the husband is traditionally tasked with allocating land within his household (Freudenberger and Sheehan, 2000). Second and third order resolution bodies, which includes justice authorities such as the police tribunal and court, would rarely be involved in conflicts around land or resource conflict, in part because these bodies are located in the urban Banjul area.

At the district level, conflict resolution is left in the hands of the district tribunals, which act as mediators. These tribunals are composed of elders, usually men, in charge of administering customary and Islamic law. As established by the Law Reform Commission, district chiefs (Seyfolu) are in charge of matters related to investigating adjudication procedures for land disputes within rural communities (Bensouda, 2013). With the customary land tenure system predominating across the country, the recognition of non-documentary forms of evidence, such as the testimonies of other community members, in the

formal court system is high. Such evidence can be used to obtain full recognition of claims to property when other forms of evidence are not available (ibid). In issues related to land, district tribunals oversee disputes over boundaries, inheritance, and compensation. For the 95% of the population that is muslim, Islamic law prevails in cases of conflicts related to marriage, succession, dowry, divorce, and guardianship³⁹. The fact that women's access to land is mediated by their social and marital status resolutions has a great influence on women's tenure security in cases of divorce, inheritance and succession (African Development Bank Group, 2011). District tribunals may further take cases to Islamic Cadi courts, of which two exist in The Gambia.

The literature identifies three types of conflict resolution mechanisms: first, second, and third order resolution bodies. First order resolution bodies include customary and local authorities, including *alkalo* village heads and village elders such as religious leaders and other highly respected groups such as traditional midwives (*ngansimba*). In some regions, dispute mediation committees may also support conflict resolution at the local level (African Development Bank Group, 2011).

39 As noted in Gambia - Researched and compiled by the Refugee Documentation Centre of Ireland report on 26 March 2009. https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/11/sharia%20law_0.pdf

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Gender and Women Empowerment Policy 2010-2020.Date of text: 2010

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LAND AND SOIL

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WOMEN

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Muslim Marriage and Divorce Act, Act No. 1 of 1941

Mohammedan Marriage and Divorce Ordinance of 1941

The Civil Marriages Act of 1938

The Christian Marriages Act of 1862;

These regulations were retrieved from the following sites:

ILO. [NATLEX](#). Database of national labour, social security and related human rights legislation

FAO. [FAOLEX](#). Gambia Country Profiles

The [FAO Gender and Land Rights Database](#)

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.

Alliance



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.



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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.

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