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**TENURE AND NATURAL RESOURCES IN
THE GAMBIA**

**SUMMARY OF RESEARCH FINDINGS
AND
POLICY OPTIONS**

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With

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Introduction

This report is a synthesis of research conducted by the Working Group on Resource Tenure and Land Use Planning and the Law Reform Commission of The Gambia. The report reviews the central research findings and recommends a series of tenure policy options. Specific programs and projects are also recommended.

Research Program

The interministerial Working Group on Resource Tenure and Land Use Planning (Working Group) was established in March 1993 to coordinate a process of applied research and dialogue on resource tenure in The Gambia. The Working Group is under the tutelage of the Planning Unit of the Ministry of Natural Resources and Environment. Field research and public policy discussions have been financed through the Agriculture and Natural Resources Project (ANR) of USAID/The Gambia.

In April 1993 the Working Group sent a team of six individuals from different ministries to participate in a three-week tenure workshop at the Land Tenure Center. During this visit the team reviewed the issues involved in the tenure debate in Africa, summarized the tenure problematic in The Gambia, and designed a field research process to inform policy discussions.

The team returned to The Gambia and conducted a series of case studies on the tenure situations found in different agroecological zones of the country. The four case studies were done in the Upper Baddibu and Kiang West districts (June 1993) and the Sami and Sandu districts (November 1993). (See map of The Gambia and case study sites, p. 5). The research team held workshops on their initial research findings on several occasions (see appendix 1: List of Participating Researchers). The findings from these case studies serve as the basis of this report.

The Agricultural and Natural Resources project also funded (through the Land Tenure Center) a grant to The Law Reform Commission of The Gambia to undertake a review of land and resource disputes that have been brought before the Supreme Court, Court of Appeals, and five district tribunals over the past five years. Mr. Alhaji B.M. Marong, a Research Officer of the Law Reform Commission, coordinated this research. The review sought to:

- o describe different categories of land and resource disputes;
- o ascertain the process by which resource disputes are resolved at the various levels of Gambia's legal system; and
- o uncover the legal principles (either customary rules or legislated laws) employed in resolving different categories of land and resource disputes.

Partial conclusions of the Law Reform Commission report are incorporated into this report. The complete commission report is to be presented to the government in the near future.

Under the auspices of the Land Tenure Center of the University of Wisconsin-Madison and the Working Group, Nancy Sheehan has been conducting doctoral dissertation research on gender relations of resource tenure systems in the Kiang West District of the Lower River Division. Her research used oral history to uncover principles of tenure systems in the case-study village and semi-structured interviews to understand land-borrowing arrangements. She also investigated the reasons for urban migration and documented the incidence and causes of resource conflicts in the rural community.

Report Organization

This report comprises two parts. The first part is a brief guide to key tenure issues in The Gambia. It addresses 15 commonly asked questions about tenure and natural resource management. It is complemented by Part II of the report which addresses the same issues in a parallel, but much more detailed approach. Readers interested in more detail and cases to back up statements found in Part I are encouraged to consult Part II. Both parts look at definitions of tenure and resource-management vocabulary, formal legislation and customary tenure arrangements, and areas where tenure issues are the most contentious. Having identified the key problems in current tenure systems, the report then addresses various broad approaches that government and donors may wish to consider in addressing these problems. These range from replacing customary tenure regimes with new legal frameworks to looking for ways that customary arrangements can be strengthened. The report goes on to consider how working in the natural resource domain can better respond to tenure concerns in designing and implementing their projects. Finally, the report focuses on specific policy actions that the government may wish to take in the short, medium, and long term to address the kinds of concerns raised in this report.

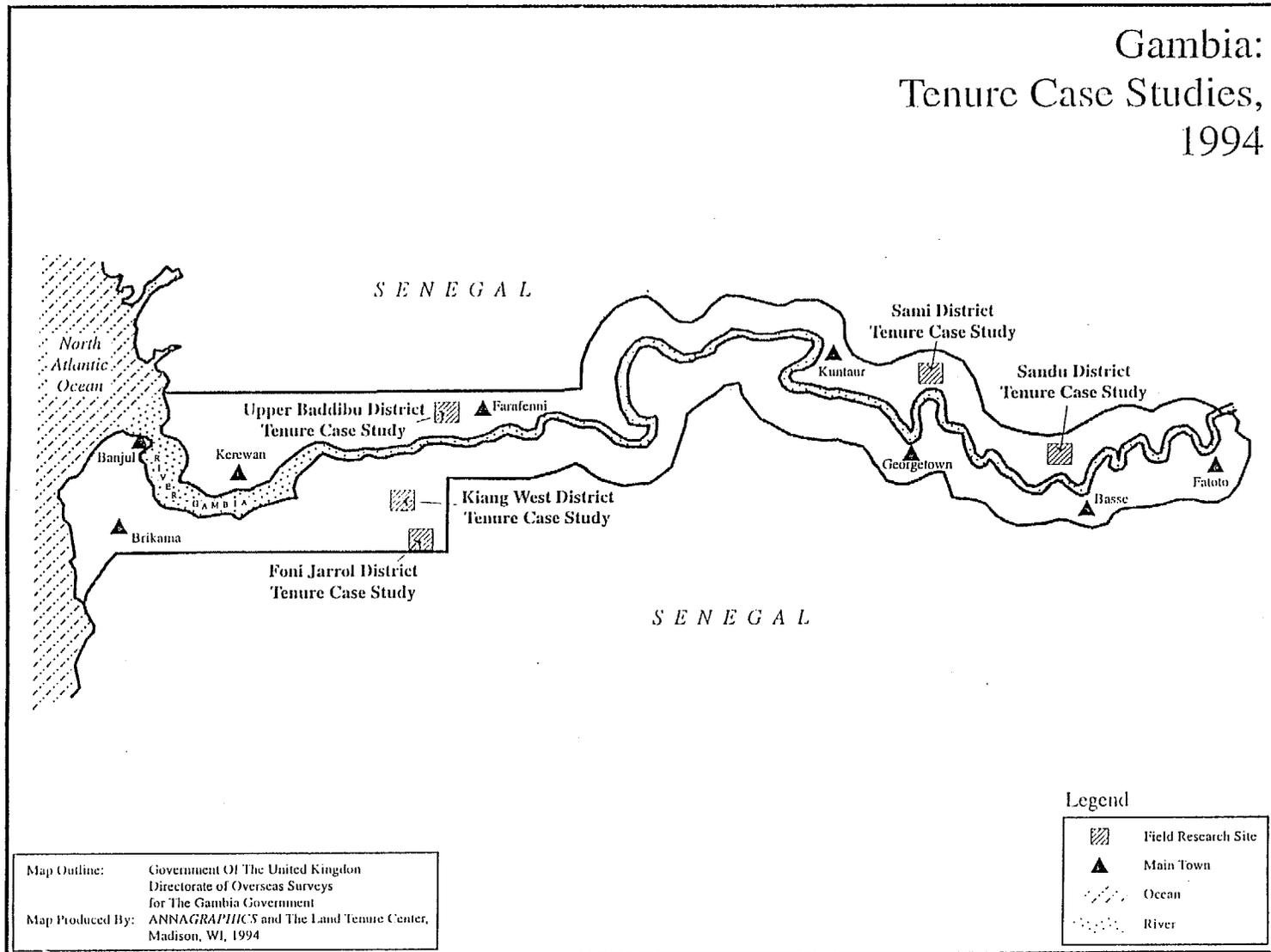
There are certain themes that run throughout all sections of the report and highlighting these themes may help the reader to organize the information in an "absorbable" fashion. Among the key issues that the reader may wish to keep in mind are the following:

- * Even though The Gambia is a small country, tenure practices vary immensely from area to area and even from village to village. The complexity and diversity of tenure arrangements do not lend themselves to easy generalization. This diversity may, at first glance, appear to reflect merely haphazard and idiosyncratic patterns of development. However, more careful analysis suggests that in most cases there are identifiable reasons for these differences, which indicate the adaptation of rules and practices to specific conditions and situations. One of the great strengths observed in customary tenure systems is their flexibility and adaptability to changing circumstances.
- * Tenure in The Gambia is not a neat, dualistic system of formal legislation on one hand, and customary practices on the other; rather, the fingers of the two hands are intertwined. Over time, customary tenure traditions have entered into the formal legal framework and the laws of the land have caused customary tenure rules to adopt certain practices and precepts. In addition to these two major forces

in the Gambian tenure system, numerous other factors have influenced the rules governing resource management at the local level. These include, among others, Islamic tenets and the influence of projects which often bring their own sets of rules to bear.

- * While both customary and formal legal structures exist and constantly interact, there has been an increasing tendency over the past decade for the government to expand its jurisdiction and to attempt to take a more active and directive role in resource management and planning. At the same time, nongovernmental organizations are playing a more important role in rural development.
- * The expansion of the central government in the resource management domain renders more complex tenure arrangements at the local level. Institutional jurisdictions need to be clarified between the central state, district authorities, nongovernmental organizations, and resource-user groups. This report suggests ways to do this from both the "top" and the "bottom" of civil society.
- * In contrast to other African countries, the citizens of rural Gambia enjoy considerable tenure security. In general, rural populations possess sufficient certainty that they will obtain access to land for seasonal field crop cultivation. Customary tenure traditions are strong in The Gambia and for this reason rural populations know and respect traditional tenure arrangements. This does not suggest that the picture is rosy, however. Tenure pressure points do exist, most especially around the commons. The commons may be degraded because property rights are not clearly articulated. Land borrowers and certain socioeconomic categories of women may have rather insecure rights to land.

Gambia: Tenure Case Studies, 1994



PART I

A Brief Guide to Tenure Issues in The Gambia

This section of the report is, essentially, a synopsis of the key elements of the research findings which follow. It addresses some of the key questions that arise in trying to understand The Gambia's tenure and natural resource management systems. The first questions define some of the key terms that are used to discuss tenure issues. The second set of questions looks at key pieces of legislation that affect resource management in the country. Since many resource-management practices are governed by local tenure arrangements, rather than by formal legislation, the third set of questions looks at customary tenure arrangements and how they deal with certain issues such as the rights of women and conflict resolution. The fourth set of questions focuses on some of the most critical issues now confronting the Gambian tenure system by identifying the "hot spots" or pressure points where tenure disputes are most likely to take place. The last set of questions deals briefly with various options for addressing these concerns by policymakers and development practitioners.

Question 1: What is resource tenure?

Tenure is simply the term for the rights which individuals and communities have in land and other natural resources. The nature of these rights and the extent to which people have confidence that they will be honored ("security of tenure") play a critical role in determining how resources are used. When rights are framed so that they provide secure expectations of continued access to resources, users are more likely to take the long view, conserving and regenerating, rather than rapaciously exploiting the resource base for immediate needs. Alternatively, dysfunctional tenure rules can encourage resource degradation (Bruce 1989, p.1).

Tenure is often considered to be a "bundle of rights." A given resource may have multiple users, with different rights based on the nature of the use, when it is used, etc. These rights are often divided into *primary rights* and *secondary rights*. Primary rights (similar to "ownership" in the western sense of the term) enable a person to exclude others from access to the resource. Secondary rights are usually limited to some kind of "use right" where the person's access is limited to certain kinds of activities and has a specific time limit. A secondary right holder might have permission to gather certain tree products, for example, or to graze their animals in a field during a specific season.

Tenure rules apply to different kinds of property. The *holding* is the aggregate of all parcels of land held by family members within a household in which the family or individual is given more or less exclusive use. It generally consists of all the land in a farmer's possession, whether owned or leased or held on some other basis.

The *commons* are lands that do not have rules of exclusion by individuals or families but are used by members of the community and, sometimes, by outsiders. These include certain pastures, woodlots, and some forested areas. *Common property regimes* are sets of rules that

define who has access to the commons. Some communities invest considerable time and energy in constructing rules and conventions to define rights of access to particularly valuable resources. In other cases, institutional arrangements governing the commons are so poorly defined and enforced that there is noticeable degradation of the resource.

In *state property regimes* ownership and control over resources is vested in government. This includes classified forests, certain water courses, and government-constructed boreholes. Various ministries and departments are charged with managing these state lands. These services must often deal with tenure conflicts which result when communities define their rights to resources differently from how the state defines those rights.

Question 2: What is the relationship between resource tenure and the sustainable use of natural resources?

The literature on land tenure in Africa hypothesizes that increased agricultural productivity and sustainable use of natural resources is facilitated by strengthening individual and/or community rights to the land.

Increasing individual and group security of tenure is one of several incentives to promote economically and ecologically sustainable rural development. By augmenting tenure security, it is anticipated that farmers will reap returns from investments in land. Increased security of tenure for individuals or groups may also improve the creditworthiness of farmers and increase opportunities for receiving credit from banks and other lending organizations. Improved tenure security should encourage rural populations to use soil and water conservation practices provided that other economic incentives are in place (e.g. markets for farm inputs and outputs, extension services, credit facilities, adequate labor, etc.).

The vast majority of rural households in The Gambia have access to land under indigenous (customary) land tenure arrangements. This report considers the issue of whether customary tenure provides sufficient security to encourage investment in the productive and ecologically sound use of the land. In general, it concludes that customary tenure arrangements may be insufficient where there is intense pressure on land, such as adjacent to urban areas. In fact, already much of this land is covered by formal land laws. In most rural areas, however, customary tenure regimes provide high security, particularly for primary rights holders. The rights of secondary holders, such as borrowers and other temporary users, are much less secure.

This suggests that there are opportunities to adapt and strengthen the provisions of customary tenure regimes by, for example, establishing contracts between primary and secondary rights holders that would increase the tenure security of the latter (while continuing to protect the primary rights holders' concerns), thereby encouraging their more sustainable use of resources. Borrowers, for example, in the present tenure system are rarely sure of maintaining access to a parcel for more than one, or at most two seasons. As a result, they are unlikely to invest in inorganic fertilizers, the effect of which often lasts longer than one year.

Question 3: What are the legal foundations of land tenure arrangements in The Gambia?

The land tenure systems of The Gambia are complex and constantly changing norms and practices influenced by western judicial concepts, Islamic religious values, and traditional beliefs and practices of the various ethnic communities in the country. These legal traditions coexist and interact to shape tenure arrangements to land and other natural resources. Tenure relations are dynamic and flexible due to the constant testing and revision of legal precepts through the court system and current administrative practice.

The principal corpus of Gambian law related to tenure issues is inherited from the English common law tradition. In general, this is a body of law that develops and derives through judicial decisions, rather than from legislative enactments. When a point of law has been settled by a court decision, it forms precedent which is only contravened if it goes against obvious principles of law.

The Lands (Provinces) Act has historically been the principal land law of The Gambia. The act recognizes customary land tenure arrangements and states that the use of "land by the indigenes shall be governed and regulated by the customary laws obtaining in the localities in which such lands are situated." District authorities, including chiefs, headmen, elders, and traditional advisors are given authority over customary tenure systems.

Legal respect of both customary and Islamic laws is subject to caveats that say that these laws will be respected as long as they are not repugnant to such factors as equity, good conscience, and morality or inconsistent with other laws that may be in force. In fact, these caveats give considerable latitude to overrule their provisions.

Question 4: What is the 1991 Lands Act? Physical Planning and Control Act? Land Acquisition and Compensation Act? Surveys Act?

These four new acts were enacted by the House of Parliament in late 1990, were signed by the president in 1991, and entered into law on January 22, 1992. Technical assistance in developing the legislation was provided by the Gambian-German (GTZ) Urban Development Planning Project.

The acts were designed primarily to resolve the uncontrolled expansion of urban centers in The Gambia. The State Lands Act replaced the previous Land Act for urban areas but the Land (Provinces) Act is still operative in rural parts of the country. The new State Lands Act provides mechanisms for abolishing customary land tenure and replacing it with a leasehold system administered by the state in "designated" areas. For the moment it applies only to Banjul and Kombo Saint Mary, but the government intends to apply the law to the entire greater Banjul area as well as other growth centers.

The Physical Planning Act provides for the systematic preparation and approval of plans and control of developments in Greater Banjul and other growth points. Planning authorities are to spell out guidelines regarding the location of urban and rural settlements, traffic and

transportation routes, resource utilization and economic activities, and the preservation of national and environmental reserves.

The Land Acquisition Act permits the acquisition of land by government for "public purposes" though this is conditioned upon payment of compensation. Land acquired under the act is to be designated as State Lands and then administered under the provisions of the State Lands Act. This would abrogate customary tenure arrangements and permit the establishment of leases.

The Surveys Act sets up a board which grants licenses to qualified private surveyors. The intention of the act is to facilitate land registration.

Question 5: How does this legislation affect the management of natural resources?

The effect of these acts on the management of natural resources remains open to question since many of their provisions have not yet been implemented, or tested.

The tendency to strengthen leasehold arrangements may have either negative or positive consequences, depending on how and where it is applied. The acts are likely to be particularly useful in and around urban areas where land has high economic value and is subject to intense speculation. The laws offer considerable latitude in designating other areas for leasehold as well. Whether this is in the interest of local populations depends entirely on how the law is applied. The laws could be used to take away lands considered by the communities to be "theirs" in order to benefit private interests or to establish parks or other national domains. This could reduce communities' tenure security and their interest in protecting resources in their territory that are viewed as vulnerable to expropriation. On the other hand, the same laws could be used to secure villages' rights to commons by establishing community leases over common lands.

The State Lands Act, which stipulates that 99-year leases can be granted in "designated areas" to those holding customary claim to land and those that borrow it on short-term tenancy, risks major conflicts. It may generate enormous litigation due to the complexity of rights under customary tenure arrangements and is likely to discourage all forms of land lending, with serious consequences on women and other borrowers.

The tendency toward a more centralized planning role for the state also promises ambiguous results. The acts vest considerable planning authority in state institutions and individuals. Government technicians are given the responsibility to plan for the future of rural and urban populations in provisions calling for the creation of national and local development plans. These plans risk being highly top-down since the law contains few mechanisms to question and, if necessary, rescind the decisions of these planners. This is a serious omission since there are no guarantees that the Planning Authorities will have adequate financial and technical support to prepare plans that are sufficiently flexible and sophisticated to deal with the diversity and complexity of local conditions. The National Natural Resource Policy Statement of February 1990 advocates decentralized and participatory approaches to resource management, but this orientation is largely lacking from the new legislation.

At the moment both rural populations and government administrators are confused about the implications of the laws on customary tenure arrangements. Whether justified or not, this has the effect of reducing peoples' sense of tenure security.

Question 6: What other legislation affects the use of natural resources?

The legal corpus of The Gambia contains a wide variety of legislation affecting the use of natural resources. The following lists some, though not all, laws influencing tenure arrangements.

National Environment and Management Act

The National Environment and Management Act reaffirms the Government of The Gambia's commitment to preserving biodiversity and promoting sustainable use of resources. It sets up a National Environment Management Council.

Resource Management and Local Government Legislation

The Local Government legislation sets up and regulates the Area Councils. This legislation potentially grants these bodies a wide range of powers to manage natural resources. The law gives the Area Councils the power to legislate locally, an important condition to developing the rule-making capacity of rural populations.

Forest Act

The act gives the minister power to designate forest parks and declare protected forests. It grants government regulatory power to regulate the collection and use of forest products through a licensing/permit system. The law may be used to promote participatory management of natural resources upon agreement by the minister.

Wildlife Conservation Act

This legislation creates the Department of Wildlife Conservation, establishes national parks, reserves, and local sanctuaries.

Fisheries Act

The Fisheries Act calls for the preparation and continuing review of fisheries plans for the management and development of inland and marine fisheries. The act provides mechanisms to license fishing interests.

Question 7: What are the characteristics of customary land tenure arrangements in The Gambia?

The customary land tenure systems of The Gambia are characterized by the coexistence of a multiplicity of property rights regimes in the social and geographical territories controlled by rural communities. Various property regimes (private, common property, state reserves, openaccess) may be found simultaneously within the spaces communities consider to be their "own." Tenure arrangements are site specific and defy easy generalization. In addition, they change and adapt as conditions vary over time.

Just as one finds diverse ecological niches within rural landscapes, so too does one uncover complex tenure arrangements related to these different niches. Private-property arrangements (with rights of total exclusion) are most highly articulated around resources of high use and exchange value. Lands of lesser value are characterized by less strict tenure arrangements and are, in some cases, either common-property or open-access resources. Property rights are often highly individualized around the fertile "inner fields," "outer fields," and valuable rice land. In contrast, property rights arrangements are less well defined and enforced around forests, water courses, and lands bordering tidal estuaries.

Settlement history is key to understanding the allocation of rights. In most cases, first settlers enjoy primary rights, and grant secondary rights to later arrivals. Primary rights may be transferred when land is lost through conquest or through more amicable arrangements such as marriage, inheritance, gifts, and (occasionally) sale. The first village to settle in an area and the first families to settle in villages often have more rights than later arrivals. Secondary rights can be transferred to other users by loans, pledges, rental arrangements, and/or sharecropping.

Traditionally, heads of extended families, or lineages, hold land in trust for use by members of the family. Land is distributed to family members and loaned between lineages. This pattern is changing particularly in areas where population is increasing and undeveloped land is unavailable. In such areas, individual members of the lineage tend to assert long-term rights to discrete parcels of land. Village authorities (*seyfo*, *alkalo*, councils of elders, etc.) play a key role in administering customary tenure arrangements. The authority of these traditional leaders is still largely intact in The Gambia.

The existence of various types of land-transfer arrangements is testimony to the flexibility and adaptability of customary tenure systems. Most people find land to cultivate through one of the mechanisms for transferring secondary rights. The flexibility in land-transfer mechanisms helps to maintain peace and stability in rural areas, and helps to ensure that both local disadvantaged populations and immigrants can gain access to resources.

Question 9: What rights do women possess to land and other natural resources in customary tenure systems?

Women's access to land is largely conditioned on the social status of her husband or, in the case of single or divorced women, her immediate family relatives. Custom dictates that male relatives are obliged to make land available to women; this is one of the reasons why Gambian men claim that there is no need for Gambian women to own land. There is an expectation that women will be taken care of by their husbands, fathers, or brothers. The results of this research suggest that in fact land access by women who do not marry into landowning families or who divorce is tenuous. They often have access to only very poor land, or land that is far from the village where they live. Landless women can borrow land from other unrelated villagers or, sometimes, from neighboring villages but again the quality of such land is often dubious. In areas where there are land shortages, women are often excluded from farming and forced to seek other income generating activities (Sheehan 1993).

The majority of women do not have primary rights to land, although some do inherit land and others are beginning to purchase it outright. As a result, most women are subject to the general insecurity that is associated with secondary rights. This is particularly a problem when they want to invest in activities such as gardening which require a multi-year investment of resources. Numerous conflicts have taken place when men have attempted to recall the secondary right after women have already invested in infrastructure (wells, fencing) or planted trees.

While women have only this limited access to land, they do own livestock. As many as half of all cattle are owned by women and they own more than half of the small livestock (as much as 90% in some villages). While their rights to own these animals are not questioned, they are subject to serious tenure insecurity due to theft which is particularly a problem for small ruminants.

Question 10: Is land borrowing an incentive or disincentive to the sustainable use of natural resources?

Land borrowing is a major feature in rural Gambia. Since land distribution within villages is not equitable, borrowing remains a flexible mechanism for the land-poor households to obtain sufficient land for cultivation. Complex borrowing arrangements are essential to maintain the viability of traditional farming systems. Borrowing, for example, plays a key element in bush-fallow rotation systems.

Certain groups of women and men who have tenuous usufructuary rights over land (who are always land borrowers) face particular difficulties in planting trees and in establishing and maintaining garden-orchards. For example, in one village case study, the women's *kafo* was lent a plot of land for a garden. After several years of gradually building the fertility of the soil and reaping better harvests, the landowner decided to take back the land. In another village studied, women are able to borrow land for a *kafo* field, but hesitate to invest money in chemical fertilizers because the landowner only loans land on a seasonal basis (Sheehan 1994).

This impediment need not be permanent. Public discussion in a village around the problems of land borrowing may remove possible tenure constraints to tree planting. Villagers can be assisted in negotiating written and witnessed contracts amongst each other spelling out the use of the land for specific periods of time. This is particularly important for women. Land-use contracts need to be negotiated which will ensure that women can use a parcel for gardening without the landowner's losing rights of possession.

The Working Group research teams are concerned about the impact that a policy to convert customary tenure to leaseholds may have on flexible borrowing arrangements. During the transition phase from customary tenure to leaseholds, landowners may be fearful of loaning land because of possible litigation from borrowers. This could have dramatic effects on agricultural production if the rural labor force short of land finds it difficult to obtain short-term loans from major landowners.

Question 11: What are the causes of tenure conflicts in The Gambia?

It is often assumed that conflicts are the consequences of dysfunctional customary tenure systems. For some policymakers the existence of numerous rural conflicts, sometimes very violent in nature, justifies the need for major land reforms. Leasehold or freehold tenure systems are assumed to generate less conflicts than customary tenure systems. Another way to view conflicts and conflict-mediation processes is to consider how dispute resolution leads to change within tenure systems. Through the mediation process, old rules governing resource use may be abandoned and new ones instituted. The resulting restructuring of tenure regimes may result in changes of the social status of the contending members, something that may or may not be judged equitable and fair. The outcome of the dispute-resolution process must be judged on a case-by-case basis.

The Working Group case studies suggest that tensions between individuals or groups leading to either informal or formal adjudication is the result of a rapid change in the value of a particular natural resource. The resource in question may suddenly increase in value due to external economic demands. This is certainly the reason why lowland depressions useful for horticulture and fruit tree orchards are presently the source of numerous conflicts between contending interest groups in many parts of The Gambia (Schroeder 1993). As the value of the resource increases, various interest groups try to claim it. Previous tenure arrangements are often called into question as the interest groups vie for access to the resource. Various legal traditions (western, Islamic, customary) are brought into play to try to defend the competing groups' rights to the resource.

The causes of disputes over natural resources are varied and difficult to interpret. For purposes of analysis, disputes over natural resources are categorized in the following fashion: Disputes within the village, disputes between villages, disputes between villages and nonresidents, and disputes between the village and the state. The report documents the different types of disputes that occur around natural resources and various conflict-resolution techniques. Most disputes in rural areas are settled before they reach the formal court system. This may be less the result of an effective conflict-resolution process than the fact that disputants are discouraged from pursuing their claims due to lack of funds, confidence in decision-makers, or knowledge of the system.

Question 12: What are the principal tenure "pressure points" in The Gambia?

The tenure debate in The Gambia is largely centered on the rather unique land tenure dynamics unfolding in the Greater Banjul area. When the topic of tenure and property rights is brought up in governmental and nongovernmental forums, the discussion usually focuses on the problems of urban land speculation, conflicting ownership claims, and contentious court cases taking place in the peri-urban areas surrounding Banjul. Disputes around the use of land in the Kombo Saint Mary region are indeed rampant, though this is not the subject of this report.

The Working Group found that tenure on holdings used for field crop cultivation is fairly secure for primary rights holders. Primary rights accrue to descendants of founding families or

those closely associated with these lineages through marriages or political alliances. People with firm primary rights to land face no constraints in planting trees, constructing soil conservation devices, or otherwise making permanent investments in the land. Customary land tenure arrangements in our case studies are still very strong and they are protected by the legal system. National land law in The Gambia currently respects customary land tenure traditions and the district tribunals play a critically important role in maintaining the system through its conflict-resolution prerogatives.

People possessing "secondary" rights to land face varying degrees of tenure insecurity and limitations on what they can do with the land. Women and men from land-borrowing families may not have the same security of access to resources as those from the founding families. A wide variety of arrangements allow borrowing and lending of land between founding families and newer arrivals. Founding families retain the right to revoke land loans, and as one case study showed, this may even apply to lands lent hundreds of years ago.

Land tenure problems in the holdings are particularly acute when land suddenly acquires new value. At that particular moment various interest groups struggle to control the land allocation process. The process of jockeying for exclusive control and the renegotiation of the rules of the game is often conflictual. This dynamic is no more evident than in large-scale irrigation projects in The Gambia.

The Working Group case studies and other literature suggest that one of the central tenure and natural resource problems in The Gambia is the management of the village commons. These are forests, mangrove swamps, salt flats, grazing areas, and water courses that are neither controlled by households nor lineages but that "belong" in a vaguely defined sense to one or more villages. Village commons in The Gambia are very important sources of firewood, construction materials, thatching materials, fruits and nuts, medicinal plants, fish and wild game, and pastures for both rural and urban populations. Women and economically marginal populations are especially dependent on the collection of forest products for sale to urban and rural markets.

In contrast to land controlled by households and lineages, property rights in the commons are often poorly articulated and enforced. In some cases an open-access situation exists in which few if any rules regulate the use of the natural resources. At times government and rural communities insist that particular resources of the commons be governed by statutory or customary laws, but in reality no authority exists to enforce the statutes or traditional covenants. For this reason, a wide variety of resource user groups may have free reign to extract unencumbered the products of the commons.

Sustainable management of such degraded resources like the commons may be facilitated if both state and local community authority structures clarify the multiple and overlapping rights and responsibilities of the many resource user groups that depend on these important forest, range, and water resources for their livelihood. This entails most often the creation of common-property regimes out of open-access situations. Yet, in several cases the issue is to clarify the

respective role of the state versus local communities over the use and sustainable management of the commons.

Populations living around forest parks have little sense of ownership or stewardship of the state reserve. In the Kiang West and Upper Baddibu case studies, the Forest Parks are perceived to be state owned and managed and thus not worthy of care by local populations. Villagers are certainly very much aware of excessive exploitation of the park (and they partake of it in many cases), but they do not try to stop abusive practices because they believe that this responsibility lies with the state.

Research in other parts of West Africa suggests that communities have the capacity and willingness to manage resources when they view them as their own and when they derive appreciable benefits from the investment and time in resource conservation. The experiment by the Gambian-German Forestry Project in Foni Brefet suggests that communities are very interested in managing forests for the benefit of the broader community. Similar observations were made in Dankunko where strong district leadership lead to strict control on the use of forest resources. The government can play a very important role in establishing institutions and mechanisms to foster participatory management of state reserves.

Question 13: What are the major policy options available to The Gambia to improve tenure security and sustainable resource use?

The Working Group on Resource Tenure and Land Use Planning presents to government and the public a wide array of policy options to respond to the tenure constraints and opportunities identified in this report (see appendix 4: Matrix of Policy Options). The intention of the Working Group is to promote informed debate within government and public circles on the pressing tenure dilemmas facing rural communities. The Working Group is convinced that informed public debate will generate policy consensus which will in turn allow government to clarify to rural and urban populations the rationale and objectives of land policies.

The Working Group has been debating the merits and constraints of four major policy approaches briefly defined below:

- 1) Replace Customary Tenure: Replacement of customary tenure systems in The Gambia with a freehold or leasehold system administered largely by the government;
- 2) Co-Manage Natural Resources: Establishment of collaborative arrangements with resource user groups and the government to jointly manage natural resources;
- 3) Adapt Customary Tenure: Build upon strengths of customary tenure systems to better manage natural resources; and
- 4) Laisser Faire: No interference by government in tenure arrangements.

The Working Group believes that the first three options can coexist within The Gambia, though clear choices must be made by government to promote the particular approach in specific parts of the country. Tenure systems applied uniformly across the country are not necessarily required at this time in The Gambia.

It is important for the government to promote debate on these four options through national workshops, applied research, and dialogue with interest groups in the rural and urban areas of the country. Consensus needs to be reached regarding where and how the tenure options indicated above should be applied in the country.

Question 14: How can natural resource management projects better respond to tenure concerns in project design and implementation?

Rural development consists primarily of a process of planning for economically and ecologically sustainable development. Property rights arrangements may be one of many variables that favor or impede economic growth. The acceptance of new agricultural technologies designed to increase productivity may be hindered by the tenure arrangements found in a particular community. Extension programs familiar with existing tenure relations in a community can tailor their technologies to meet the particular circumstances of the zone.

Development programs and projects, be they designed by technical planners or community-level leaders, must take into account the way in which tenure arrangements affect programs and plans. Tenure issues affect every stage of project activities. Early on, tenure determines who has access to the resources needed to participate in the project. Once the project has commenced, people's willingness to participate fully in proposed activities often depends on the kinds of rights they have to resources which determine, in turn, their incentives to invest in or protect them. Tenure rules may determine who benefits from the project as time goes on.

Development programs frequently fail to identify accurately who uses the various resources of a locality. Politically and economically marginal groups are often overlooked, yet these people have an impact on the way resources are employed. Though it is now an old saw, development projects need to continue their efforts to insure the participation of women, members of all castes and classes, and younger people in decisions affecting the use of natural resources.

Projects play an important role in creating the space for underrepresented groups to participate in decisions governing the use and distribution of natural resources. Applied research projects can identify groups historically marginalized from decision-making and recommend ways to incorporate these people into the planning process. Various techniques to highlight the concerns of underrepresented populations at the village level include holding focus group meetings with women, semi-structured interviews with key women leaders, and separate planning sessions with and for marginalized socioeconomic groups. This is most important in planning for the better management of the commons. Women are key users of these resources, but they may feel reluctant to contribute openly and decisively to decisions affecting their use.

Programs and projects in The Gambia can take immediate steps to promote improved management of natural resources through the use of participatory planning tools. Rural communities are involved in various planning activities on a continual basis. The capacity for community planning is very high in rural Gambia because many villages are already engaged in numerous collective activities ranging from maintenance of the mosque and *bantaba* to participation in credit schemes. Communities deliberately plan for the use of natural resources, including farm lands, forests, water sources, and pastures. The purpose of participatory planning with external agencies and government is to build upon these experiences and include those who may feel disenfranchised.

The experience gained in community-planning initiatives shows that rural communities can plan for their own futures so long as it is worth their investment of time. However, if concrete benefits do not emerge villagers quickly find that it is simply not worth participating. Experience from both Africa and Asia suggests that once rural communities are taught participatory planning skills, they can continue the process independently if they find it worthwhile. The task for the Agricultural and Natural Resources Program of the Ministry of Natural Resources and Environment and projects of other interested donors is to finance the costs of initial training and to set up financial and technical incentives for rural communities to prepare realistic plans and strategies.

It is recommended that the districts studied by the Working Group on Resource Tenure and Land Use Planning be selected as pilot areas for participatory planning for sustainable use of natural resources. The five districts represent a cross-section of the socioeconomic and ecological conditions of The Gambia. The ANR program should work with the various agencies and organizations in these five districts to determine how it can most effectively assist the ongoing activities of a wide range of governmental, donor, and nongovernmental agencies while furthering new initiatives in the environmental domain.

The village-level planning exercise should result in the generation of village development plans and specific programs of action. The development institutions of the district would be encouraged to apply to the ANR program, and other projects, to secure any technical support and funding that might be necessary. Policy obstacles confronted by the rural communities through the planning process would be addressed through the aegis of the ANR program. The participatory planning process would lead to the creation of resource-management agreements outlining the responsibilities of the various actors involved in the planning initiative.

Question 15: What can the Government of The Gambia and interested donors do to address tenure security in the short, medium, and long term?

The Government of The Gambia and interested donors should seek ways to promote greater public involvement, through various policy-dialogue mechanisms, in decisions affecting resource tenure. The suggestions enumerated below list specific ways to create opportunities for a wide array of public interests to address pressing tenure realities encountered at the local level. Out of the *process* of informed public debate encouraged here, the members of the Working

Group on Resource Tenure and Land Use Planning and the Land Tenure Center are convinced that innovative policy guidelines and responses will emerge.

Short-term responses include:

National workshops or conferences on issues of importance to rural populations: Representatives of rural interest groups should play an active part in these meetings. The following topics were identified through field research: Resource tenure in urban/peri-urban and rural areas of The Gambia, the bush pig problem, and the fire problem.

Training programs: Training programs should be held to meet the needs of various publics for information and skill acquisition. These include training programs on resource tenure for women's interest groups and nongovernmental organizations; training in participatory resource management planning; training in resource-management agreements; training in participatory forest management; and training in conflict-resolution techniques.

Medium-term responses include:

Monitoring tenure and land use changes: A monitoring program should be set up to assess the impact of the Lands Act and Physical Planning and Control Act on tenure and resource-management arrangements in different parts of the country. Data generated from periodic studies of the tenure situation at pre-selected sites would generate information needed for policy analysis.

Regulatory reforms: Recommendations for an exhaustive review of regulations regarding land use must await broader public policy debate. However, it is clear that the Lands Act regulations should be reviewed in order to promote greater public participation in decision-making leading to the creation of "designated areas" in urban and peri-urban areas of the country.

Legislative reforms: Without embarking on a full public debate on land tenure, it is not appropriate to propose specific legislative changes. However, it is clear that once consensus is reached on the type of land policy to be promoted in The Gambia, the corpus of laws will require full review leading eventually to a harmonization of public policy with legal texts.

Paralegal education: Rural populations, as well as some members of the administration, lack a full understanding of the legal system and key legislative texts. Recommendations are made to set up a paralegal education system for rural populations, district tribunal members, and district authorities. Legal education programs should make a special effort to reach women.

Long-term responses include:

Land policy statement: The Working Group on Resource Tenure and Land Use Planning advocates the adoption by government of a land policy built upon an informed, coordinated, and inclusive national debate. The task of promoting a dialogue and creating a consensus on tenure

issues might be delegated to a legally recognized task force created by the National Environmental Agency and supported actively by the president's office. The final product of this national debate could be a government white paper identifying the tenure issues confronting The Gambia, spelling out the policy choices available, and recommending specific legislative, administrative, and judicial reforms. The development of national consensus should be an internal matter for The Gambia. International donors should actively support the process of dialogue, but ultimately the decisions must rest with the people of The Gambia. Support of an informed debate on land and tenure issues will encourage policies that reflect the diverse interests and concerns of the Gambian population whose well being ultimately depends on the health of its natural resource base.

PART II

I. TENURE ISSUES IN THE GAMBIA

This section of the report addresses key issues that frequently arise in trying to understand The Gambia's tenure and natural resource systems. The first set of questions defines the terms that are widely used in describing tenure systems and shows how these terms apply to specific situations found in The Gambia. The second section looks at key pieces of legislation that affect resource management in the country. Since many resource-management practices are governed by local tenure arrangements, rather than formal legislation, the third section looks at customary tenure arrangements, including the rights of women and approaches to conflicts and conflict resolution. Finally, in the fourth section focuses on some of the most critical issues confronting the Gambian tenure system by identifying the "hot spots" or pressure points on private lands, the commons, and state reserves.

A. Tenure definitions

1. Resource tenure

Tenure is simply the term for the rights which individuals and communities have in land and other natural resources. The nature of these rights, and the extent to which people have confidence that they will be honored ("security of tenure"), play a critical role in determining how resources are used. When these rights are framed effectively so that they provide secure expectations of continued access to resources, users are more likely to take the long view, conserving and regenerating, rather than exhausting, the resource base. Alternatively, dysfunctional tenure rules can lead to resource degradation (Bruce 1989, p.1).

Tenure is often considered to be a "bundle of rights." A given resource may have multiple users, with different rights based on the nature of the use and the time when it is used. A piece of land may be the subject of rights belonging to several different persons or groups. Various stakeholders of diverse ethnic origins, occupations, and interests may utilize the same resources of a particular area either simultaneously or serially.

For analytical purposes, it is often helpful to consider tenure arrangements in light of the following property-rights categories:

The holding

The *holding* is the aggregate of all parcels of land held by family members within a household in which the family or individual is given more or less exclusive use. It consists of all the land in the farmer's possession, whether owned or leased or held on some other basis. The holding may consist of a single parcel of land or several separate parcels. People's rights to their *holdings* are governed by several different property regimes in The Gambia. The vast

majority of land in rural areas of the country is governed by customary land tenure arrangements.

The holding may be held either as *private property* or as a *lease*, or some combination of both. *Private property* is the legally and socially sanctioned ability to exclude others. Private property is not only a characteristic of western property-rights systems,

but also of traditional Gambian tenure arrangements. Traditional tenure systems permit selling, lending, renting, and gifting of land and other natural resources. Private property in natural resources exists in many forms. Fruit trees, orchards, and compound gardens are often the private property of individual women and men in both rural and urban areas. Trees planted by an individual or her/his descendants are usually privately owned (see box 1: Baobab Tree Tenure). Shallow wells dug for the watering of cattle are often the private property of the individual who paid for digging. An active commercial market exists for privately owned land in and around several urban areas of The Gambia. A complex system of norms and practices govern the transfer of land and other privately owned resources. Under customary tenure arrangements, heads of lineages and households tightly control the use, lending, rental, and inheritance of land.

Box 1: Baobab Tree Tenure

The towering baobab trees in the village of Karantaba Tabokoto were planted behind the settlement by the forefathers of a particular *kunda* (compound). The fruits and leaves of the trees cannot be harvested without the permission of the compound head. However, children who wish to harvest a few fruits for themselves need not ask. Those who wish to harvest fruits may be subject to the following arrangement: One third of the fruits to the owner and two thirds for the collector. Leaves sprouting in the early dry season may be harvested by anyone without requesting permission. However, permission must be asked of the owners to pick leaves sprouting during the early rainy season. Removal of bark for rope-making requires the permission of the owner. (Sami District Case Study).

Leasehold is the tenure arrangement in which the owner of the land gives it to someone else to use temporarily, in return for rent. In The Gambia, the 1990 Lands Act provides for 99-year leaseholds. A lease is granted by government to an individual specifying a termination date, though renewal is possible. The law spells out the mechanisms to register title deeds. The Department of Lands and Surveys of the Ministry of Local Government and Lands measures and records the boundaries of the parcels and produces a map indicating ownership and special conditions attached to the use of the land. Government agencies often control physical development of the land through restrictions attached to the title deed.

The commons

The commons in The Gambia are resources that do not have rules of exclusion by individuals or groups, but that are used by members of the community. These include pastures, mangroves, ponds, streams (*bolongs*), and most forested areas. The commons are valuable, though often ecologically threatened, sources of food and fiber products for rural and urban populations. The collection, processing, and marketing of such products as firewood, construction materials, fruits and nuts, fish, oysters, wild game, and medicinal plants generates benefits for a wide array of user groups, especially the most socially and economically marginal

segments of Gambian rural communities.

The commons are resources used simultaneously or serially by members of a community (Bruce 1993, p.6). Often these "common-pool" resources are sufficiently large as to make it costly, but certainly not impossible, to exclude non-owners from obtaining benefits from its use (Ostrom 1990, p.30). Communities invest considerable time and

Box 2: Sacred Forest of Sintet

The "sacred forest" of Sintet is a ten-hectare area of towering silk cottonwood and baobab trees located next to the village. A freshwater stream used to flow year-round through what foresters say is a "relic gallery forest," and even today, crocodiles are said to live deep within the mud. Prayers are said here, ceremonies are performed, curses are pronounced, and people come to the area to settle disputes in the calm and cool shade of the trees. As one elderly man explained, "go to the sacred tree and tell it what bothers you and ask it to help you." The forest has many other uses. Livestock graze within the forest and drink water from the seasonal pools. People come to collect deadwood, fruit, nuts, honey, and roots dug up from certain trees and shrubs. Tree felling is strictly forbidden. The forest is governed by a "conservator," an elderly gentleman with considerable mystical and magical powers who, over the years, has planted trees and watched over the forest carefully (Foni Jarrol Case Study).

energy in constructing rules and conventions to define rights of access to particularly valuable resources. Unfortunately, institutional arrangements governing the commons are sometimes so poorly defined and enforced that they lead to the ecological degradation of the resource itself. Tenure insecurity in the commons is often high in The Gambia.

Common-property regimes are sets of rules that define who has access to the commons (Lawry 1990, p.406). Common-property regimes are "corporate group property" in that a collectivity may exclude others from the use of the resource yet, at the same time, members of the group possess specified rights and duties to the resource (Bromley and Cernea 1989, p.15). Rights and management responsibilities accrue to specified groups or communities of people while nonmembers are excluded from use of the specified resource. Sets of rules define the rights and duties of members and nonmembers with regard to access, use, and management of these resources by both groups (IFAD 1992, p.vii). Like private-property regimes, common-property regimes depend upon an effective system of authority to enforce the rules and mechanisms governing resource use (Bromley 1991, p.456). Successful common-property regimes exist when communities agree to moderate their exploitation of the resource or accept punishment if they violate rules protecting the resource. Several common-property regimes exist in The Gambia and new ones may be emerging (see box 2: Sacred Forest of Sintet).

In *open-access regimes* no rules govern the exclusion of any resource user and hence everyone has free and unrestricted access to the resource. Purely open-access situations are quite rare in The Gambia. Usually several user groups claim historical rights to a particular resource, yet neither the state nor traditional authorities are able to adjudicate competing demands for access or enforce existing restrictions on the exploitation of the resource. Violent conflicts sometimes occur in these situations. This institutional vacuum often leads to the excessive use of the natural resource because no authority structure can enforce exclusion by either nonmembers of the community or responsible use by its own members (see box 3: The Forest

Commons in the Foni Jarrol District).

The state reserve

In *state property regimes* ownership and control over resource use is vested in government. The state establishes through laws and regulations the rules governing the use of the

resource. Statutory laws in The Gambia vest control in the state over such resources as forests, water courses, government-constructed boreholes, and land expropriated for public purposes. Compensation is usually paid when land is expropriated for public works. Various ministries and departments are charged with the task of managing these state lands. For example, government technical services are charged with the responsibility of managing state reserves (Forest Parks and National Parks) often found in or contiguous to villages. As the case studies demonstrate, forestry services must often deal with tenure conflicts that the local communities have concerning use rights to these parks (see box 4: Forest Parks and National Parks in Kiang West District).

Box 3: Forest Commons in Foni Jarrol District

The forest commons in the Foni Jarrol District consists of an uncultivated area between the villages of Sintet, Kammamadu, and Wassadun. This forested area, located on the rocky uplands between several valleys, is used jointly by the contiguous villages for the collection of a wide array of forest products. Even though the residents of these villages consider this forest to be theirs, no rules formally regulate the extraction of forest resources. Key forest species are threatened by abusive and excessive woodcutting, bush fires, and heavy grazing. For this reason one can say the forest suffers from an open-access tenure situation (Foni Jarrol Case Study).

2. Relationship between resource tenure and the sustainable use of natural resources

The literature on land tenure in Africa hypothesizes that increased agricultural productivity, and sustainable management of natural resources, is facilitated through a process of strengthening individual and/or community rights to the land. Resource management is a question of rule-making governing the use of resources if we define "management" as "the right to regulate internal use patterns and transform the resource by making improvements" (Schlager and Ostrom 1992, p.251).

Increasing security of tenure to individuals and groups of people is one of several incentives to promote economically and ecologically sustainable rural development. By augmenting tenure security, it is anticipated that farmers will reap returns from investments in land. Increased security of tenure for individuals or groups may also improve the creditworthiness of the farmer and enhance chances for receiving credit from banks and other lending organizations. Improved tenure security should encourage rural populations to use soil and water conservation practices provided that other economic incentives are in place (e.g.: markets for farm inputs and outputs, extension services, credit facilities, infrastructures, sufficient labor, and so on).

The vast majority of rural households in The Gambia have access to land under indigenous, customary land tenure arrangements. This report considers the issue of whether customary tenure provides sufficient security to encourage investment in the productive and

Box 4: Forest Parks and National Parks in Kiang West District

Dumbutu is surrounded on nearly all sides by state Forest Parks and the Kiang West National Park. Rural communities around the park are uneasy because rights of access to the forests have been progressively restricted over the years. Livestock owners fear loss of access to grazing within the park, though for the time being it is still allowed. Women oyster collectors were initially banned from collecting in the mangroves, though the order was rescinded later on. The Forest Parks have been fenced off and no access of any kind is permitted. Felling of trees, burning, hunting and trapping are prohibited in the National Park. Commercial wood gathering and sale is no longer allowed, though villagers can go into the park to gather deadwood for household use. Restrictions of use rights may be justified on ecological grounds, but these interdictions should only be made following in-depth scientific studies supporting such actions. Communities should be consulted and ways should be sought to compensate traditional user groups for the loss of access (Kiang West Case Study).

ecologically sound use of the land. General questions addressed in the research by the Working Group and the Law Reform Commission are: Do landholders maintain rights to the land long enough to invest in its protection and sustainable use? Are individual and group rights protected adequately so that they will not be overridden by other individuals or the state? Or do customary tenure systems contribute to tenure insecurity and the degradation of natural resources? If so, what type of policy reforms are required to increase tenure security for rural populations?

B. Resource tenure and legislation in The Gambia

1. Legal foundations of resource-tenure arrangements

The land tenure systems of The Gambia are complex and constantly changing norms and practices influenced by western judicial concepts, Islamic religious values and jurisprudence, and traditional beliefs and practices of the various ethnic communities in the country. These legal traditions coexist and interact to shape tenure arrangements to land and other natural resources. Tenure relations are dynamic and flexible in The Gambia due to the constant testing and revision by rural populations of legal precepts through the court system and administrative practice.

English Common Law Tradition

The Gambia inherited the common law tradition from the English. In general, this is a body of law that develops and evolves through judicial decisions, as distinguished from legislative enactments enforced through administrative fiat. When a point of law has been settled by a court decision, it forms precedents which are not afterwards to be departed from except when the decision goes against obvious principles of law.¹ Legal precepts of justice are thus a

¹ The influence of the British common law is clearly spelled out in the Application Act (Cap. 5) of the 1990 Laws of The Gambia. Section 2 notes that the "common-law, the doctrines of equity and the statutes of general application in force in England on the 1st day of November, 1888, shall be in force in The Gambia."

complex amalgamation of western norms as well as beliefs and practices influenced by Islam and other belief systems of the populations of The Gambia.

Customary land tenure arrangements are recognized by law in The Gambia. The Land (Provinces) Act clearly states in the preamble that "it is expedient that the existing customary rights of the indigenous inhabitants of the Provinces to use and enjoy the lands of the Provinces and the natural fruits thereof should be preserved and that "existing customary law regarding the use and occupation of such land should be as far as possible preserved." The act states that "the occupation, and use of Province's land by indigenes shall be governed and regulated by the customary laws obtaining in the localities in which such lands are situated" (Cap 57:03). This section acknowledges explicitly the existence of a multiplicity of tenure arrangements in the country.

The Land (Provinces) Act vests authority over customary tenure systems in district authorities.² The function of the district authorities has long been the subject of considerable contention and confusion. The British colonial power vested in chieftaincies the authority to administer and allocate land. This was a strategy designed to strengthen their traditional authority and construct alliances with a rural power block. It was hoped that these chiefs could also serve as modernizing agents, and press the population to employ more efficient techniques of agricultural production favored by colonial officials. Colonial policy accepted African rights to land, but generally not claims to private ownership (Phillips 1989, pp.59,111).

The colonial administration viewed rights to land as derived from the authority of the chieftaincy and not from the rural communities themselves. This view of land rights may have been based on romantic and illusionary views of African communal tenure rather than the realities of the local situation. Admittedly, the political context in the late nineteenth and early twentieth centuries in rural Gambia was confused during this tumultuous and violent period of colonial expansion. The colonial power and the Gambian rural populations were both seeking to establish new institutional arrangements in the wake of the destruction of the older social order, especially that of the former Mandinka and Fula kingdoms (Quinn 1972). Exactly what the right of chiefs was, and still is, a constant matter of discussion (Chanock 1991, p.64). To this day, the authority of the head chief (*seyfo*) and village chiefs (*alkalolu*) to distribute land is often called into question by the heads of extended families or lineages. The British common law tradition has led to a delicate political balance between these institutions over the question of who controls the use and administration of land.

² "All Provinces' land are hereby declared to be vested in the Authorities for the Districts in which such lands are situated, and shall be held and administered for the use and common benefit, direct or indirect, of the communities concerned" (Cap. 57:03 Part II, 4). As defined in the Local Government Act, district authorities are "in every district...the Head Chief, as advised by the Headmen of the District and such elders and advisors as by tradition advise any Head Chief and are available and willing at any time to advise." (Cap. 33:01, Part XII, 45).

The legal system clearly recognizes the customary traditions of the populations of rural Gambia. However, very few of these traditional legal precepts have been written down for the use of the legal profession or the general public. In the English common law tradition, many of the customary tenets of land law were codified, or written down. This has not yet occurred in The Gambia, with the important exception of the Law Reform Commission's publication The Customary Laws and Usages of The Gambia (Law Reform Commission of The Gambia, 1991).

Islamic Legal Traditions

Islamic legal principles apply to civil law, status, marriage, succession, divorce, dowry, and the rights and authorities of parents and guardians whenever the contesting parties are of the Muslim faith and that the principles are "not repugnant to justice and morality or inconsistent with the provisions or other law in force in the Provinces" (Cap 52: Section XI (b) of the District Tribunals Act). This same clause holds equally to principles guiding non-Muslim customary law. The district tribunals administer Islamic precepts whenever all the parties are "Mohammedans" and they are Africans residing in the jurisdiction of the tribunal. Koranic rules of inheritance (Sura IV, verses 12 and 176) determine the transfer of property though generally not that of land.

The Islamic legal traditions are upheld through the Cadi Courts, of which there are two in The Gambia. Investigation of recent court records of the Kanifing and Banjul Cadi Courts by the Law Reform Commission showed that these courts rarely deal with land cases yet judicial authorities are often invited to provide opinions on difficult legal matters pertaining to customary law (Law Reform Commission, 1994).

The primacy of customary legal traditions and Islamic law is challenged frequently by legislation enacted by Parliament, national policy statements, administrative regulations, and development practice. These are laws and associated regulations that govern the use of forests, wildlife, mines, minerals, and water resources.³ At times these laws fill judicial voids not covered by customary legal traditions, but in other instances, the laws serve to amend provisions of the Lands (Provinces) Act.

2. Gambian legislation

The new Lands Act and the Physical Planning and Development Control Act create new institutions of land-use control in rural areas. This initiative challenges the role of not only

³ The Lands (Provinces) Act itself grants authority to the state to regulate the use of "protected" trees of economic value. "The Minister may make regulations prescribing that trees of any specified species shall be protected either through the Provinces or in any part thereof; prohibiting or regulating the felling, cutting, taking, working, burning, injuring or removing of any protected tree; prohibiting or regulating the sale, offering for sale, purchase or export of any tree, timber, rubber, gum, or other forest produce." (Cap. 57:03, Section II (6)).

seyfolu and *alkalolu*, but also of district authorities. Customary precepts are also challenged by rural development projects. For instance, irrigation schemes often create the "law of the project" by establishing new land-allocation practices based on various criteria of equity and efficiency rather than on customary land allocation practices. Nongovernmental and governmental projects create village development committees of various names to manage gardens, village woodlots, and forested areas. These committees construct rules of resource use on the lands under their immediate supervision.

The land tenure situation in The Gambia is particularly complex because changes in land policies and administrative practices are occurring at several different levels.

1. Conversion of customary tenure to leasehold tenure: The 1990 Lands Act and associated legislation encourages conversion of customary land tenure arrangements in urban and peri-urban "designated areas" to a leasehold system. The Land Acquisition and Compensation Act expands considerably the power of government to acquire and control development of land for a wide variety of purposes.
2. Centralization of planning powers in the state: Government control over physical planning is being increased substantially through the establishment of Planning Boards and Planning Authorities with considerable legal powers to shape urban and rural growth patterns and the use of the environment.
3. Devolution and decentralization of resource-management control: Development projects sponsored by both governmental and nongovernmental agencies are encouraging the transfer of resource-management control from various centralized state institutions to local-level rural institutions. Participatory planning at the village level is being strongly encouraged. New local-level development institutions engaged in village and intervillage planning are being created that both complement and compete with authority vested in the district councils.
4. Reinforcement of customary tenure: Some actors within the legal profession are seeking ways to reinforce the foundations of customary tenure arrangements by recording customary land use precepts of rural populations and through reforms in the court system.

These parallel policies and practices generate at times contradictory and unforeseen results explored further in this report. While in theory there is no inherent problem with having a multiplicity of tenure regimes and practices coexisting in The Gambia, in practice their respective roles are unclear. Divergent policies contribute to tenure insecurity among rural populations who do not understand what rules apply to various situations. The sections below explore the complexities generated by the passage of four new laws affecting the use of land. These summaries may appear dry for non-legal specialists yet overly cursory for legal professionals, yet knowledge of these laws is important for much confusion surrounding their application in both rural and urban areas.

In late 1990 the House of Representatives enacted four very important pieces of new legislation: the State Lands Act, the Land Acquisition and Compensation Act, the Physical Planning and Development Control Act, and the Surveying Act. These laws were signed by the president on December 27, 1991, and became force of law on January 22, 1992, by ministerial order. Technical assistance in developing the legislation was provided by the Gambian-German (GTZ) Urban Development Planning Project. Various drafts of the legislation were reviewed by the cabinet on repeated occasions.

The new acts were designed primarily to resolve the uncontrolled expansion of urban centers in The Gambia. The acts increase the legal capacity of government to shape the physical development of urban areas, not only in the Greater Banjul Area, but also in and around urban "growth centers" such as Brikama, Basse, and Farafenni.

The State Lands Act replaced the previous Land (Banjul and Kombo Saint Mary) Act (Cap. 102). The Land (Provinces) Act is still valid and operative in rural parts of the country. The new Land Acquisition and Compensation Act replaces Part IV dealing with land acquisition and compensation clauses of the Land (Provinces) Act. The Physical Planning Act of 1984 and the Building Act (Cap 17) were repealed and replaced with a new and more unified Physical Planning and Control Act. The Surveys Act is an entirely new act.

a. The Lands Act

The preface to the Lands Act summarizes the rationale for the new act. It notes that the Land (Provinces) Act was initially passed in 1946 with the intention of preserving the existing customary rights of indigenous populations in rural areas. The main problems with the act are believed to be extensive land disputes and the lengthy process to obtain leases in rural areas. The act is viewed as an inadequate framework for controlling urban growth. In contrast, the new legislation is "to provide a unitary title system of land in designated areas where due to population growth and economic development, pressures for the replacement of customary tenure to a leasehold tenure emerge" (Government of The Gambia, nd. 7). The act provides mechanisms for abolishing customary land tenure and replacing it with a leasehold system administered by the state.

Jurisdiction: The Lands Act of 1990 is applicable only to those lands deemed "designated areas." For the time being the act only applies to Banjul and Kombo Saint Mary as it explicitly replaces the old Lands (Banjul and Kombo Saint Mary) Act. The intention of government, as the preface to the act notes, is that the law must be made "applicable to the rest of the Greater Banjul Area and Growth Centers whose boundaries have to be defined and gazetted as designated areas" (Government of The Gambia, nd. 8).

Leases: The State Lands Act declares that "all land in Banjul and Kombo Saint Mary, excluding such land as is held in fee simple and subject to any grant which has been or hereafter be made, shall vest in the State absolutely." Except for freehold (privately owned lands) the government no longer recognizes customary rights to land in the Banjul and Kombo Saint Mary

areas. All land leases are now for a period of 99 years from the date of the original lease, both in urban as well as rural areas.

Conversion of customary tenure to leasehold: The Minister of Local Government and Lands is granted the power to deem the land within a division a "designated area." Customary land traditions are abrogated as of that moment. The act states that "any person who holds any land in a designated area under customary law or year to year tenancy shall, at the date on which such area is designated and subject to the provisions of this Act, be deemed to be a lessee of such land."

A deemed lessee receives a lease of 99 years provided that the individual applies for a title within a prescribed period of time. If the individual fails to obtain a title within a specified period, the person becomes a "tenant at will of the State and may at any time be thereafter dispossessed thereof." The deemed lessee cannot change land uses unless there exists an approved development plan. The lessee is subject to rent as may be determined by the minister.

Land Boards: Land Administration Boards are presently established in designated areas and in all divisions. The Minister of Local Government and Land appoints the members of the board. The functions of the board are to process applications for acquisition and compensation of state land and make recommendations for approval; process applications for title deeds from deemed leases; advise on the acquisition and compensation of land for public purposes; investigate disputes on landownership in liaison with the district tribunals; assess land taxes and property premiums; and monitor the registration of properties.

b. The Physical Planning and Development Control Act

The preface to the new Physical Planning and Development Control Act indicates that the purpose of the law, applicable to the whole of the country, is "to provide for a unified legal basis for the systematic preparation and approval of plans and control of developments (including buildings) on land and for creating a better environment and efficient utilization of land resources" (Government of The Gambia, nd., 4). The legislation is addressed specifically to problems related to the chaotic and dispute-ridden urban development of the Greater Banjul area and other urban growth points in the country.

Development plans: The Physical Planning and Development Control Act establishes a Planning Authority for Banjul and Kombo Saint Mary, and most importantly, for each division of the country. Members of the authority are appointed by the Minister of Local Government and Lands. The central function of these planning authorities is to prepare plans for the "spatial development and effective use of land to ensure a well balanced environment and good living conditions" at the national, divisional, and district level. National plans are to spell out guidelines and polices regarding the location of urban and rural settlements, traffic and transportation routes, resource utilization and economic activities and the preservation of national and environmental reserves. These national plans are to provide the foundation for divisional development plans which in turn shall be the basis for preparing comprehensive local development plans.

Planning authorities: Planning authorities are granted considerable powers to enforce development plans. Any "development," defined as a building, construction or *change in land use* requires a development permit in conformance with stipulations of a local development plan. The Minister of Local Government and Lands can declare that any "lawfully existing" land use be discontinued in the "public interest" provided that compensation is paid to the injured parties. The ministry may similarly repeal development permits if the land user does not conform to the local plan. Fines and imprisonments can be handed out for failure to comply with the land use restrictions set down by development permits.

c. The Land Acquisition and Compensation Act

The act permits acquisition of land by government for "public purposes" though this is conditioned upon payment of compensation to the injured parties. The act applies to all parts of the country. The definition of "public purposes" is all encompassing. Land may be acquired for the following purposes:

- exclusive government use or community use,
- sanitary improvements of any kind, including reclamations,
- laying out of any new government station or the extension or improvement of any existing government station,
- control over land continuous to any port or airport,
- control over land required for defense purposes,
- control over land subjected to environmental protection and conservation,
- control over land the value of which will be enhanced by the construction of any railway, road or other public works or convenience about to be undertaken or provided by government, and/or,
- planning purposes.

Land acquired under the act is to be designated as State Lands and then administered under the provisions of the State Lands Act. This provision would thereby abrogate customary land tenure arrangements and facilitate the establishment of a leasehold system.

The act describes in considerable detail methods for notifying the public of intent to acquire land, evaluating the value of land, procedures to follow in granting compensation, and litigation measures.

d. The Surveys Act

The act sets up a Survey Board which grants licenses to qualified private surveyors. The intention of the law is to facilitate land registration by increasing the number of qualified and government-approved surveyors. This act should remove a major obstacle to land registration and surveying in both urban and rural parts of the country. The act should encourage an expansion in the number of licensed surveyors, and this in turn should facilitate land surveying needed to apply for a lease.

e. Potential Environmental Impact of the New Acts

The Working Group on Resource Tenure and Land Use Planning considered the potential impact of the 1991 Lands Act on customary tenure arrangements and the use of natural resources. Several concerns are raised based on the field work conducted by the Working Group research teams.

The Physical Planning and Control Act, the Lands Act, and the Land Acquisition Act all increase the powers of government technical services to plan for the rational use of urban and rural space. Various mechanisms allow qualified technicians to determine sustainable uses of the land, plan for rational spatial development, and coordinate development planning from the national to the local level. The acts greatly facilitate the establishment of a leasehold system of tenure, a beneficial mechanism for controlling the use of land of high economic value and intense speculation. Lands can be "designated" in most any part of the country and leases can be granted for these territories under the auspices of the land boards and the Ministry of Local Government and Lands.

The Land Acquisition Act increases the power of government to acquire land for public purposes. The legislation explicitly states that land can be taken for environmental protection and conservation ends. Conceivably, the act can be used to acquire new lands for national parks and forest reserves. But it can also be used to convert the commons in a rural community to a lease granted to a village or a group of resource users, a potentially useful and much-needed legal innovation. The ensemble of laws can be used to render more secure tenure rights to resources through the creation of a leasehold system of landownership. None of these options have yet been fully tested, but one would expect development projects and state agencies to use these new legal mechanisms in the future.

The new legislation promotes more systematic planning yet does little to include the public in the design and implementation of land use plans. The public comments on the designs of plans, though they are not integral participants from the outset in the planning process. The National Natural Resource Policy Statement of February 1990 advocates decentralized and participatory approaches to resource management, but this orientation is lacking from the new legislation.

The acts vest considerable authority in state institutions and individuals to manage the land resources of the country. Government technicians are given the responsibility to plan for the future of rural and urban populations in provisions calling for the creation of national and local-level development plans. The law contains few mechanisms to question, and if necessary rescind, the decisions of the planners. This is a serious omission since there are no guarantees that the planning authorities will have adequate financial and technical support to prepare plans that are sufficiently flexible and sophisticated to deal with the diversity and complexity of local conditions.

The Minister of Local Government and Lands may "designate" any lands in a division as subject to the provisions of the Lands Acts of 1990. No formal procedure is in place to allow

public comment or reaction to this unilateral decision of profound implications to rural populations. In cases where the government wishes to expand leaseholds, the public needs to understand the justification behind converting customary tenure to a leasehold system if they are to cooperate with the new provisions. Land boards and planning authorities are selected by the minister rather than the general public. This may not necessarily generate the most representative composition of such an important body. Boards may represent special interest groups seeking uses of land which do not reflect the long-term interests of rural populations. Few mechanisms exist in the legislation for the public to shape the composition of these new decision-making bodies.

The Working Group research members are apprehensive about the new Lands Act because it could profoundly disrupt customary land tenure arrangements and thus contribute to considerable social and political instability. The new acts are contributing to a sense of land insecurity in rural areas. While the Lands Act may be appropriate for urban areas, there is considerable question about its appropriateness to rural settings. From experience elsewhere in Africa and the perspectives gained by field research, the Working Group research team is concerned that the creation of a generalized leasehold system is likely to reduce the flexibility that characterizes customary tenure systems and threaten borrowing arrangements currently enjoyed by women and secondary rights holders.

Another potential conflict is found in the provision in the State Lands Act that grants 99-year leases in "designated areas" to those holding customary claim to land and those borrowing it on short-term (year-to-year) tenancy. This clause could generate enormous litigation since much of the land in The Gambia is currently loaned under various complex customary tenure arrangements. Clear and unequivocal rights to land are rather rare, the Working Group team found, and for this reason it would not be easy for land boards to determine the validity of applications for leases. The legal costs associated with litigation could be enormous. In addition, this provision would discourage the various forms of lending of land, with consequences to women and borrowers.

The Working Group and the Law Reform Commission researchers found that both government administrators and rural populations are confused and uncertain of the implications of the laws on customary tenure arrangements. Rumors and expectations circulate freely and unchecked. Some respondents worried that the new laws represent government attempts to nationalize all land and abolish customary tenure arrangements. Others felt that the new laws are contributing to rapid land speculation and the reduction of borrowing arrangements, especially around towns that may become "designated areas" and subject to the creation of leaseholds.

The confusion over the new Lands Act is most clearly demonstrated with regards to women's role in the acquisition of leases. Women interviewed in the Greater Banjul area hoped that because they had some customary inheritance rights to their father's land, they would then be eligible to lease this inherited land in their own names. Other women, however, felt that the laws would undermine their rights and they would be eligible neither for leases nor for their traditional rights. Other women saw no problem with this situation—they felt that their husbands or brothers would still be obliged to share land with them (Sheehan 1994).

Given these concerns, the Working Group field research members hesitate to recommend the full-fledged and unilateral implementation of the Lands Act in rural parts of The Gambia. The law and its associated legislation can go a long way towards resolving land conflicts in urban and peri-urban areas or on other lands of high commercial value. Blanket application of the Lands Acts throughout the country would be premature at this time.

3. Key environmental legislation and land use planning

The legal corpus of The Gambia contains a wide variety of legislation affecting the use of natural resources. The following legislation is a review of some, though not all, laws influencing tenure arrangements. More complete reviews of environmental legislation are found in other sources (Tolentino 1992; Gibson and Laurent 1992). This summary concurs with previous studies that the legal framework is largely in place to promote sustainable use of natural resources. Sufficient provisions exist in the legal corpus to promote whatever policy government desires with regards to land use. Contradictions in the legal framework of The Gambia are evident, yet the central problem is to define consistent land policy across ministries. In some instances laws encourage participatory planning for the use of natural resources, in other instances resource-management control is vested exclusively in the state. Most of the key legislation can be used to facilitate decentralized management of natural resources, yet key legal features must be tested through administrative and judicial means.

National Environmental and Management Act (1987)

The National Environmental and Management Act reaffirms the Government of The Gambia's commitment to preserving biodiversity. It sets up a National Environment Management Council and recommends that actions which affect the environment "shall be undertaken...having regard to the necessity to promote the sustainable utilization, rational development and conservation of these natural resources in accordance with currently recognized principles." Regulations for monitoring and assessing the state of natural resources should be done by the respective ministries.

Resource Management and Local Government Legislation (Chapter 33:01)

The legislation setting up and regulating the area councils potentially grants these bodies a wide range of powers to manage natural resources. The function of the area councils in resource management is often ignored because most authority for resource-management activities passes through either departments enforcing specific laws (i.e.: Forest or Wildlife Conservation Acts) or through projects controlled directly by these ministries. The case studies conducted by the Working Group showed that area councils in fact generally play a quite insignificant role in resource management. *Seyfolu* and *alkalolu* have a much greater say in local-level resource use issues than the area councils. However, this does not preclude these institutions from potentially playing a beneficial role in the sustainable management of natural resources.

The Local Government Act (Chapter 33:01) created the local-level governance structure of the area councils in 1963. Even though environmental preoccupations were not at the

forefront of the development debate at that time, the legislation does spell out in considerable detail the ways in which the area council can conserve and manage natural resources (see box 5: Land Use Management Functions of the Area Councils). The strength of this legislation is that the area councils possess the power to legislate locally, an important condition to developing the rule-making capacity of rural populations.

The democratically elected council is empowered to legislate bylaws applicable to the whole district or different parts of the territory. The council possesses powers to enforce bylaws either through fines or prison sentences. Bylaws cannot come into force until they have been approved by the Minister of Local Government and Lands and have been reported either in the *Gazette* or some other manner approved by the minister. The council can raise funds through tax receipts, rates, fees, charges, tariffs, grants, and loans subject to the provision of the act.

As in many countries of West Africa, statutory structures have been put in place in The Gambia to encourage local governance of resources. Despite their potential to enhance more democratic and participatory resource management, these entities generally lack legitimacy and the respect of local populations because they are perceived as ineffectual and nonresponsive to local needs (Thomson et al. 1989; Freudemberger 1992). However, the legal and institutional structure is in place to promote participatory planning around the use of natural resources.

Forest Act (1977)

The Forest Act is a very comprehensive statement of powers granted to the forestry service to manage the forest resources of The Gambia. The act gives the minister the power to designate forest parks through a specified public review process. Protection, control, and management of these areas are under the jurisdiction of the Minister (Forestry Department, Ministry of Natural Resources and Environment). The regulatory power of the minister over the management, utilization, and protection of forests extends from prohibitions to the regulation of the collection and taking of forest produce through a licensing/permitting system (Tolentino 1992).⁴ The act clearly grants the minister considerable powers to control the use of forests, forest products, and bush fires. The most far-reaching clause of the Forest Act allows the minister to regulate taking of forest produce of any type at the "disposal of the Government or on Provinces' lands or communal lands."

In light of the above discussion of the role of the area councils, the Forest Act parallels certain activities stipulated in the Local Government Act. For example, the minister may regulate "the kindling and suppression of bush fires in all lands and prescribing the persons who may declare the period during which fires may or may not be allowed." Forest regulations passed in

⁴ The act must be read in conjunction with the Lands (Provinces) Act. Cap.57:03, Section 6 (2) grants the minister considerable powers to make regulations for the protection of forest parks and "protected species." For instance, the "Minister may make regulations ...prohibiting or regulating the felling, cutting, taking, working, burning, injuring or removing of any protected tree."

Box 5: Land Management Functions of the Area Councils

The Area Councils are legally entitled to pass by-laws on the following environmental issues:

- control of pests of all sorts, including tsetse flies and mosquitoes, and weeds;
- regulation of methods of husbandry;
- prevention of soil erosion;
- improvement of the productivity of the soil and the preservation of fertility;
- control of stray animals, the provision and management of pounds, the sale and destruction of such animals, and the regulation of payment of compensation for damage done by such animals;
- control of the keeping and grazing in, and the movement in and into and out of the Council's area, of livestock of all kinds;
- prohibition, restriction and control of cutting and selling of trees and tree products, and the management of such forest parks and areas as may be delegated, and the planting and tending of trees in general;
- control and protection of wells, springs, dams and water supplies in general;
- restriction, prohibition, prevention, regulation and abatement of grass, forest or bush fires; and
- prohibition, restriction and control of hunting and fishing.

late 1978 state that bush fires are to be fought by "Head Chiefs, Sub-Chiefs, and Headmen of districts, sub-districts, town and villages" and that these people can be held liable for penalties under the law.

The legislation enumerates state rights and responsibilities rather than the collective and individual rights and responsibilities of rural populations. No mention is made of participatory involvement in forest planning nor of the capacity of rural communities to make rules governing local uses of forests. Rural respondents noted on several occasions to the Working Group researchers that they believed that forests and certain protected species belong to government. While no provision in the law indicates that any tree of forested area outside of a Forest Park "belongs" to government, the fact that the forestry department enforces regulations prohibiting certain uses of trees suggests to rural populations that this resource is indeed the property of government. This sense that forests and economically valuable "protected species" are owned by government, rather than the community, contributes to a hands-off stance by the community.

The Forest Act provides the forestry service with the legal framework to design and modify regulations as it sees fit to promote the most suitable uses of forest resources. This clause may be used in a variety of ways. On one hand regulations can be developed and modified to expand the authority of the forestry service to repress exploitative uses of forest products. From the experience with implementing forest codes in the francophone Sahelian countries, this strategy does not engender cooperation with rural communities (Elbow and Rochegude 1990; Brinkerhoff and Gage 1993; CILLS/Land Tenure Center 1993; McLain 1993). The alternative, however, is to use the regulations to construct creative "comanagement" arrangements with resource users, that is, collaborative relations between rural populations and the forestry service designed to better use forest resources.

Wildlife Conservation Act (1977)

The conservation and rational management of wildlife, the establishment of national parks and reserves and local sanctuaries and the creation of a Department of Wildlife Conservation fall under the Wildlife Conservation Act. Habitat conservation and management of wildlife resources is the central intention of the act. In general, control over resources is by way of absolute prohibition, licensing and permits, open and closed seasons for hunting, and regulation of hunting methods. The act also spells out the procedures for the establishment of protected areas. The act obliges the Director of Wildlife Conservation to develop and keep under review wildlife management plans for the rational management of this important resource (Tolentino 1992, pp.12-13).

The Wildlife Conservation Act places control of state reserves in the hands of the director to "control, manage and maintain all national parks, national reserves, and local sanctuaries." As with the Forest Act, neither the intent nor the provisions of the law support community participation in management decisions. Certainly the director can, and does, encourage community involvement in the decision-making process though this is not embodied in the law.

Fisheries (1991)

The Fisheries Act calls for the preparation and continuing review of fisheries plans for the management and development of inland and marine fisheries. Each plan is to be based on scientific information to ensure optimum utilization, but, at the same time, is subject to management measures for sustainable development. Mechanisms allow for licensing of fishing interests. The minister may make regulations for the conservation, management, or protection of fish resources, the conduct of fishing operations, and the control of importation and exportation of live fish (Tolentino 1992, p.13).

C. Customary land tenure in The Gambia

1. Characteristics of customary land tenure arrangements in The Gambia

The customary land tenure systems of The Gambia are characterized by the coexistence of a multiplicity of property-rights regimes in the social and geographical territories controlled by rural communities. Various property regimes (private, common, state reserves, open access) may be found simultaneously within the spaces communities consider to be their "own." In any particular territory used by the predominately sedentary communities of The Gambia, property-rights regimes are constantly shifting from one status to another as a function of a wide range of socioeconomic and ecological factors. Tenure arrangements are site specific and defy easy generalization. In order to fully appreciate the complexity and diversity of tenure arrangements in any locality, one is obliged to study the settlement history, authority structures, and rights of various socioeconomic categories to land and other natural resources.

Village territories and microecologies

The Working Group on Resource Tenure and Land Use Planning and the Land Tenure Center found it helpful to investigate tenure arrangements in the *village territory*. The term "territory" has been defined as the "land area which is habitually used by members of an agrarian community for their livelihoods and with boundaries that are recognized by members of the spatial unit and by those residing outside the area" (Painter 1991, p.11). Tenure arrangements vary from place to place within the territory largely as a function of the types of uses of microecological zones.

Just as one finds diverse ecological niches within rural landscapes, so too does one uncover complex tenure arrangements related to these different niches. Private-property arrangements, or the rights of total exclusion, are most strongly articulated around resources of high use and exchange value. In contrast, lands of lesser value are characterized by less strict tenure arrangements and are, in some cases, either common-property or open-access resources. In most of the villages studied by the Working Group, property rights were very highly individualized around the fertile "inner fields," "outer fields," and the valuable rice lands. Rice lands are often controlled by women, except in cases where irrigation projects have been introduced. In contrast, property-rights arrangements are less well defined and enforced around forests, water courses, and lands bordering tidal estuaries.

The conceptualization of rural territories as subdivisions of different tenure categories corresponding to ecological variations is a useful, though at times limited, analytical tool. In reality, many boundaries between Gambian villages are poorly defined and the subject of considerable conflict. Even where boundaries are clear, people from a neighboring village may have rights to farm a plot of land or collect forest products because of agreements made generations ago. Inter-marriage between communities further complicates the situation because of inheritance rules in customary land tenure systems.

Village settlements and their surrounding land used for cultivation and forest product collection have long and complex histories. The space considered to belong to a particular village is determined by the unique background of the village. Some villages are considered "core" villages, communities that have long-held rights to vast amounts of land. Surrounding these villages one sometimes finds "satellite" villages that were granted land by the older village. These satellite villages are sometimes composed of newly arrived pastoralists, casted families, and ex-slave communities. Tenure security for these satellite villages may be quite tenuous, especially in instances where land speculation is rampant (see box 6: Settlement History of Maka Farafenni).

Importance of Settlement History

The settlement histories of rural communities in The Gambia describe how individuals and extended families came to reside in a locality. The Working Group case studies of settlement histories show that great importance is attached to recounting the names and events associated with those who first settled in the locality. The order of arrival and social status of later arrivals is a key element in the oral histories. From these accounts, it becomes clear that tenure security

is a function of settlement history and membership to particular kinship or lineage groups resident in the community.

The events leading to the settlement of present-day villages in The Gambia are very diverse. Some villages were founded by hunters who discovered propitious places for a new

settlement. Often one hears that a hunter came across fertile lands, plentiful water, and abundant game. Since land was in short supply in the home village, the hunter returned with other members of the family to clear land, construct houses, and build a new community. The first settlers divided the land among themselves. To this day the descendants of these pioneers often retain considerable control over the allocation of land.⁵

In other village histories, rights of conquest take precedence over the claims of first settlement. In the Foni Jarrol District, Jola elders admitted that Bainunka were the original settlers in the area, but that the Jola acquired firm rights through conquest. Land use authority is vested in the hands of the eldest descendants of the conquerors. In several cases, current settlements owe their existence to gifts or loans of land obtained from the first settlers in the area. In such cases, the amount of land available to the village for cultivation is often very clearly indicated and boundaries are well marked by trees, bands of grass, stones, or other geographical features.

Rights to land and other natural resources under customary tenure systems are determined largely through membership in a kinship or lineage group. Security of tenure and availability of land depends upon the aggregate amount of land available to the particular extended family. In the Mandinka communities studied by the Working Group, membership in a *kabilo* possessing great amounts of land facilitated access to sufficient farmland. Membership may be inherited through birth, acquired through marriage, or forged through political alliances.

The descendants of those who first cleared the forest and cultivated often retain considerable authority to determine land uses. The members of founding families grant permission for outsiders to settle in the community and obtain land for cultivation for the new arrival. Land may be given to the nonresident as either a gift or as some type of loan. The

Box 6: Settlement History of Maka Farafenni

Farafenni was settled at least 500 years ago by four founding families. The exact origins of these *kabilos* are not known. The founders claimed ownership over virgin forest land extending north of present day Farafenni to slightly above the present boundary with Senegal, south to the River Gambia, east about five kilometers and west as far as Yallal. Today, more than twenty villages fall within this boundary, including the village of Maka Farafenni. Many of these villages claim rights of first occupation. Only the Fula village of Dutabulu is reported to borrow all of its lands from Farafenni. This may be due to the tradition of mobility of pastoralist communities (Upper Baddibu Case Study).

⁵ Settlement histories recounting this line of argument were recited in the Foni Jarrol and Kiang West District case studies and the narration recorded by Momodu Jammeh. Momodu Jammeh with Nancy Sheehan, "My Own Beef," Land Tenure Center, December, 1993.

nonresident is a guest of the village and for this reason, may be denied access to land and other resources if the person turns out to be non-acceptable to the community.

Village settlement histories are vitally important to customary tenure because historical antecedents determine property-rights arrangements. Settlement histories are well known by rural communities, though the interpretations of the settlement history vary considerably as a function of who tells the story. Historical accounts are not objective because the recounting of settlement histories serves the interests of the storyteller. Reconstructing the settlement history of a village thus often uncovers many internal conflicts and contradictions within the community.

It is often hard to discern who really is the "first arrival" because so many migratory waves have swept through The Gambia due to political crises, wars, famines, and ecological factors such as declining soil fertility in the home villages. For this reason, a public policy to convert customary rights to land to a 99-year leasehold is fraught with dangers because numerous claims to the same piece of land will most likely occur.

Tenure and the role of traditional authorities

The tenure arrangements of rural communities of The Gambia are flexible and constantly changing. Village authorities create and re-create land tenure systems on a continual basis. This flexibility is possible because the authority of traditional leaders involved in land allocation issues is to a large extent still intact. In comparison to other countries in Africa, traditional leaders (*seyfolu*, *alkalolu*, councils of elders, heads of extended families) are still actively involved in land use questions. Local leaders actively search for ways to respond to the complexities of a rapidly changing physical and social environment.

In traditional and long-standing Gambian villages, heads of extended families, or lineages, hold land in trust for use by qualified members of the family. Traditionally, each year the lineage heads negotiate among themselves the allocation of different tracts of land to members of the community. Land is loaned out between and within lineages in order to facilitate the functioning of bush-fallow rotations or ease collective protection of fields against marauding wild animals. This practice, however, is disappearing in some areas. Land shortages in some cases is so great that there is not enough land to allow bush-fallow rotations.

The authority of elders remains strong in most of the case study villages visited by the Working Group. However, signs are visible that the younger generation and newcomers to the communities are challenging the powers of the elders. Elders complained that individual members of the lineage tend to assert long-term rights to discrete parcels for fruit orchards or gardens. This gradual individualization of tenure reflects how the tenure system in some communities may be evolving towards a better-articulated private property system of land-holding.

The Working Group research team found that land use control is vested primarily in the heads of lineages. The largest land owning lineage may happen to hold the alkaloship of a village and possibly the position of *seyfo* at the district level. District tribunal members are often

the members of the oldest and best established lineages in the community. These influential representatives may grant land to newcomers upon consent of other family members. This finding contradicts the view embodied in the Land (Provinces) Act that land use control is vested in the district authorities. From the perspective of respondents interviewed for the Working Group case studies, district authorities do not have the right to allocate land unless consent is obtained from the land owning lineage.

The Working Group research teams found that *alkalolu* usually respected the principal that control over land is vested in the lineages that first settled in the community. However, considerable ambiguity concerns the authority of the village headman over the commons. Here confusion reigns because some *kabilo* heads interviewed consider parts of the forested commons to fall under their domain while in other cases village leaders feel that the forests "belong" to the forestry department. *Seyfolu* often argued that the commons are the domain of the district authorities and as a consequence they have the prerogative to determine uses of the land. Government can play a key role in clarifying rights to the commons. This would help create the foundation for improved management of these important resources.

Despite these ambiguities, the traditional rural authorities continue to exercise a major role in the use of natural resources and for this reason they must be incorporated into the programs and plans of resource-management projects. It is possible to build upon the environmental knowledge and organizational skills of these individuals. Traditional authorities set and enforce a wide range of rules governing the use of resources. For instance, at the village level, *alkalolu* and village elders influence the use of rainy and dry season pastures. Livestock owners hire herders for the rainy season and tell them where livestock may be grazed. Village authorities also determine the dates in which livestock may be set loose to graze freely on crop stubble during the dry season. Various fines and sanctions enforce the rules devised by the community. The traditional authority structures enforce the practice of *tongo*, determining the use of particular resources (see box 7: Description of *Tongo*).⁶

Development programs and projects can build upon this rule-making capacity to construct arrangements to manage natural resources on a sustainable basis. Traditional authorities in The Gambia possess the means to devise and enforce rules regulating the use of natural resources, an asset critical to the establishment of, for instance, common-property regimes around forests or inland fisheries. Participatory planning should incorporate integrally traditional authorities into the design and implementation of these types of resource-management projects.

Variety of rights holders: primary and secondary rights

Within the customary tenure systems of The Gambia, transfers of rights to land can be distinguished between a transfer of *primary* rights and an assignment of *secondary* rights. A

⁶ Gray reports in *History of The Gambia* that *tongo* was used by groundnut growers during the early twentieth century as a producer's cartel in order to obtain higher prices from merchants. The practice was severely condemned by the colonial administration.

primary right is secured through original settlement of unused land or through direct allocation of land from the founding lineage to the group member, normally the male head of a household. This is the strongest right under indigenous tenures because the rights-holder enjoys more or less permanent occupation, has a strong degree of discretion over land use, and can pass

Box 7: Description of *Tongo*

Tongo is a Mandinka term meaning embargo or prohibition. A *tongo* can be placed on activities such as washing dirty clothes near wells or harvesting the fruit of selected domestic or wild trees. These arrangements are found throughout rural Gambia. *Alkalolu* and *seyfolulu* in a district meet to set dates for the *tongo*. Once it has been declared for such species as baobabs, mangos, and locust bean trees, children and young adults are forbidden to pick the fruit. This embargo ensures that fruit will reach maturity. Fines are charged to those who break the interdiction. In Sintet, the family of a youth caught picking fruit must buy a goat and a couple of liters of oil and prepare a meal for the village. After the feast, the offending youth is taken into the bush and thrashed. In other villages, parents pay cash fines to a fund kept by the young people of the village.

along these rights to the land through inheritance without interference from the larger group. Primary tenure is similar to the Western concept of ownership and primary access holders enjoy a high degree of tenure security (Bruce 1988).

Secondary rights are held by a person who has secured agreement from a primary rights holder to utilize his or her land according to mutually agreed terms and conditions. These rights may be granted on a short-term seasonal basis, or they may consist of long-term agreements to use particular resources. Some argue that women in The Gambia are secondary rights holders because they do not control definitively the use and allocation of land. Rights of access to land and other resources is determined by a woman's marriage status. Rights of use accrue to her through her male relatives or spouse. These rights of access to land evolve as a function of her marriage situation. For instance, tradition dictates that the husband obtain land for the wife's use, but once divorced, the woman returns to her family and seeks from her father or brother land for cultivation.

Other forms of secondary rights holders are found throughout The Gambia. Women oyster collectors from Senegal seasonally migrate to villages situated near mangrove swamps in order to harvest oysters. Following the droughts of the early 1970s and early 1980s, Fula from neighboring countries have settled near Mandinka and Jola villages to care for the livestock of their hosts. Eventually, many of these Fula become permanent residents of the community and acquire fairly firm rights to land. A wide array of restrictions are placed on secondary rights holders. Frequently it is forbidden for nonresidents of a community to plant trees, an act that is considered a prerogative of those holding primary rights.

Diversity of ways to transfer rights to resources

Indigenous tenure systems historically prohibited the alienation of land to persons outside the lineage since this would diminish future opportunities and equitable access for family members. The most common means of transferring primary rights in land is through inheritance. A deceased person's rights are distributed among heirs according to local inheritance rules.

Inherited land can be further grouped into two categories, divided and undivided. *Undivided inheritance* land is typically held by a multigenerational extended family and has not been apportioned for the exclusive use of smaller family units. By comparison, *divided inheritance* land has been allocated for exclusive use and is cultivated by individuals within each smaller family unit. The Working Group case studies showed that the trend is presently in place for land to be divided among family members for exclusive use in areas of high population density.

A less common method for transferring primary rights in land is through *inter vivos gifts*, in which rights to land are permanently given to another person. Mandinka and Jola women sometimes receive gifts of prime rice lands from their parents. These gifts may then be handed down by the women to their daughters or sons.

The *sale* of land, which transfers primary rights, has evolved as one mechanism to secure rights to land and other natural resources, though this type of transfer is relatively infrequent in rural areas. However, recent Land Tenure Center research in the villages near Banjul indicated that a land market is rapidly developing (Roth, Carr, and Cochrane 1994). The seller must secure the consent of relatives, whose permission is not easily obtained since inheritance may be the only effective means by which family members gain access to land in areas experiencing land shortages. Acquiring unanimous or near-unanimous consent is difficult, and purchasers may have to contend with counterclaims for years after purchasing a tract of land (Saul 1988).

Secondary tenures are important modes of access to land and other natural resources in The Gambia. Founding families possessing firm rights to land will be increasingly pressured to transfer rights of access to secondary holders as land becomes more scarce and valuable. In other cases, primary rights holders are transferring secondary rights in the following fashions:

Borrowing. Land is loaned out by the landholder under mutually agreed terms. Although traditionally there was often no payment made, a symbolic payment is usually now required. Kola nuts and cash are used as forms of payments. Use is typically limited to annual crops, though it is not uncommon for such an arrangement to be inherited by the borrowers' successors. The case studies conducted by the Working Group noted the widespread prevalence of land borrowing within villages and between villages. Borrowing of land is done by both men and women (see below for further descriptions).

Pledging. The landholder allows the use of some land in return for one lump-sum payment in advance. The understanding is that the land reverts to the landholder upon repayment of the pledge price. In the past, a landholder accepted an in-kind payment in return for letting the pledger use the land, but now a cash payment is usually expected. Pledges are often heritable. Pledging often occurs around exotic species of trees. In the Foni Jarrol District, Gambian and Senegalese merchants pay a lump sum to the owner of mango trees for the exclusive right to harvest and sell all the fruit.

Rental. As land is becoming more scarce or valuable cash crops are introduced in The Gambia, token payments to holders of primary rights by borrowers are being transformed into cash rentals. In current rental arrangements, a cash payment is usually made to the

landholder in return for use of the land. Although rental contracts between two parties may span decades, they are generally renegotiated annually. Rental agreements often specify certain restrictions, such as bans on planting trees or constructing permanent physical infrastructure.

Sharecropping. In response to the increase in land values and/or the introduction of cash cropping, landholders with insufficient labor can establish cash crops (annual or perennial) by exchanging the use of a tract of land for a share of the crop produced. For agricultural output, this arrangement is negotiated on an annual basis, though the same person may sharecrop a given parcel for many years. When dividing tree crops, the sharecropper either retains a portion of the annual harvest or gains ownership rights to a fixed number of trees until the trees stop producing. These arrangements are increasingly used as a method for women to acquire access to rice growing lands. Fula women of Kampassa, for example, go to neighboring villages of Senegal and give to the owners of the rice fields D10 to D50 per field plus 10 to 20 percent of the rice harvest in exchange for the right to cultivate.

Diversity, flexibility, and resiliency of customary tenure systems

The case studies conducted by the Working Group and the field research of the Law Reform Commission indicate that there is no single customary tenure system in The Gambia. Variations exist between Mandinka, Jola, Fula, and Wolof tenure systems, though they generally share the common characteristics described above. The particular bundles of rights to land and other resources are influenced by such factors as geography, gender, ethnic affiliation, age and marital status.

The existence of various types of land transfer arrangements is a testimony to the flexibility and adaptability of indigenous tenure systems in The Gambia. Tenure arrangements shift constantly: borrowing arrangements become sharecropping arrangements in some areas as a response to the increase in the value of land; in some places, like in the Foni Jarrol and Sami District, farmers have abandoned groundnut cultivation and in these cases the family holdings are reverting to an open-access regime as bush engulfs the once-productive fields.

The flexibility in land transfer mechanisms helps to maintain peace and stability in rural areas. The Working Group did not sense that rural landlessness is prevalent because those in need of land for cultivation generally find ways to borrow land. Pockets of severe land scarcity do exist, for example, as described in the Upper Baddibu and Sandu District case studies. However, for those that choose to remain in rural areas, land can usually be obtained for cultivation on at least a short-term seasonal basis. Young people migrate out of rural areas on both a seasonal and permanent basis, but the Working Group found that this is due primarily to better employment and revenue generating opportunities in urban centers in The Gambia and overseas.

The Working Group research teams found that there are vacant and unused lands in some of the case studies. This was most apparent in the Foni Jarrol and Sami District Case Studies. While this land appears to be without owners, in reality numerous latent tenure arrangements

exist. Land has been abandoned for cultivation in some parts of The Gambia (most notably on the South Bank) because economic incentives no longer stimulate agricultural production. This is especially the case with the groundnut sector. Seed shortages, lack of inorganic fertilizers, low crop prices, labor shortages, and erratic rains undermine farmers' incentives to clear and cultivate land suitable for groundnut growing. In these situations of land abandonment, private property arrangements atrophy. Since no one cultivates, the bush invades the former fields. The forest of fast-growing pioneer species becomes a forest commons of the community.

If for some reason, the value of land increases, rights to the resource may become activated, sometimes resulting in conflicts. For example, when an individual or group decides to plant trees or construct a well on what they think is unoccupied land, one often finds that long hidden property rights arrangements suddenly surface. Similarly, if farmers shift labor into the cultivation of food crops like sorghum requiring more humid lowlands, these lands suddenly become much more prized. A project may attempt to implement a fenced-off grazing zone in what it thinks is a forest common controlled by no single village. At these moments, property rights must be redefined by the community in order to avoid major tenure conflicts.

The re-emergence of claims to property by contending interest groups usually leads to some type of process, sometimes led by the district authorities, to clarify the property rights status of the contested land. Expert witnesses, usually elders of land-owning lineages, are brought in to recall the history of land use in the particular area. Through this use of history, traditional authorities negotiate new tenure arrangements that often allow secondary rights holders access to land for a specific period of time and a particular use. This process of redefinition of tenure arrangements is a positive feature of customary tenure.

The customary land tenure systems benefit not only rural citizens of The Gambia, but also vulnerable populations immigrating to the country. Refugees from conflicts and droughts in neighboring countries have obtained land for cultivation. Sometimes these refugees become permanent residents of Gambian villages. However, outsiders may face more initial restrictions on their use of land than local farmers. The history of "strange" farmers in Gambia and Senegal shows that these nonresidents become eventually permanent residents by virtue of marriage to members of the community. Through marriage secondary rights holders can change their dependent status to become primary tenure members.

The customary land tenure regimes of The Gambia are remarkably resilient. The central precepts of the tenure system tend to remain in place despite changes in legislation or administrative practice. Rural populations retain a certain confidence that customary tenure systems may well outlast current government policies and projects. As a member of a district tribunal summarized to a Law Reform Commission team:

The rice fields belong to the villages of Jahally and Pacharr, however, other surrounding villages are benefitting and using the rice fields during the lifetime of the project. As a result of this the population of this area has increased two-fold. But we all know that once the project comes to an end, the land will revert to the two villages which are the original owners (Law Reform Commission 1992, p.3).

2. Rights of Women to Land and Other Natural Resources in Customary Tenure Systems

For the majority of Gambian women, access to land is largely conditioned on the social status of her husband or, in the case of single or divorced women, conditioned on the status of her immediate family relatives (see box 8: Rice Field Allocation in Dumbutu). Marital status is a crucial factor in the determination of whether or not an individual will have access to and/or control of land. The question of gender and tenure must also be considered in light of who controls women's labor and access to farm inputs such as tools and credit.

As part of the research process undertaken by the Working Group and by Nancy Sheehan, Land Tenure Center research associate, meetings were held with various individuals and focus groups to discuss the merits and constraints of The Gambia's "patrilineal property system." The primary justification given for the maintenance of this system (land should be inherited only by sons from their fathers) is that since daughters leave the family of their birth when they marry into their husbands's families, they would "carry away" the family lands if they owned land: family lands would be given to another family.

Another justification for this system (and thus, why women should not own land) is that land is owned collectively by the family—no one person can own land; the very question about particular women owning land; as some argued, is, therefore, misguided (in light of this stated collective ownership). However, contrary to this perception that land is family-owned, there is a growing sense among individuals that in fact women have inheritance rights over particular parcels of land. Discussions with men and women migrants to urban areas show that they believe they do have inheritance rights over particular parcels of their fathers' lands. Land rights are being progressively individualized in The Gambia, especially on high value land. The issue is whether women obtain equal rights of access to this important resource.

Custom dictates that male relatives are obligated to make land available to women; this is one of the reasons why Gambian men claim there is no need for Gambian women to own land. Indeed, villagers—men and women alike—often claim that women will be taken care of by their husbands, fathers, or brothers. The results of research by the Working Group, however, indicate otherwise. The access to land of those women who do not marry into landowning families, or who eventually become divorced, is tenuous at best. While these women can return to their fathers and brothers to borrow land, they are frequently lent less fertile land or land located far from the village settlement. The best lands within these women's family of birth are usually reserved for the sons and brothers and the wives of those sons and brothers.

Tenure disputes increasingly revolve around issues of women's access to land. Women may try to obtain prime lowlands for dry-season gardening, but find that male heads of lineages will not loan out the land. Gender conflicts over horticultural land have now been documented quite extensively (Carney 1993; Schroeder 1993). In several of the Working Group studies, women's *kafo* groups cultivating communal fields complained that they do not invest in the purchase of fertilizer because the borrowed land would be taken back the following season by the landowner. In another case, a women's garden was financed by a nongovernmental

organization, but the land was taken back by the landowner once the well and fence were built. Women in Darisalami (Sandu District) encounter difficulty in obtaining manure for fields because the scarce supply of manure is provided first to the fields of men. Similarly, women also have difficulty obtaining access to farm implements (horses, plows). Even though many projects target women's groups for credit and farm equipment, these resources can be expropriated by men. For example, men will share equipment, but only after all of the men's fields are cultivated.

Box 8: Rice Field Allocation in Dumbutu

A woman in her late forties, Mrs. X, lives with her husband in the compound known as X *kunda*. The X *kunda* is within the ward of the Y *kunda kabilo*. This rainy season, Mrs. X plans to grow swamp and upland rice, maize, and sesame. Mrs. X plans to cultivate five rice fields: one in an area called "Daloto," two in the "Wulong Bango" area, and two in the area called "Manneh Koito." The management of the fields is not carried out in the same fashion. Four fields are *suba* fields and one is a *patchico* field. The *suba* fields are cultivated by a mother, her unmarried daughters and her daughter-in-laws. Each co-wife manages her own *suba* fields. The *patchico* fields are managed by the women individually and the harvested rice is used at her own discretion.

Mrs. X received her two *suba* fields from her husband at the time of marriage. Her husband inherited these rice fields from his father. Because he came from a large family, Mrs. X's husband only inherited a small amount of rice land. As a result, his fields are not large enough to support the requirements of Mrs. X's family; every year Mrs. X must borrow land for rice cultivation (Kiang West Case Study).

Gender related tensions are high, though often hidden from the cursory view of outsiders, because traditional social obligations and responsibilities are breaking down. The popular perception in many rural communities is that male relatives will always fulfill their obligation to provide land to their female relatives (e.g., sisters, daughters, wives). There have been several cases which have reached the Supreme Court where women have protested the violation of this obligation. In some cases men view this contestation as a "political" act because the high court fees are paid for by women's associations, some nongovernmental associations, and other undetermined sources. During interviews, women have stated that their husbands can not and have not always provided land and food for their families. This fact has forced women to seek employment outside of the village and to purchase land as a safety valve. The exceptions to this oft-cited custom raise questions concerning women's land security in rural communities.

For divorced women it is often difficult to obtain land once she has left her former husband's household. The norm is for the divorced woman to return to her father's compound. It is there that she is to obtain land to subsist on until a time when she becomes married again. In some cases, however, the divorced woman may face a situation where good land is at a premium in her father's compound-the best land having been allocated already to the wives of the divorced woman's brothers. Also, the woman may not choose to remarry. One hope for divorced women is to lobby that her children should receive a share of her ex-husband's land. Court cases over the custody of children thus have a bearing on women's access to and control of land. In some cases, a divorced woman may retain access to land she had been using during her marriage if her ex-husband gives the land parcel(s) to their children. How district tribunals

decide custody cases can be of critical importance to these divorced women. There are indications that district tribunals favor the granting of custody to fathers and not mothers. This bias not only has implications for divorced women's access to land but also the social welfare of the children involved in these divorce cases.⁷

Wives contribute money to the "development" and construction of the family compound (eg. sheet roofing, cement, furniture, well).⁸ Frequently, however, only the names of their husbands appear on official documents (e.g., certificates of ownership and leases). Some women interviewed expressed frustration; yet they do not necessarily have tenure rights to household property. In the case of divorce, the wives who contributed to the compound will receive no compensation and no recognition of their monetary contributions if maintenance (i.e., alimony) is in dispute. Also, women who have invested in compound development often do not have receipts. Lacking proof of their ability to generate revenue and make investments, these women cannot offer creditors and bank officials documents necessary for receiving loans. This situation does not help bring women into the formal banking system.

Landless women can borrow land from other unrelated villagers or, sometimes, from neighboring villages. Again, it is important to consider the location and relative fertility of the land these women receive from such borrowing arrangements; borrowed land parcels are frequently located far from the women's settlement area. Land shortages are so great for some women in rural areas that they are forced to pay rent for access to rice lands. Fula and Jola women in Kampassa (Foni Jarrol District) pay rent and a portion of the rice harvest in order to obtain land in neighboring Senegal. In Maka Farafenni (Upper Baddibu case study), Bambara women invest in alternative income generating activities because they cannot obtain access to land in this area of severe land shortages.

The field research of the Working Group estimated that sixty to ninety percent of small ruminants and fifty percent of cattle are owned by women. For women, who may not be able to "own" land, livestock ownership thus represents a significant asset and means of savings. However, the rate of small ruminant and cattle theft is high. For example, it is not unusual for a woman to report that out of the three goats and two sheep she owns, two will be stolen. While cattle theft receives some of the attention of law enforcement agents, small ruminant theft is a relatively neglected problem.

Women often have different interests than men in the use of natural resources and sometimes these are ignored in project design and implementation. Women have been given relatively minor roles in government and NGO-initiated resource-management institutions at

⁷ The Department of Social Welfare has interceded on behalf of women in custody cases. The Department will assist women in bringing their cases to magistrate courts, although this is not legal.

⁸ This contribution, of course, does not include the monetary value of women's household labor, which equally develops and maintains a compound.

the village level. Women may influence indirectly community decisions regarding the use of say, a village woodlot, yet there is no certainty that men will represent their views in community forums. This is particularly evident with regards to the management of the commons. Women depend on the commons for the collection of a wide array

Box 9: Women Oyster Collectors

Since the early 1980s, women originally from Karoninka, Senegal, have journeyed to the Kiang West District to spend the dry season collecting, processing and selling oysters. The Karoninka women lodge with families in the various villages along the *bolong*. Instead of paying rent to the host families, these women exchange oyster shells for their room and board. The oyster processing points along the river serve as easy collection points for the collector's hosts to collect the disposed shells. These shells are an important source of lime, an ingredient in whitewash, cement, and plaster. The oyster collectors and their host families are fearful of losing rights of access to the mangrove swamps due to the presence of the Kiang West National Park (Kiang West Case Study).

of products. Restrictions on women's access can have severe repercussions for household incomes (see box 9: Women Oyster Collectors).

Projects often grant management control to men for forests and woodlots, yet women derive primary benefits from the resource. As the Working Group report from Upper Baddibu District concluded, "In Maka Farafenni, the woodlot management was charged to the men, who have less of an interest in its productivity than the women, who are responsible for firewood collection. Subsequent assistance to the woodlot should perhaps be channeled through the women rather than the men, as was done initially" (Upper Baddibu Case Study). Development projects will need to address very explicitly the question of how women use natural resources and whether they have a say in their future uses.

One of the most contentious issues is that of gender discrimination in sale of land administered by the traditional authorities in the Greater Banjul area. Initial research indicated that many *alkalolu* in the peri-urban areas feel that if they allow married women to purchase land without the consent of their husbands then divorce will ensue (which is a negative occurrence in their opinion). They also discourage single women from buying land. If these attitudes continue to prevent women from owning land, then, again, women's future economic and social security will be handicapped.

Women are encountering difficulties purchasing leases. The experience gained so far bodes ill for the conversion of customary tenure systems to leaseholds. Women may be excluded from the possibility of securing title to land. There has been gender discrimination in selecting applicants for grants of land in new urban "layout" areas. Land administrators view women applicants as less able to develop a plot of land. As one government official responsible for overseeing the granting of land remarked to the LTC researcher: "We advise that only 3 out of 100 land grants be made to women because we think they will be less likely to develop a plot of land." Likewise, discussing the issue of women applicants to land grants in one of the urban growth areas of The Gambia, one commissioner stated: "We all know that women have a minor role to play in the allocation of land and the management of land...but I am all for equal rights...but if women want equal rights they should be equally responsible for

development...(therefore) I would need to be convinced that a particular woman is in a position to develop the land...I know most of them (women) here and they could not even afford to build a hut...I just laugh when they come in here all sophisticatedly dressed."

Unless precautions are taken in the near future, the application process for obtaining leases of land will remain open to subjectivity, attitudinal biases, and discrimination. Discrimination against women could severely handicap women now and in the future. For example, women may find it difficult to obtain loans from banks. This concern was echoed by the representatives of several banking and small credit organizations. For example, one project focuses on the improvement of women's access to credits and loans. This project hopes that by providing loans of small amounts to women, women entrepreneurs will be able to build their businesses and eventually enter the formal banking system. If women do not have secure access to important collateral such as land and compounds then this factor will surely handicap them in their eventual entry into the formal banking system.

3. Land borrowing and the sustainable use of natural resources

Land distribution within Gambian villages is not equitable. For instance, the Working Group research teams found that the size of land holdings between *kabilos* in Mandinka villages varied considerably. Even within the extended family, size of holdings varied greatly among the *kunda* or compounds. Certain families, generally those among the first arrivals in the community, possessed the greatest amount of land. Newer arrivals generally obtained from these first arrivals much smaller amounts of land. In some villages, a rather strange anomaly surfaced. The largest landholding families often had the smallest labor pool available to cultivate. Indeed, some of the economically poorest extended families were those that had the largest land holdings. As a result of the inequalities of land holdings among families, much borrowing takes place. Those who loan out land sometimes profit from the venture through the receipt of gifts, cash, and services.

Complex borrowing arrangements among villagers is an essential feature of bush-fallow rotation systems. In the Kiang West and Sami District case studies, the Working Group teams found that villagers decide jointly to farm all of their fields together as a strategy of defense against wildlife infestation and as a way to promote soil fertility. After farming on one part of the village's fields, the entire group of cultivators moves collectively to another section of the village territory while allowing the fallow area to be used for rainy season pastures.

Borrowing arrangements support intricate rotational cropping systems. For example, men and women farmers borrow land in order to rotate millet fields with groundnut fields and to fallow other fields. This helps maintain soil fertility. Through flexible borrowing arrangements, stranger farmers and new settlers can obtain land to cultivate and to settle without paying exorbitant rent prices. In return, some stranger farmers are required to work on the fields of their hosts. Stranger farmers in Dumbutu are given fields on the perimeter of the cultivation area-the result is that their fields protect to the fields of their hosts from bush pig attacks. Borrowing of rice lands is an essential feature of Jola and Mandinka rice farming systems. Land

is constantly being transferred from one woman to another in order to meet seasonal demands for plots that change as a function of household labor availability and soil fertility considerations.

The research showed that founding families possessing surplus lands face a moral responsibility to loan out land on a permanent basis to those in need. This moral authority is very persuasive. District tribunals, *seyfolu*, and *alkalolu* constantly negotiate ways for those in need of land to obtain adequate plots for seasonal cultivation. Concepts of social justice in rural communities are premised on the requirement to loan out land to whomever has the means to cultivate. Land borrowers, be they strange farmers or residents of the rural community, have a responsibility to be good neighbors. Land lending hinges upon the assessment of the lender that the individual is in good standing within the village. Deviants or other troublesome individuals can lose borrowing privileges and even be expelled from the village.⁹

Conflicts often surface over the conditions of loans of land. A villager may ask for an informal loan of a plot of land for cultivation from one of the principal land owning families in the community. If the land is farmed successively for several seasons by the borrower, the borrower might try to secure rights his rights to the land by investing in infrastructures such as a well, trees, or fencing. The landowner considers this to be a major transgression and appeals it through various informal and formal adjudication channels.

Certain groups of women and men who have tenuous usufructuary rights over land (who are always land borrowers) face particular difficulties in planting trees and in establishing and maintaining garden-orchards. For example, in one village case study, the women's *kafo* was lent a plot of land for a garden. After several years of gradually building the fertility of the soil and reaping better harvests, the landowner decided to take back the land. In another village studied, women are able to borrow land for a *kafo* field, but hesitate to invest money in the use chemical fertilizers because the landowner only loans land on a seasonal basis.

This impediment need not be permanent. Public discussion in a village around the problems of land borrowing may remove possible tenure constraints to tree planting. Villagers can be assisted in negotiating written and witnessed contracts amongst each other spelling out the use of the land for specific periods of time. This is particularly important for women. Land-use contracts need to be negotiated which will ensure that women can use a parcel of land for gardening yet that the landowner does not lose rights of possession definitively.

The Working Group research teams are concerned about the impact that a policy to convert customary tenure to leaseholds may have on flexible borrowing arrangements. During the transition phase from customary tenure to leaseholds, landowners may be fearful of loaning out land because of possible litigation launched by the borrowers. This could have dramatic

⁹ However, what is considered a moral or a social obligation changes. Principles dictating what is just can falter-as can be seen in the Sandu District case study. Conflicts arise as these principles change (Sheehan, personal communication).

effects on agricultural production if the rural labor force short of land finds it difficult to obtain short term loans from major landowners.

4. Causes of resource tenure conflicts in The Gambia

Conflicts around natural resources in rural Gambia are a constant characteristic of rural life. Studies on the incidence, causes, and mechanisms for dispute resolution are few in The Gambia¹⁰ and for this reason, the Working Group on Resource Tenure and the Law Reform Commission focused on this sensitive issue. The study of conflicts in rural areas of The Gambia is not easy. Rural respondents often hesitate to discuss conflicts since they suggest a disharmony and an inability of local institutions to adjudicate tensions and disputes within the community. People hesitate to discuss the details of what is often considered to be a rather sensitive if not distasteful subject. The Working Group case studies nevertheless interviewed key village decision makers (*alkalolu*, *imams*, *kafo* leaders) to discuss the incidence and reasons for disputes in the case study villages. Following these initial interviews, the research team also conducted semi-structured interviews with the district tribunal members of each of the case study sites. "Conflict matrices" were developed with each of the district tribunals.¹¹

It is often assumed that conflicts are the consequences of dysfunctional customary tenure systems. For some policymakers the existence of numerous rural conflicts, sometimes very violent in nature, justifies the need for major land reforms. Leasehold or freehold tenure systems are assumed to generate less conflicts than customary tenure systems. Another way to view conflicts and conflict-mediation processes is to consider how dispute resolution leads to change within tenure systems. Through the mediation process, old rules governing resource use may be abandoned and new ones instituted. The resulting restructuring of tenure regimes may result in changes of the social status of the contending members, something that may or may not be judged equitable and fair. The outcome of the dispute-resolution process must be judged on a case-by-case basis.

The Working Group case studies suggest that tensions between individuals or groups leading to either informal or formal adjudication is the result of a rapid change in the value of a particular natural resource. The resource in question may suddenly increase value due to

¹⁰ The Law Reform Commission of The Gambia conducted in-depth semi-structured interviews with five district tribunals (Kombo Central, Fuladu West, Niamina, Central Baddibu, Foni Bondali) to look into how conflicts reaching the court were handled. This rural study complemented a review of all the court cases pertaining to land matters handled by the Supreme Court and the Appellate Court between 1988 and 1993. This study of court records was complemented by a review of the Kanifing and Banjul Cadi Courts (Law Reform Commission 1994). A final report is being prepared by the Law Reform Commission.

¹¹ This is a tool of the Rapid Rural Appraisal research methodology in which a focus group is asked to list the main types of conflicts in the community and then rank them in terms of their frequency.

external economic demands. This is certainly the reason why lowland depressions useful for horticulture and fruit tree orchards are presently the source of numerous conflicts between contending interest groups in many parts of The Gambia (Carney 1993; Schroeder 1993). As the value of the resource increases, various interest groups try to claim it. Previous tenure arrangements are often called into question as the interest groups vie for access to the resource and its benefit stream. Various legal traditions (western, Islamic, customary) are brought into play to try to defend the competing group's rights to the resource.

The causes of disputes over natural resources are varied and difficult to interpret. For purposes of analysis, disputes over natural resources may be categorized in the following fashion.

Conflicts within villages

The review by the Working Group research teams showed that conflicts in rural community occur around a wide range of resources. Often confrontations occur between those who hold "primary" rights to natural resources and "secondary" rights holders such as borrowers or sharecroppers. Tensions often surface when secondary rights holders try to render more secure their rights to a particular resource. Conflicts span across many social categories. Men and women are sometimes pitted against each other over the control of land for horticulture or irrigation. Conflicts over resources can also be a source of, or a result from, marital problems. Thus, the amicable resolution of marriage, custody, and divorce cases also contributes to change in tenure systems and/or the maintenance of tenure systems. Conflicts are generated when the elderly leaders of communities want to sell land in peri-urban areas whereas the young, fearing permanent dispossession, oppose the sale.

Disputes occur around trees for a wide range of reasons. Traditionally planted trees indicate ownership of the land on which the tree grows. When uncertainties over inherited land are being considered, the act of tree planting by predecessors is an important element in determining who "owns" the land. Long-term residents of a village might try to plant a mango orchard on what they consider to be their land, but they find that traditional landowners consider this to be borrowed land. The traditional owner of farmed land may allow anyone to pick fruit and leaves from the valuable species for home consumption, but when someone picks fruit for sale in the market, the owner steps in to forbid harvesting. This may lead to a major conflict between the landowner claiming exclusive private rights to the tree and the picker claiming that trees are public property and hence a resource open to use by all.

More serious conflicts surface between owners of livestock and cultivators as a result of livestock damage. Crop damage to field crops or gardens may be considerable, especially during the harvest seasons. Disputes not only rise in frustration over the damage caused by livestock, but also with regards to compensation for crop damage. Women in Karantaba (Sami District) feel greatly aggrieved because a cattle track passes near their rice fields and cattle enter into the fields during market days when herders sneak off to the market rather than watching the cattle. Despite numerous appeals to the *seyfolu* and the district tribunal, women rice farmers have not been able to obtain adequate compensation or halt the intrusion of cattle.

The wide variety of easily identified conflicts often reflect a deep history of latent conflict among resource user groups. What would appear to be a straight forward dispute over conditions of compensation for livestock damage may turn out to reflect deep seated conflicts reaching back many generations. A dispute over the location of a cemetery reflects much more profound land problems (see box 10: Cemetery Dispute in Darisalami). A lineage tracing its origins back to settlement in an area hundreds of years ago may still possess considerable control over the use and allocation of rights to large expanses of land. Interests of first settler families may be quite different from households of farmers who migrated from Mali during the height of the groundnut growing era and who now seek to make permanent their claims to land.

Conflicts between villages

Conflicts between villages surface for a variety of reasons. The boundaries of village territories are sometimes vague and left deliberately so in order to avoid conflict over territorial limits. Forests and bush lands between villages are sometimes left uncultivated because they have been the object of conflict in the past. As pressures to expand land under cultivation rise in many parts of The Gambia, these remaining open spaces become increasingly valuable for field crop cultivation. Rural institutions encounter difficulties in determining territorial rights of access to these commons.

Tensions between the villages continue to this day over lands highly valued for rice cultivation. Some of these disputes reach far back into the past. The conflict over loans of land between Jattaba and Sankandi (Kiang West District) was one of the central factors leading to the attack by the British colonial forces on the villages in the late 1800s. The wounds of this battle are still evident in the communities (Jammeh and Sheehan 1993). Conflicts over rice lands continue among these and many other villages. The various sub-sections of Karantaba (Sami District) contest the ownership of rainy-season rice fields converted to year-round irrigation by development projects. Project management imposed new tenure arrangements that turned out to benefit land scarce households. Now that the irrigation project has failed, these project tenure arrangements are being called into question. Tensions run high, even though the contesting parties succeed admirably in hiding the dispute from the view of outsiders.

Villages are often divided into separate administrative entities headed by different *alkalolu*. Relations between the different sections of these villages are sometimes extremely divisive and threaten to explode into violent confrontations. The dispute over the location of a cemetery in the village of Darisalami (Sandu District) reflects not so much the question of where to bury the dead, but more importantly, a very deep conflict over the use of lands needed for cultivation. This conflict pits Mandinka first settlers against the newer arrivals, the Serahuli. A dispute in the village of Sintet over the level of water allowed to flow into a rice field may be traced back to tense relations between lineages that have long contested political authority in the village (Foni Jarrol Case Study).

Box 10: Cemetery Dispute in Darisalami

Darisalami (Sandu District) consists of three sections: Serahuli communities live in Taxotala and Bulembu while Mandinka live in Sandu Darsilami. In 1976 the village decided to bury their dead in the same cemetery. This arrangement only worked for a short time. Many Serahuli died afterwards in rapid succession. It was thought that the communal graveyard was the site of evil spirits. The Serahuli decided to bury their dead in their backyards. Eventually, the Serahuli decided to ask the Mandinka of Sandu Darsilami for land for a new cemetery. Land was allocated by the *alkalo* but the customary owner refused to cede the land. This refusal caused a major dispute. The Commissioner entered into the fray and used his powers to grant the disputed plot to the Serahuli. Tensions are now very high. The Serahuli and Mandinka no longer pray together, Serahuli do not draw water from the Mandinka side of the village nor use the village dispensary found there, and most seriously, Mandinka lending of unused land to Serahuli has come to a halt. Community development has reached an impasse (Sandu District Case Study).

Conflicts between villages and nonresidents

Tensions often exist between long-term residents of rural communities and nonresident resource user groups. Communities studied by the Working Group exhibited the common characteristic of being fearful of losing territorial control over the exploitation of natural resources. In most villages, the complaint was heard that non-resident woodcutters were invading the village territory and cutting down valuable species of trees. Fula who use the leaves of the *keno* tree for livestock forage view with alarm the fact that woodcutters cut down live trees for firewood and termite resistant poles sold in the urban markets. Villagers felt helpless to combat the problem because they feel they have no legal authority to halt the use of forests by woodcutters often possessing permits issued by the forestry service (see box 2: Forest Commons of Sintet).

Similarly, cattle theft is a major problem in some districts. It is often difficult for villagers to protect cattle from theft by fellow Gambians and non-Gambians. This insecurity generates suspicions against outsiders. Transhumance herders from Senegal leading their cattle to better grazing grounds and water sources along the River Gambia generate considerable animosities because the cattle sometimes enter into fields and damage crops.

Conflicts between Villages and the State

Rural communities are many times pitted against the state over the control of natural resources. Communities may have sorrowful memories of the reduction of rights of access to land following the creation of forest reserves and national parks. Tensions around the Kiang West National Park are high among some villages because they have lost rights of access to certain resources in the park. Hunters, for example, can no longer hunt and thus they have lost a source of livelihood. Livestock owners in Dumbutu resent the loss of access to prime grazing lands to the three fenced-off Forest Parks and the Kiang West National Park. Women oyster collectors in Dumbutu fear they will lose access to mangrove swamps, a fear magnified by their

loss of access to oyster shells now used by government to make whitewash for the park headquarters.

Tensions between the state and rural communities are emerging over the creation of the new Kiang West National Park. Villagers resent the fact that bush pigs proliferate in reserves yet venture into nearby fields to decimate crops. No compensation is offered for the destruction of crops despite the fact that national parks may potentially generate considerable tourist revenue for the state. These tensions must be addressed soon or else rural populations will sabotage the park. Poaching and setting of forest fires are but a few of the many tools of resistance used by rural populations throughout Africa.

The most overt form of conflict between rural populations and government involves bush fires. Villagers are frequently fined and imprisoned for setting fires. Catching and bringing to justice the perpetrators of fires is difficult. Fires are deliberately set for a number of reasons. Sometimes fires are simply due to accidents caused by a farmer clearing a field, but on other occasions, bush fires are expressions of political acts.

Other types of conflict between the state and rural communities are more subtle. District tribunal members remarked on several occasions to the Working Group research teams that government policy prohibiting the creation of new villages and the expansion of fields into woodlands is seriously compromising agriculture. Without access to inexpensive sources of fertilizer needed to maintain soil fertility, farmers are forced to return to bush-fallow rotation systems, yet there is not enough land to allow for adequate rotations.

Conflicts between rural user groups and the state take on many forms. These conflicts are often the source of mistrust that undermines initiatives to build cooperative resource-management arrangements. Government must acknowledge the source of these misunderstandings and try to respond to the complaints. Otherwise, it will be very difficult to build the cooperation needed to protect and ameliorate the use of natural resources.

5. Tenure conflict-resolution mechanisms

Conflicts around natural resources are resolved at several different levels depending on their complexity. Conflicts are often settled by "first order" conflict resolution bodies-*alkalolu*, councils of elders, religious figures (imams and clergy), *seyfolu*, traditional conflict-resolution bodies (e.g., *saltigi*, *farba*, *nyasingba*), political leaders, and respected merchants. When conflicts fail to be resolved at this initial level, they rise to "second order" instances-the commissioner and/or the police. When these institutions either fail or refuse to resolve the conflict, the contending parties may take the dispute to more formal bodies or "third order" dispute-resolution institutions-the courts. In ascending order of importance, the path of litigation goes from the district tribunal, to the group tribunal, to the Supreme Court and to the Court of Appeals. It is, however, a somewhat false distinction to separate the role of village institutions responsible for resolving disputes from district and divisional institutions. In reality, the people involved in resolving disputes informally at the local level interact constantly with the more formal dispute mediation institutions of Gambian rural society.

First order conflict-resolution institutions

The review of the case studies conducted by the Working Group and the Law Reform Commission suggests that the vast majority of disputes over land and other natural resources are resolved at the household and village level. Relatively few disputes are formally tried through the district tribunal and even fewer resource related cases reach the Supreme Court and the Court of Appeals. Those that do reach these latter two levels are primarily cases regarding land disputes in the Greater Banjul area. This suggests that the dispute resolution institutions in The Gambia are working quite effectively to resolve a wide array of tenure disputes.

The majority of conflicts within villages are considered by the *alkalo*, councils of elders, imams, highly respected women (Traditional Birth Attendants, *ngansimba*), and highly regarded men. Some villages, like Kampassa (Foni Jarrol District) have set up Dispute Mediation Committees of elderly gentlemen to resolve conflicts that break out easily in such a particularly contentious village. In Sandu Darisalami there is a Elder Women's Association that helps to settle quarrels among women. These individuals and organizations are highly successful in enforcing rules, defining customary and religious precepts of justice, and seeking conciliation between injured parties. Respected elderly women try to resolve disputes over kafo membership fees, administration of kafo activities, marriage problems, disputes around wells, livestock damage caused by women's animals.

The success of resolution of disputes at the village level depends to a large degree on the public respect accorded to the *alkalo*, imam, and *seyfo*. The posts of *alkalo* and *seyfo* have been progressively politicized over the years. The democratic practice of majority voting rather than consensus building in the choice of *alkalo* and *seyfo* contribute at times to divisiveness within a community. The respect of elected village leaders may be quite diminished if they have only won their positions through a narrow majority.

Second order conflict-resolution institutions

The state sometimes becomes enmeshed in resource disputes. At times this helps to resolve the tenure dispute, in other instances it exacerbates the problem. New actors are brought into the dispute, ranging from the commissioner and the police to political leaders. The introduction of these actors renders the situation more complex because commissioners and police may try to resolve the dispute using an amalgamation of customary and western judicial concepts enforced by their positions of power. Commissioners are often contacted by disputants before cases are taken to the district tribunal. The commissioners interviewed in the Working Group case study referred the cases directly to the district tribunal rather than entering into the complexities of the situation.

The commissioner oversees the application of customary laws of the district tribunal by reviewing decisions taken by the various district tribunals in his division. He also considers the appeals of any disputant who contests the decision of the district tribunal. The commissioner either upholds the decision of the court or refers it to a higher court for appeal (either the group tribunal or the Supreme Court). Some commissioners avoid passing cases to the group tribunal

because they feel that this encourages appeal in the lower courts where costs are lower. Since it is more costly in terms of time and money to appeal the decision to the Supreme Court, contestants generally prefer to resolve the dispute at the district tribunal.

Third order conflict-resolution institutions

When first and second order institutions fail to resolve conflicts, the contending parties may find that the dispute enters into the third order dispute resolution body of the formal court system. Conflicts over natural resources often start in the district tribunal. District tribunals deal with landownership and inheritance issues, boundary disputes, prosecute people who have lit bush fires, assess compensation for livestock damage to crops, and enforce *tongo* embargoes on fruit tree picking. Resource tenure disputes are but a minor element of the case loads of most district tribunals studied by the Working Group. District tribunals consider cases involving divorce, theft, adultery, fighting, and defaults on loan payments (see box 11: Functions of the District Tribunal).

The case studies indicated that the *seyfolu* and the district tribunal believe that their major role is that of mediators in conflicts. These authorities intervene frequently at early stages of a dispute to try to maintain the peace. The *seyfolu* and district tribunal members go to considerable lengths to try to divert disputes away from the court system. Through informal arbitration and negotiation, these members try above all to resolve disputes amicably.

Throughout the dispute resolution process there is an attempt of *seyfolu* and *alkalolu* to consult with specialists knowledgeable of land issues before taking a decision. Considerable effort is invested in conciliation. Witnesses are brought in to recall land histories, negotiation between the contestants is conducted. If this fails, the *seyfo* is empowered to request that disputants and witnesses swear on the Koran when presenting testimony. This helps to reduce the escalation of disputes.

The magistrate's court is a parallel court to the district tribunal. This court presides primarily over criminal cases. Usually Magistrate's Courts refer land matters to the district tribunals. Sometimes criminal cases can involve natural resource matters such as illegal logging, bush fires, cruelty to animals, and illegal hunting. Land disputes can turn into a criminal case if, for example, contestants are injured. Magistrate's Courts play an important role in trying to deal with cattle thefts. As it now stands, the district tribunals can only impose fines of a maximum of D1000. This is too low for a cow can cost between D1500 and D2500. To circumvent this limit on fines, district tribunals establish rulings on a case and then refer the matter to the Magistrate's Court for the imposition of a more severe fine.

The Cadi Courts play a role in settling land dispute cases, especially as it pertains to inheritance. There are only two Cadi (or Muslim) courts in The Gambia. These courts deal with six types of marriage cases: legitimacy of marriage; fighting between husbands and wives; divorce; custody of children; and child maintenance. The Cadi also deals with inheritances cases of the following nature: intestate succession; inheritance rules; and legality of wills. While the jurisdiction of the Cadi Courts covers Banjul and the Kanifing Municipal Districts, their

jurisdiction, in reality, extends to the provinces. *Seyfolu* and/or commissioners refer cases to the Cadi Courts from the rural areas. (Referrals are made in the following cases: after a district tribunal hears a case and the commissioner decides that the judgement needs to be reviewed by a more learned Islamic scholar and when a case is appealed by one of the litigants. All referred cases must involve some aspect of Islamic inheritance or marriage law.) However, some legal practitioners and the Cadis themselves are of the opinion that two Cadi courts are insufficient to deal with the case load.

Box 11: Functions of the District Tribunal

The customary legal traditions of The Gambia are enforced by the district tribunal and the commissioner. The district tribunal administers:

1. Customary law prevailing in the area of jurisdiction of the Tribunal insofar that "it is not repugnant to justice and morality or inconsistent with the provisions of any Act or other law in force in the Provinces";
2. Islamic law relating to civil status, marriage, succession, divorce, dowry, the rights and authorities of parents and guardianship whenever the parties are Muslim;
3. The by-laws and orders made by a council, minor council, district authority, or the commissioner; and
4. Provisions of any act including any regulation, rule or order made there under which the tribunal is authorized to administer (Chap 6:03, *The Laws of The Gambia*).

6. Role of the judicial system in customary land tenure and the conservation of natural resources

In the common law tradition of The Gambia the courts are a key institution protecting and modifying the precepts of customary tenure systems. District tribunals are important institutions because they embody the essence of the particular customary tenure norms and practices used in a particular district. Each district tribunal constantly tests, affirms, and modifies the precepts of the customary tenure system in the district. Although there is a possibility that this feature simply upholds a system which is beneficial to district tribunal members, it does recognize the validity of the tenure systems of different ethnic groups in The Gambia.

The study of five district tribunal court records was undertaken by the Law Reform Commission of The Gambia. The Working Group also reviewed some of the cases reaching the court. Not all disputes heard by the district tribunal are tried in a formal court hearing, rather, many are settled out of court. The range of cases considered by a tribunal are vast: divorce, disputes over rice fields, debts, fighting, slander, child custody, forest fires, inheritance, crop damage, tree ownership, breaking of *tongo*, unauthorized cultivation, defaults, non-payment of taxes. The tribunals often sit each week, though formal court decisions recorded by the court scribe are rather rare.

For offenses against customary law, a district tribunal may, subject of the provisions of the District Tribunal Act and the Criminal Code, impose a fine or order imprisonment with, or without, hard labor or both a fine and imprisonment, or may inflict punishment authorized by customary law.¹² This gives tremendous weight to the tribunals' judgements.

The judicial system of The Gambia places district tribunal members in the center of environmental debate. Court members possess the powers to modify tenure arrangements to reflect changing social and economic conditions. The Working Group and Law Reform Commission research teams observed how the tribunals are responding to a host of resource use issues. For example, the district tribunals enforce the *tongo* regulating the dates for picking fruit on specified trees. The district tribunal of Kiang West District frowns upon tree planting by land borrowers because this practice can become a source of dispute later on. Yet the tribunal members interviewed in the Foni Jarrol case study recognize the importance of accommodating the needs of land borrowers. Tribunals are deeply implicated in trying to control forest fires through the act of administering fines and prison sentences against those caught setting fires. Courts assess compensation and determine fines for livestock damage to crops, yet at the same time they advise on ways to minimize entry of livestock into fields. District tribunal members try to enforce respect for cattle tracks and corridors to water and pastures.

Land disputes constantly surface. The court case summary in box 12 (Group Tribunal Case Yarbou vs. Jawara) provides a flavor of how tribunal members try to balance the needs of primary rights holders to protect their rights to the land, but also to allow borrowers rights to cultivate.

The district tribunals are key resource- management institutions because they can and do create local-level environmental law by judging cases coming before them. The tribunal members employ a wide array to customary precepts, mixed admittedly with sometimes ill-informed views of national law, to mediate and resolve resource disputes. Higher courts are considering primarily land disputes in peri-urban and urban areas of the country.

D. Tenure "pressure points" in The Gambia

The tenure debate in The Gambia is largely centered on the rather unique land tenure dynamics unfolding in the Greater Banjul area. When the topic of tenure and property rights are brought up in governmental and nongovernmental forums, the discussion usually focusses on the problems of urban land speculation, conflicting ownership claims, and contentious court cases

¹² Punishment must be tempered in that it "shall not be repugnant to natural justice and humanity and the fine or other punishment shall in no case be excessive but shall always be proportioned to the nature and circumstances of the offence" (Cap. 6:02, 13). No sentence imposing corporal punishment or imprisonment of more than 14 days is allowed unless it is reported first to the Commissioner. No sentence of corporal punishment shall be executed unless it has been confirmed by the Commissioner and Supreme Court and it shall be executed in accordance with section 30 of the Criminal Code.

taking place in the peri-urban areas surrounding Banjul. Disputes around the use of land in the Kombo-Saint Mary region are indeed rampant. The research led by Mike Roth of the Land Tenure Center deals principally with this part of the country (Roth, Carr, and Cochrane, 1994) and thus this subject is not dealt with extensively in this study .

1. Tenure constraints and opportunities in the holdings

Even though private property is an integral element of the tenure regimes of The Gambia, traditional norms usually put restrictions on the sale of land to non-family or non-residents of the community. This

interdiction is nevertheless rapidly breaking down. A recent study of peri-urban land tenure attests to the flourishing land market in the greater Banjul area (Roth, Carr, and Cochrane, 1994). This growing land market may be leading to a highly mobile and politically frustrated landless class.

The Working Group found that land is not the key factor of production in generating wealth in many of the rural communities studied. The research shows that rural individuals become wealthy through diversification of sources of income. Those who are wealthy tend to earn income off the farm. Wealth is generated through work in cities and overseas, remittances, government employment, and sales of cattle and small ruminants. The wealthy in rural communities tend to be those who have access to sufficient labor (family labor or hired labor). The indicators of wealth suggested by rural communities in box 13 (Criteria of Wealth in Karantaba) are good illustrations of how land is not viewed as a critical constraint in some communities.

Box 12: Group Tribunal Case Yabou vs. Jawara

Ultimately, after a full day of deliberation, the Group Tribunal members decided in favor of the plaintiff, Yabou (which concurred with the decision of the District Tribunal). Their decision was based on the principle of first settlement. Since X was the original founding village, X was the "landlord" of the more recent settlement Y. Thus, the farmers of Y were indeed land borrowers and had to return land at the request of their "landlords." However, in issuing their judgement, the Group Tribunal members stated a concomitant principle -- if a person is in need of land to grow crops for his/her survival then it is the obligation of the "landlords" to provide him/her with land. The following quote from the court records illustrate these aspects of the judgement:

Any land you see belongs to somebody. If you are using somebody's land and he or she needs it back please return it to avoid conflict. The defendant and his witnesses did not give any good evidence here. If at all the defendant is [looking] to farm so as to feed himself, one could understand. In reality the land belongs to Yabou... Villages settle one after another. You, the defendant, stated here that the plaintiff is your landlord because he settled before you. It is obvious that the said land is his. Everybody has land but if you leave your place and go to another place, then your landlord owns the land. He, the landlord, has the right to give you where to work and feed yourself. It does not necessarily mean that you should own it. Anybody who allows someone to settle in his place, should give the individual a place to farm. You should return this said land..." Yabou vs Jawara, LRD Group Tribunal, Saturday 22 February 1992.

Box 13: Criteria of Wealth in Karantaba

Wealthy

Signs - Corrugated roofing; iron beds; mattresses; able to feed the family year round; cash available to purchase fertilizer and seeds; nice cloths; being able to have more than one wife; ability to lend food and money

Sources of Wealth - Large herds of cattle, sheep, goats; horses and donkeys; guns and ammunition to kill bush pigs; remittances from relatives overseas; remittances from civil servants; inheritance; trading activities; stinginess.

In-Between Wealthy and Poor

Signs - Occasionally corrugated roofing; no cattle; few or no sheep; a donkey; not enough farm tools; no money to hire labor or rent farm equipment; a little bit of remittance; no need to borrow money or food; can just barely feed family throughout the year; large labor force but mostly women and children.

Sources of Livelihood - Farming; large fields but little available labor

Poor

Signs - No sheep, no donkeys; maybe corrugated roofing on house; cannot feed family year round; need to borrow food and money; lack of nice cloths.

Reasons for Poverty - Not ambitious; do not always farm; lack of able bodied persons; "many little mouths"; migrant workers; frivolous with money; lazy.

The case studies demonstrated that tenure on the holdings is fairly secure, except for some "secondary rights" holders. A wide variety of arrangements exist to assure security to parcels used for field crop cultivation to lineages and households possessing "primary" rights to land. Primary rights accrue to descendants of founding families or those closely associated with these lineages through marriages or political alliances. People with firm primary rights to land face no constraints in planting trees, constructing soil conservation devices, or otherwise making permanent investments in the land. Customary land tenure arrangements in our case studies are still very strong, and they are protected by the legal system. National land law in The Gambia currently respects customary land tenure traditions and the district tribunals play a critically important role in maintaining the system.

People possessing "secondary" rights to land face varying degrees of tenure insecurity and limitations on what they can do with the land. Women and men from land borrowing families may not have the same security of access to resources as those from the founding families. A wide variety of arrangements allow borrowing and lending of land between founding families and newer arrivals. Founding families retain the right to revoke loans of land, and as one case study near Farafenni showed, this may even apply to lands lent hundreds of years ago. As a market for land emerges around Farafenni, families and entire villages that borrowed lands from major landowners are fearful that their borrowing rights will be revoked as land is put up for sale by the founding families. A similar problem was noted in the Sami District case study. World Bank and Chinese rice irrigation schemes had redistributed land on a random basis during the period of the project. Landless households had sometimes acquired rice lands through the

projects. Now that the projects have been abandoned, dispossessed traditional land holders are attempting to regain control over their land.

There is a concern that land speculation around urban growth points dissuades landholders from lending land for agricultural purposes. Conversion of rural lands to leases similarly reduces opportunities for borrowing.

Land borrowers face restrictions on their right to plant trees and make other permanent investments in soil fertility improvements. This tenure practice has profound implications for agroforestry programs. Land borrowers may not have the freedom to participate in tree planting programs due to restrictions placed on tree planting by landowners. However, our research suggests that flexibility does exist in the land tenure systems and that through protracted negotiation, borrowers can arrange to embark in certain land improvement measures in exchange for the right to plant trees.

Land tenure problems in the holdings are particularly acute when land suddenly acquires new value. At that particular moment various interest groups struggle to control the land allocation process. The process of jockeying for exclusive control and the renegotiation of the rules of the game is often conflictual. This dynamic is no more evident than in large-scale irrigation projects in The Gambia. Often the conflict pits men against women, as in the case of the Jahaly Pachar project, or of new arrivals against first settlers as seen in the Sami District case study. Yet, the same type of conflicts can surface around small-scale water catchment and salt intrusion projects.

2. Tenure constraints and opportunities in the commons

The Working Group case studies and other literature on The Gambia suggest that one of the central tenure and natural resource problems in The Gambia is the management of the village commons. Village commons in The Gambia are very important sources of firewood, construction materials, thatching materials, fruits and nuts, medicinal plants, fish and wild game, and pastures for both rural and urban populations. Women and economically marginal populations are especially dependent on the collection of forest products for sale to urban and rural markets. Important economic interests profit considerably from the collection and marketing of fuelwood to urban centers. A wide variety of tree crop products are sold by an extensive network of commercial interests who earn their livelihood from this activity. Certain resources of the commons, such as the mangrove swamps lining the estuaries of the river Gambia are breeding grounds for fish, shrimp, and shellfish.

The commons are often heavily degraded resources for a wide variety of reasons. Various studies have documented the history of the decline in the diversity and extent of the forest commons and attribute the changes to the conversion of forested lands into agricultural and residential uses, drought, and excessive extraction of food and fiber products for commercial purposes. The field research indicated that the extent of forest cover may not be declining uniformly across the country, but the diversity of useful forest products may be. For instance, the Karantaba case study showed that bamboo is now nearly extinct while rhun palm tree populations have declined severely. Bamboo used to be extensively harvested in the Kiang West District and Foni Jarrol District, but it too is nearly extinct. Thatch grasses once prevalent in

lowland areas have similarly declined. Wild game, once so widespread throughout the country, is now very scarce.

The rural communities studied attributed the decline in the diversity of the forest commons to a complex interplay between drought, fire, and excessive exploitation. Bush fires in the more humid past served as a management tool. In the Kiang West District, fires were set to help control the populations of bush pigs during the dry season. Intervillage associations hunted pigs and other wild game together as a way to control the excessive numbers. Following the arrival of the prolonged drought of the 1970s-1990s, fires continued, yet the trees were weakened by both the effects of drought and burning. Exploitation of the forests for firewood, forest products like bamboo, and medicinal products continued unabated. Today, many species of flora and fauna are no longer found.

In contrast to land controlled by households and lineages, property rights in the commons are often poorly articulated and enforced. In some cases an open-access situation exists in which few if any rules regulate the use of the natural resources. At times the government and rural communities insist that particular resources of the commons are governed by statutory or customary laws, but in reality no authority exists to enforce the statutes or traditional covenants. For this reason, a wide variety of resource user groups may have free reign to extract unencumbered the products of the commons.

Rural communities often encounter great difficulty controlling the use of the commons. Exclusion is highly problematic if not impossible in many cases. For instance, forest resources may be too distant from a village to merit constant surveillance or it may be nearly impossible to exclude outsiders from using good fishing spots along an estuary. The case studies indicated that the rural communities greatly appreciate the utility of the various types of commons, yet lack the legal means and the technical information to protect and regenerate the resources. The case studies showed that most rural communities were very concerned about the future of forests and found it difficult to control excessive cutting by nonresidents. Forests are places where cattle theft is rampant and no authority effectively responds to the problem. In some cases villagers stated to the research teams that they do not feel that local authorities adequately respond to the problem because of collusion with major cattle thieves, often those from neighboring countries.

Management of the commons often requires intervillage cooperation to enact new forms of resource use. Bush fires are set in the forested commons, a source of much consternation to rural communities. Controlling forest fires is extremely difficult unless there is intervillage cooperation. Research indicates a relative paucity of indigenous intervillage institutions capable of establishing and enforcing arrangements regulating the use of resources. We are intrigued, however, by the apparent authority of the district tribunals and their current role in adjudicating a wide variety of resource disputes. We are impressed by the capacity of "conservators" of sacred forests to protect and nurture these unique and diverse habitats.

The commons are vital resources for rural communities. Various user groups depend on the commons for their survival, and thus are interested in their maintenance. Most villages have

rainy-season commons for livestock grazing and since livestock production is so critical to the survival of the household, there is an interest in deriving maximum benefit. Villagers are interested in maintaining sacred forests, especially the Jola. In many of the case study villages, the populations expressed interest in the Gambia-German Forestry Project initiatives in Foni Brefet and hoped that similar initiatives would be launched. Several communities had explored ways to set up forest patrols, but many were discouraged by the legal, administrative, and organizational difficulties encountered.

Sustainable management of such degraded resources like the commons may be facilitated if both state and local community authority structures clarify the multiple and overlapping rights and responsibilities of the many resource user groups that depend on these important forest, range, and water resources for their livelihood. This most often entails the creation of common-property regimes out of open-access situations. Yet, in several cases the issue is to clarify the respective role of the state versus local communities over the use and sustainable management of the commons.

Rural communities may need assistance from the government to design viable common-property regimes-arrangements in which rules and responsibilities regulating the use of resources are defined and jointly enforced by both the community and the state. Neither the modern legal corpus nor administrative practice facilitate the construction of new common-property arrangements out of open-access situations.

The Working Group looked at ways to increase the capacity of rural communities to better manage the commons. We are sobered by the complexity of the question. It is abundantly clear that rural communities are rarely homogenous and that the interests of the various users of the commons are often opposed to each other. Despite this reality, rural communities have succeeded remarkably in devising and maintaining certain collective resource-management practices. These are the foundation upon which the commons may be better managed in the future.

The traditional rural leadership of The Gambia continues to exercise considerable control over the use of resources. Our case studies indicated that the *seyfolu*, district tribunals, and *alkalolu* play a critically important role in defining and enforcing rules governing the use of the commons. Often these local authorities are effectively supported by the government. This is no more evident than observing how effectively the government enforces the ban on creating new villages and clearing forests for new fields. Throughout The Gambia everyone knows that local authorities and government will harshly sanction attempts to contravene these policies. This suggests that traditional institutions should be fully incorporated into any and all initiatives to construct and enforce common property regimes.

Government and donor agencies should look at ways in which the legal corpus of The Gambia can be adjusted to increase the control exercised by rural populations over their own resources, yet at the same time, provide checks and balances against abusive exploitation caused by the local residents themselves.

3. Tenure constraints and opportunities in the state reserves

The colonial and post-colonial governments have created forest parks and national parks with the intention of protecting the diverse and valuable flora and fauna of The Gambia. Management control for these state reserves has been vested in the Forestry Department and the Department of Natural Resources. The Forest Acts and the Wildlife Conservation Act constitute the legal foundation for restricting use of the reserves. Use rights are often granted to the communities living around these state controlled lands to collect certain forest products for noncommercial uses.

The case studies so far completed have looked at the impact of state reserves (Forest Parks and the Kiang West National Park) on local populations. The studies demonstrate the technical and organizational difficulties government agencies are encountering in managing state reserves. The case studies also vividly demonstrate the high costs born by villagers because of the destruction of field crops by bush pigs and other wild game. This problem is especially acute around Kiang West National Park.

The research teams support participatory forest park management models such as those being tried in other parts of the Sahel. But as the Maka Farafenni case study showed, villages surrounding a forest park do not always share similar interests. Maka Farafenni adamantly insists on converting a large part of the forest into cropland while a neighboring village recognizes the importance of the forest for providing a wide assortment of forest products. Intervillage negotiation must take place if participatory forest park management is to be encouraged (i.e., Guesselbodi or Baban Raffi model in Niger); but this is a very long, delicate, and time-consuming process requiring considerable negotiation skills by a variety of parties. The government and donors will need to take a close look at the successes and set-backs of participatory forest reserve projects and focus attention on the complex institutional/organizational issues involved in these endeavors. But analysis should not stop here. Village-initiated efforts to manage forests should be investigated in other parts of the sub-region, most notably in the peanut basin of Senegal and in other regions of The Gambia.

Populations living around forest parks have little sense of ownership or stewardship of the state reserve. In the Kiang West and Upper Baddibu case studies, the Forest Parks are perceived to be state-owned and -managed, and thus not worthy of care by local populations. Villagers are certainly very much aware of excessive exploitation of the park (and they partake of it in many cases), but they do not try to stop abusive practices because they believe that this responsibility lies with the Forestry Department or the Department of Wildlife Conservation.

The Kiang West District case study looked at the impact of the Kiang West National Park on the adjoining village of Dumbutu and raised concerns about a number of issues, most importantly, the question of who must bear the social and ecological costs of the park. As the park becomes operational, we fear that it will not only generate possible financial benefits through tourism, but also a series of adverse costs that will be borne by surrounding communities. The most serious problem concerns damage from wild pigs and baboons that live within the park but that consume field crops from the villages surrounding the park. The

communities surrounding the park are facing an increasingly desperate situation. Some type of culling program may need to be established to control the exploding populations of bush pigs and baboons. Unless the bush pig problem is squarely confronted by the government, similar efforts to restore wildlife and woodlands in other parts of the country will be met with resistance by rural populations.

The Kiang West National Park is operated by the National Park Service, but it is advised by a technical advisory committee (TAC). From our initial findings, we feel that efforts should be made to grant this advisory board more powers to influence decision-making on the use of the park. The ANR project may wish to focus some of its efforts on the institutional capacity building of the TAC as part of an initiative to learn what type of training is required to serve the needs of rural populations involved in the management of resources.

Research in other parts of West Africa suggests that communities have the capacity and willingness to manage resources when they view them as their own and when they derive appreciable benefits from the time and investment in resource conservation. The experiment by the Gambian-German Forestry Project in Foni Brefet suggests that communities are very interested in managing forests for the benefit of the broader community.

II. Tenure Policy Options

A. Tenure policy choices in The Gambia

The Working Group on Resource Tenure and Land Use Planning presents to the government and the public a wide array of policy options to respond to the tenure constraints and opportunities identified in this report. The intention of the Working Group is to promote informed debate within government and public circles on the pressing tenure dilemmas facing rural communities. The Working Group is convinced that informed public debate will generate policy consensus which will allow the government to clarify to rural and urban populations the rationale and objectives of land policies.

The Working Group on Resource Tenure and Land Use Planning has been debating the merits and constraints of four major policy approaches briefly defined below (see appendix 4: Matrix of Policy Options):

- 1) Replace customary tenure: Replacement of customary tenure systems in The Gambia with a freehold or leasehold system administered largely by the government.
- 2) Comanage natural resources: Establishment of collaborative arrangements with resource user groups and the government to jointly manage natural resources.
- 3) Adapt customary tenure: Build upon strengths of customary tenure systems to better manage natural resources.
- 4) Laisser Faire: No interference by the government in tenure arrangements.

The Working Group believes that the first three options can coexist within The Gambia, though clear choices must be made by government to promote the particular approach in specific parts of the country. Tenure systems applied uniformly across the country are not necessarily required at this time in The Gambia.

The sections below briefly review the central components of each option.

1. Option I: Replace customary tenure regimes

The replacement approach entails the abolition of customary tenure systems and the substitution of these norms and practices with a state supported freehold or leasehold tenure system. The government enacts legislation to facilitate the conversion of customary land holdings to some type of registered title. In either a leasehold or a market driven freehold system, transactions should be recorded in some comprehensive fashion to avoid multiple claims to the same land. In many cases land is registered in the name of the individual or household, in other cases, land is registered in the name of the state, as with national parks and forest reserves. The state takes an active role in promoting a market for leases or privately owned lands.

Assumptions

The central precept of this approach is that the state should control the direction and content of rural development activities. State promotion of private ownership of land and other natural resources is assumed to lead to greater agricultural productivity and improved management of natural resources. Leasehold tenure systems are especially viewed with favor by many central state planners for they present the opportunity to control the patterns and rates of physical changes to the land through stipulations and conditions made in lease agreements. It is assumed that state technocrats possess the knowledge and administrative power to plan adequately for the use of the land. The role of rural populations is to comment upon the plans of the technical advisors.

Legislative framework

The state legislative apparatus plays a very central role in this approach. Legislation must be put in place to facilitate the abolition of customary tenure systems and to replace it with a leasehold or freehold system. Legislation establishes land registration systems, mechanisms to convert customary holdings to titled holdings, and judicial mechanisms to resolve land disputes during the conversion process from customary to leasehold/freehold tenure.

State administrative practice

The role of the state is to enforce the legislation by putting in place a leasehold or freehold tenure system. The function of the government is to assist in the survey of landholdings, maintain title deed registers, intervene in land disputes, and play an active role in the physical planning process.

The state bureaucracy plays a central role in maintaining the leasehold or freehold system. Government bureaucracies, such as Departments of Lands and Surveys, are central to the maintenance of the leasehold system.

Rural development practice

Government administrative and technical services are central to the development of rural areas. The function of the government is to promote planned economic growth, but also regulate land uses consistent with national environmental policies. The government can take an active part in regulating land uses, as envisaged in The Gambian 1990 Physical Planning and Development Control Act, by establishing planning boards, approving applications for leases, and drafting national, divisional, and local development plans.

Judicial practice

The court system plays a central function in the replacement approach, especially during the period of conversion of customary holdings to registered titles. The extensive land registration program in Kenya, for instance, resulted in considerable litigation during the initial years of land registration. Western legal concepts are often applied to the resolution of disputes once they enter into the formal court system. Litigation costs are often high as rural populations are forced to engage lawyers to resolve disputes over multiple claims to land.

Financial costs

The financial costs of the replacement paradigm are high though difficult to estimate. Public funds are used to pay the salaries and operating costs of the administrative, judicial, and technical services. Tax revenues are a key though variable source of funds to maintain the state bureaucracy. Costs to the public of litigation as well as transaction costs associated with the transfer to title or the acquisition of a lease may be extremely high.

Experiences in Africa

The replacement approach is employed selectively in The Gambia. The 1990 Lands Act represents an initiative to replace the customary land tenure systems of The Gambia with a state leasehold system. The government envisages applying the act to urban and peri-urban areas of The Gambia (i.e., Greater Banjul and "growth points" such as Basse or Farafenni) but also to "designated areas" in other parts of the country.

The replacement model is the foundation of many irrigated agricultural projects in The Gambia. Government planners establish irrigation projects and in many cases impose changes in the customary tenure systems. Projects play a central role in transforming the traditional tenure arrangements to irrigated areas, but as this study has shown, customary tenure arrangements resurface if the project fails and the land reverts to its original uses.

Throughout Africa, the replacement paradigm has served as the foundation for land tenure reform efforts. National governments have undertaken land registration programs for rather different ends: to establish a single, uniform system of national land tenure; to resolve problems of underutilized landholdings and land concentration; and to centralize political authority by diminishing the allocation rights of local, customary authorities. Registration programs have been instituted under such diverse regimes as those of Senegal, Kenya, Somalia, Nigeria, Malawi, Zimbabwe, and Uganda. The granting of individual freehold title has not been seen as the only appropriate end of registration. Registration has also been the vehicle for creating and recording leasehold titles and rights of occupancy from the state, and for titling land to groups as well as individuals (Land Tenure Center 1990).

Experience in Africa has shown that government attempts to create security of tenure through reforms promoting leaseholds and land registration rarely serve their intended purposes. Efforts to enhance smallholder productivity via land tenure reforms are likely to be ineffective if conducted in a vacuum: title status appears to be less important in the determination of farm productivity than do other mediating factors such as access to markets, non-farm income, and wealth. The reasons for the failure of land registration and titling programs are summarized from Land Tenure Center research programs in Africa (see box 14: Limitations of Land Registration Programs).

Studies in many parts of Africa have shown that customary tenure regimes are remarkably resilient. National legislation on tenure reform has a limited capacity to abolish traditional tenure arrangements. World Bank and Land Tenure Center studies in both East and West Africa have shown that titling and registration programs have not succeeded in most cases in changing the land transfer behavior of rural populations. Farmers continue to comply with community tenure arrangements despite the existence of leasehold regimes. Similarly, World Bank research in Rwanda and Land Tenure Center research in Senegal have found that laws forbidding lands sales without government authorization have been ineffective. Rural populations disregard the law when it is in their interests.

Reforms designed to replace customary tenure often create greater confusion, and the powerful may take advantage of that confusion to augment their holdings. Titling by the state has often been abused by providing elites and dominant ethnic groups the powers to strip pastoralists and other seasonal resource users of access to resources. Land conflicts are often the result of land grabbing and forced removal of populations claiming traditional rights to land. Titling programs designed to redistribute land have resulted in so many abuses that it is important for policy makers to question whether this is a trusted tool of land reform. It seems almost inevitable that corruption will occur when valuable land is allocated and rationed administratively.

Land registration and titling programs can be viable alternatives for administering exceptionally economically valuable resources for which there is much competition. Rights to land may need to be registered in the case of irrigation schemes. Yet, as the Jahaly Pacharr project of The Gambia has demonstrated, considerable controversy surrounds the question of who should possess ownership title (Dey 1982; Carney 1988; Carney and Watts 1991). In cases

Box 14: Limitations of Land Registration Programs

1. Security of Tenure and Land Markets. Studies from Kenya suggest that registration of title by itself may not always increase significantly a farmer's security of tenure or enhance a smallholder's access to credit. Benefits of titling appear to be unevenly distributed, with some farmers more able to take advantage of title than others. Land markets remain constrained in important respects; they produce increased land concentration in some circumstances, and reduce it in others. Production in the short or intermediate term is often not the motivation behind purchases, but rather social security considerations and the potential profits from appreciation in value.

2. Land Disputes. Although rising incidences of land disputes often provide a motivation for registration, the evidence on whether registration actually diminishes disputes over the long term is mixed. A decline in disputes following registration may only be temporary, and registration may engender new kinds of disputes: instead of quarreling over boundaries, the most common subject of dispute on customary holdings, suits over actual ownership, may become more prevalent.

3. Intra-Household Impacts. Registration has even been the vehicle for extinguishing subsidiary, derived rights to land of women and junior male household members while granting the head of household the title and thus the right to mortgage or sell the land without the consent of other family members.

4. Failure to Maintain Land Records. In Kenya, Uganda and elsewhere, successions and other transfers of title have gone unregistered, resulting in records that are increasingly unreliable, with negative impacts on land markets, numbers of disputes and access to credit (Land Tenure Center 1990).

where customary tenure systems provide reasonable security, some innovators may want registered title in order to obtain access to credit. In these cases, sporadic, voluntary registration on a user-pays basis may be a viable option. The creation of leasehold and freehold tenure regimes may be necessary in urban centers and surrounding areas, but should be applied very judiciously to rural regions. The conversion of customary tenure regimes to a leasehold or freehold system should be carefully planned and financed adequately.

2. Option II: Comanage natural resources

Description

The comanagement approach advocates a fundamental transformation in the roles, rights, and responsibilities of the State, individuals, and communities vis a vis the management and control of natural resources. The cornerstone of a successful decentralized resource management approach is the legal recognition by the state of the authority of local institutions to make and enforce rules governing the use of natural resources. Certain rights and responsibilities for the use of natural resources are transferred from the state to local institutions. The state gives rural populations greater legal and administrative control over the use and exploitation of natural resources found within their rural territories.

Assumptions

The underlying assumption is that the state and local resource user groups are equal and active partners in promoting the sustainable use of natural resources. The premise is that if local people are given more authority over the use and allocation of resources, they will have a greater interest in conserving and improving the resource base. Public policy should encourage the full participation of rural interest groups in all decisions regarding the use of resources. By consciously promoting wide participation of all resource user groups in the decision-making process, local solutions to local problems may emerge.

The premise of the comanagement option is that local communities possess rights of *conditional territorial exclusion*. Local communities should be granted the authority to exclude nonresidents from the use of particular resources if they do not abide by rules and regulations designed and enforced by both the local communities and the state. Nonresidents that responsibly and sustainably use particular resources should have access to the collection, processing, and marketing of resources found within a community's territory. Yet if locally devised rules governing the rates of extraction are countervailed, nonresident use can be terminated.

Other examples portray how one can build upon pre-existing social institutions to better manage resources. Sacred forests are ecologically diverse and productive islands of vegetation. These forests are protected and managed by "conservators," usually elderly men of mystic powers. Cultural restrictions tightly control use of these common property resources. Forestry service administrators should consider ways to work with these knowledgeable and experienced men to better manage the forests and to consider ways to create new community controlled sacred forests garnished with specific and well defined use rights.

Legislative framework

The comanagement tenure model entails the negotiation of a series of agreements governing the use of natural resources by the state and rural civil society. This option entails active state involvement in cooperating with local institutions to construct resource use agreements or covenants that define sustainable utilization of natural resources. The central assumption is that the state and local communities can plan for joint management of natural resources. Planning primarily entails a process of articulating the roles and responsibilities of different actors involved in the use of resources of a particular community. The state encourages local institutions to develop resource-management plans that spell out how resources are to be used in the village territories.

The legislative framework for the promotion of a comanagement approach is largely in place within The Gambia. The legal premises of the law quite clearly outline the role of the district Councils in regulating the use of natural resources. Mechanisms need to be created in which rural communities have the power to create bylaws governing their own resources, but also with arrangements for joint enforcement of the bylaws by village institutions and government. The legal instruments exist in The Gambia granting district Councils considerable powers, yet the capacity of this institution to design and carry out programs is limited.

In effect, rural government and communities should be involved in a process of creating *resource-management agreements*, though these must be protected and sanctioned by a legislative framework. These agreements are simply covenants between the state and the resource stakeholders defining rights and responsibilities with regards to the exploitation of particular resources. Resource-management agreements should be the end result of a community planning process that defines the use of the resources of a village territory. The agreements are a public statement of how the community plans to change or uphold tenure arrangements.

State administrative practice

The purpose of central government is to create a style of working with local populations that supports and encourages local initiatives, rather than intervenes to directly manage the resources. This requires a change in attitude among technical services and the scientific community. The indigenous knowledge and experiences of communities will need to be wholly embraced and incorporated into the actions of government workers.

The purpose of government is to encourage the definition of rights and responsibilities between the state and rural civil society. This may entail recognizing the rights of certain local institutions to negotiate the use of natural resources.

The state plays a key role in harmonizing legislative texts in order to facilitate local-level planning. In The Gambia this might entail reviewing all legislation relating to land matters to assess whether it uniformly promotes joint government and local community management of resources.

The government must play the role of honest broker to help communities reach agreements and enforcement procedures regarding the use of resources, especially those of the commons. From time to time the government will need to be a mediator in local conflicts. This will entail the complex issue of helping opposing points of view to articulate differences yet avoiding the temptation to take sides. Gambian government administrators and government technical advisors already have considerable skill in this domain, though experiences are not widely shared. The Gambian-German Forestry Project activities at Foni Brefet illustrate the stance the government may need to take to help craft new resource use arrangements.

Rural development practice

The field research showed that rural communities can construct and enforce arrangements to control the use of the commons. The most prevalent example of the capacity of local communities to manage resources is the *tongo* of rural Gambia. The *tongo* system is a particularly interesting indigenous resource-management institution that illustrates the factors that go into creating a "comanagement" agreement between the state and the individual resource user. The village community determines which fruits should be subject, and it tries to enforce restrictions through its own means, though intervillage institutions back up the arrangement. *Seyfolu* and *alkalolu* announce the embargo period for fruit tree picking and the types of

punishments to be handed out for contravening the agreements. The arrangement is vigorously enforced and it is effective in controlling theft of non-harvested fruit.

The Working Group research team is concerned about the long-term viability of any resource-management agreements. Through the project, arena agreements may be negotiated and "protected" throughout the duration of project intervention. Following the termination of the project, agreements may collapse. This process has occurred in The Gambia (i.e., Sami District Case Study) as well as in other Sahelian countries. In effect, islands of innovative resource-use agreements are created, though are of questionable durability.

It is thus necessary to work closely with traditional rural authorities from the outset in the design and implementation of resource-use arrangements. Programs and projects designed to promote contractual agreements around the use of natural resources must obtain support from district authorities. Environmental education will be needed for all involved.

Judicial practice

The enforcement of community crafted resource agreements should be largely the purvey of local authorities at the village, district, and divisional levels. Rural communities often need help to enforce arrangements controlling the use of resources. Sanctions and fines against members of a close-knit rural community are often difficult to apply. The principle of "graduated sanctions" can serve as the basis of enforcing local-level resource-management agreements.

The district tribunal and the group tribunal can play a key role in enforcing the formal and informal resource-management agreements established by rural communities and resource user groups. The district tribunal does indeed enforce many customary as well as state inspired resource use agreements and legislation. The Land (Provinces) Act gives power to the district tribunals to impose fines on practices deemed detrimental to the environment. The case studies in the Kiang West and Sami District indicated that the district tribunal takes an active part in enforcing bans on forest fires.

Financial costs

The financial cost of the comanagement approach is difficult to estimate. Experience from West African countries suggests that initial costs of promoting a comanagement model are high due to the cost of retraining extension agents in participatory planning techniques, the high cost of personnel capable and willing to work in the field, and the considerable cost of transportation needed to support the participatory planning process.

Experiences in Africa

The comanagement approach is the current development orientation in many West African countries at this time. Known popularly as "gestion du terroir," development projects throughout francophone West African are experimenting with the concept. The majority of innovative programs are found in Senegal, Mali, Niger, and Burkina Faso. A growing literature

describes in considerable detail the successes and set-backs of this approach (Painter 1993; Djibo et al. 1991; Hagberg 1992; Freudenberger 1993).

The majority of these programs and projects are trying to find ways to devolve control over resources from the centralized state to local communities. This entails a process of crafting new institutional arrangements between the central government and a wide array of local organizations and resource user groups. Initially, little consideration was given to whether or not local institutions possessed the political authority, social legitimacy, and levels of administrative and technical competence necessary to regulate resource use locally (Lawry 1991). Project planners underestimated the costs rural populations face in participating in programs to create and enforce rules governing the use of natural resources.

Gradually, this lacuna is being addressed, though it is one of the most difficult elements (Vedeld 1992). It is becoming clear that when resource user groups and village communities see clear benefits that are roughly proportional to the costs of participation, they have incentives to work at crafting new ways of managing natural resources. People who have a stake in a program of decentralized management of resources will contribute ideas to solve problems and will have commitment to each other and the common good. "Design principles" for comanagement of natural resources are becoming increasingly well defined (Schoux 1993; Ostrom 1990; Freudenberger and Mathieu 1993).

3. Option III: Adapt customary tenure

Description

The adaptation model is concerned with ways to encourage progressive change in customary land tenure systems as a response to new economic, social, and ecological realities. This option presupposes that customary tenure systems are flexible and adaptable. It requires policymakers to rethink the model which sees customary tenure systems as dysfunctional and static and envisages their systematic replacement by the state with freehold or leasehold tenures.

Assumptions

The adaptation approach assumes that rural communities possess the capacity to devise and enforce rules governing the use of natural resources at the local level, but that many factors impinge upon this process. The approach recognizes the importance of allowing a wide range of unique and distinct tenure regimes to emerge throughout a country.

This precept accepts the premise that an "African democracy" generates responsive decisions and that local institutions can generate capable and representative leaders. This approach suggests that consensual decision based on protracted discussion and debate generates responsible actions. Majority voting is rarely practiced. While decision making is generally made by a small group of male leaders, these people can only maintain power if they retain reciprocal relations with their constituencies.

History is a very important element of this paradigm. Historical information is critical for the community since it determines who has primary and secondary rights to land. Historical knowledge crystallizes political relationships. Settlement histories are important to clarify rights of ownership. As our case study research demonstrated, however, the historical background of a community can be quite complex.

Legislative framework

The Gambia is one of few countries in Africa that explicitly recognize the existence of customary land tenure systems. For this reason, it is difficult to spell out in detail the forms and functions of an appropriate legal framework. Some type of legal structure is needed to guarantee the customary rights of communities, households, and individuals to land and other natural resources. This framework should set out the broad principles of land use for a country. Land charters have become one of the mechanisms suggested to articulate public policy. Broad definitions of government land policy are stated in such documents as the new *Code Rurale* in Niger.

Mechanisms should be built into the legislation to allow local-level tenure systems to evolve to meet new economic, social, and ecological demands. Legislation and public policy need to take seriously customary tenure systems and local land administrators. This requires not only conducive law at the national level, but effective strategies for working with resource managers and communities in each locality.

The Land (Provinces) Act (Chapter. 57:03) of The Gambia represents one of the elements of the adaptation policy approach. The act sets out the principle that "it is expedient that the existing customary rights of indigenous inhabitants of the Provinces to use and enjoy the land of the Provinces and the natural fruits thereof should be preserved," and that "it is expedient that the existing customary law regarding the use and occupation of such land should be as far as possible preserved" (Laws of The Gambia, 1990).

Land policy and administrative practice may need to be revised to spell out clearly the precept that local communities are the primary managers of natural resources. Control for the forests, river courses, pastures, land, and other natural resources are vested in district authorities who should act in consultation with the village communities of a district. Legislation may be needed to clarify the definition and rights of the district authorities with regard to land use.

The field research of the Working Group on Resource Tenure indicated in most instances that the *kabilo* heads are the locus of decision-making regarding the allocation of land and not, as many assume, the *alkalo* and *seyfo*. These authorities, villagers believe, control unoccupied and unowned land, something that is rather rare in The Gambia.

Legislation may be needed to demarcate community boundaries and possibly even the registration of group rights. Communities located next to urban centers may need to clarify rights to land and roles of land-allocation institutions in order to reduce speculation and corruption. Modern mapping technologies (geographic information systems and global

positioning systems) may be a useful and cost-effective way for mapping territorial rights to land. Recent work by the LTC in Guinea-Bissau has successfully combined oral, participatory demarcating methods with these modern technologies.

The adaptation approach can consist of national policies to clarify the rights and responsibilities of communities and individuals. A land charter can be developed out of a public process of decision-making that spells out national tenure views. For instance, a national land policy might articulate the view that original landholders possess priority rights to the management of the land, but that they have a responsibility to provide land to those in need. The policy could let communities decide what type of transfer mechanisms they consider adequate so long as the terms are not usurious. This legislation might articulate the precept that sacred areas (e.g., forests, water courses, particular trees) are to be managed by the traditional religious authorities in the community.

State administrative practice

Security of tenure for women may not be guaranteed in contemporary indigenous tenure systems even though traditional tenure norms may note otherwise. Critical changes in customary tenure systems may involve modifying them to allow land to pass by wills to women and inclusion of daughters and widows as heirs in property distribution. This process may be incremental. District tribunals could be encouraged by either legislative fiat or administrative persuasion to rule that widows retain land of their husbands for as long as they live in the community. The government might strongly encourage the nomination of women as members of district tribunals.

The national government can play a key role in encouraging national debate on tenure norms. In Niger the government invested considerable resources in setting up regional commissions to study land problems. The process of meeting with rural interest groups created public interest in a new Rural Code. In some cases these codes are simply policy statements, or land charters, describing principles of land allocation, use, and transfer.

The state can play a key role in helping communities record their histories. The National Museum of the Gambia may play an important role in helping to transform the oral historical traditions on land allocation practices into a written form. This would build upon the pioneering work of the Law Reform Commission of The Gambia.

Rural development practice

The Government of The Gambia and donors can invest resources in strengthening the institutional capacity of indigenous institutions to respond to changing tenure arrangements. This entails above all careful assessment of how the state can support collaborative relations between district authorities and more "modern" institutions such as village development committees and area council members. The purpose of the central government is to clarify the respective roles of each institutional jurisdiction. This would go far to reducing the ambiguity that characterizes the functions of many local institutions.

Judicial practice

The Gambia's common-law system is a powerful tool for guiding the adaptation of customary law. However, care should be taken to not romanticize the district tribunals. They tend to represent the interests of the first settlers and major landed interests in the community. The district tribunals are the bastions of tradition as represented by elder males. Concentration of power in the hands of this body may frustrate younger and more dynamic members of the communities. Women's interests may not be fully represented in these courts, though women do take cases to court on a regular basis.

The district tribunals play a key role in the adaptation approach for around this institution tenure arrangements governing the use of resources are debated, modified, and enforced. For this reason, policy makers should turn their attention to the functions and roles of the district tribunal as a resource-management institution.

The research of the Working Group suggests that the district tribunals are potent local-level institutions that can, within certain parameters, contribute enormously to the enforcement of community devised resource-management arrangements. Donor environmental programs should acknowledge the importance of the district tribunals in enforcing local-level tenure agreements. The Agricultural and Natural Resources program should look into ways to increase the capacity of district Authority (e.g., *seyfolu* and *alkalolu*) and district tribunal members to design and enforce various local-level rules of resource use.

This may entail strengthening the ability of the district tribunals to resolve disputes around natural resources. Important steps have been made by improving the recording of court proceedings by court scribes, yet this mechanism continues to pose difficulties. District tribunal members recommend that court scribes be allocated to each district. Other suggestions are made such as increasing the allowances paid to district tribunal members and the *seyfolu*, providing bicycles to Badge Messengers, and improving security facilities like jail cells, hand-cuffs, and whistles.

Financial costs

The adaptation approach may be the least expensive of the policy options. Responsibility for strengthening management actions is placed primarily in the hands of rural institutions. Existing government personnel are engaged in bringing about incremental changes as defined by rural interest groups.

Experiences in Africa

Field research indicates that the customary tenure systems in The Gambia are capable of responding to new needs and pressures. District authorities, backed up by the district tribunals, enforce a wide range of customary land use norms and devise new ways to enforce uses of natural resources. These have been identified in the case studies (i.e., *tongo*) and serve as

models for how tenure systems may adapt. Few other similar approaches exist in Africa at this time.

4. Option IV: The *laissez faire* choice

The Government of The Gambia may choose to make no interventions in the rural or urban tenure domain. Costs of this lack of intervention could be high. The state would be obliged to confront tenure conflicts as markets develop in haphazard and uncontrolled ways around particularly valuable resources, for example, land in urban and peri-urban areas.

III. Tenure and development practice

A. Incorporation of a tenure focus into project design and implementation

1. Linkages between tenure and natural resource use

Rural development consists primarily of a process of planning for economically and ecologically sustainable development. Property rights arrangements may be one of many variables that favor or impede economic growth. The acceptance of new agricultural technologies designed to increase productivity may be hindered by the tenure arrangements found in a particular community. Extension programs familiar with existing tenure relations in a community can tailor their technologies to meet the particular circumstances of the zone.

Development programs and projects, be they designed by technical planners or community level leaders, must take into account the way in which tenure arrangements affect programs and plans. Tenure issues affect every stage of project activities. Early on, tenure determines who has access to the resources needed to participate in the project. Once the project has commenced, people's willingness to participate fully in proposed activities often depends on the kinds of rights they have to resources which determine, in turn, their incentives to invest in or protect them. Tenure rules may determine who benefits from the project as time goes on.

For instance, a review of tenure arrangements in different agro-ecological zones may show that it is more appropriate to promote natural regeneration of trees in fields rather than tree planting in order to circumvent difficult tenure problems. Villagers might find it easier to enact and enforce rules regulating the removal, trimming, or excessive cutting of naturally grown trees than to negotiate agreements allowing tree planting on borrowed lands. Similarly, knowledge of tenure arrangements in a particular locale will help to assess whether benefits of an intervention are likely to be distributed equitably among different social categories and between men and women. Project personnel should encourage recipients to determine how future benefits from a project will be distributed and devise strategies with the populations to define and protect the rights of various beneficiary groups.

2. Inclusion of underrepresented resource user groups into the community planning process

The Working Group case studies indicated clearly that a wide variety of stake holders exploit natural resources. Various stakeholders not only have interests in exploiting a wide array of natural resources in a particular locale, but many are involved in determining how these resources are used. Development programs frequently fail to identify accurately who uses the various resources of a locality. Politically and economically marginal groups of people are often overlooked, yet these people have an impact on the way resources are employed. Development projects need to continue their efforts to insure the participation of women, members of various castes and classes, and younger people in decisions affecting the use of natural resources.

Projects play an important role in creating the space for underrepresented groups to participate in decisions governing the use and distribution of natural resources. Applied research projects can identify groups historically marginalized from decision-making and recommend ways to incorporate these people into the planning process. Various techniques to highlight the concerns of underrepresented populations at the village level include holding focus group meetings with women, semi-structured interviews with key women leaders, and separate planning sessions with and for marginalized socioeconomic groups. This is most important in planning for the better management of the commons.

B. Tenure and participatory planning for natural resource management

Programs and projects in The Gambia can take immediate steps to promote improved management of natural resources through various participatory planning approaches. Participatory rural appraisals (PRA) can be a useful planning tool if properly carried out (see appendix 2: Selected Bibliography of Participatory Planning Materials). The Working Group recommends that the Agricultural and Natural Resources program recruit PRA specialists to train staff and village planners in these techniques (see appendix 3: Trainers in PRA and Participatory Planning).

Rural communities are involved in various planning activities on a continual basis. The capacity for community planning is very high in rural Gambia because many villages are already engaged in numerous collective activities ranging from maintenance of the mosque and *bantaba* to participation in credit schemes. Communities deliberately plan for the use of natural resources, including farm lands, forests, water sources, and pastures. The purpose of participatory planning with external agencies and government is to build upon these experiences (see box 15: Selected Resource Management Practices).

The process of participatory planning has been extensively applied in India, parts of Sahelian West Africa, and some East African countries. (see appendix 2: Selected Bibliography of Participatory Planning Materials.) Experience from India suggests that participatory planning consists of several key steps (see box 16: Layout of the Participatory Learning Method (PALM)). The first important step involves selecting appropriate sites for community planning based on well defined selection criteria. Following this initial exercise, the organizers conduct preliminary visits and community orientation. Then follows a period of intense information collection, discussion, and analysis of options conducted jointly by the target community and external development actors. This planning process consists of ranking development constraints and opportunities, considering alternatives to respond to specific problems, and preparing some type of community action plan. The community, with outside assistance as necessary, then begins to work on the priorities they themselves have identified. This may involve the creation of a covenant defining roles and responsibilities between the rural communities and institutions of external support.

The experience gained in community planning initiatives shows that rural communities can plan for their own futures so long as it is worth their investment of time. However, if concrete benefits do not emerge villagers quickly find that it is simply not worth participating.

Experience from both Africa and Asia suggests that once rural communities are taught participatory planning skills, they can continue the process independently if they find it worthwhile. The task for the ANR program and other interested donors is to finance the costs of initial training and to set up financial and technical incentives for rural communities to prepare realistic plans and strategies.

While some PRA training has already taken place in The Gambia, there is a need to reinforce and expand these interventions. Skilled resources in The Gambia are Save the Children, Action Aid, Catholic Relief Services and many Gambians who have participated in various RRAs conducted over the past few years. External sources of skilled trainers in RRA/PRA are: The International Institute of Environment and Development (London and

Dakar); Clark University, Center for International Environment and Development; University of Wisconsin, Land Tenure Center, and various consultants (see appendix 3: Trainers in PRA and Participatory Planning). The ANR program may wish to consider inviting the Dakar office of the Institute for Environment and Development (Director: Bara Gueye) to assess the possibilities of setting up a community planning process around resource-management issues.

Box 15: Selected Resource Management Practices

Pastures

- *District Authorities determine opening and closing dates for grazing
- *Owners of livestock hire herders during rainy season for cattle and small ruminants
- *District Authorities enforce boundaries to cattle tracks to the River Gambia and its tributaries

Water

- *Village institutions regulate access to public wells
- *Village institutions devise rules to maintain hygiene around village wells

Soils

- *Cereal crops are rotated with leguminous crops
- *Rice fields are left in fallow
- *Communal rotation of fields and pastures under authorization of landowners
- *Farmers negotiate tethering contracts with cattle herders and their owners for manure
- *Farmers do not cut down economically valuable trees, especially the *kadd* (*Acacia albida*).
- *Farmers plow into fields household residues and ashes from burned weeds

Trees

- *Village youth associations, *alkalo*, *seyfo*, and District Tribunals enforce *tongo* arrangements governing the harvest dates of fruit picked from domesticated and wild trees
- *Households strictly monitor collection of fruit and leaves from economically valuable trees like baobabs (*Adansonia dig.*)

Mangroves

- *Women oyster collectors rotate the harvesting of oysters in order to promote regrowth

1. Participatory resource planning in five case study areas

The Working Group conducted detailed case studies on the tenure constraints and opportunities in four districts (Kiang West, Upper Baddibu, Sami, and Sandu Districts). These districts should be used by the Agriculture and Natural Resources program to promote a pilot participatory planning process designed to improve resource management by and for local communities. This planning initiative should complement ongoing activities of governmental and nongovernmental

Box 16: Layout of the Participatory Learning Method (PALM)

Day 1: Introduction

History of village, village layout, village infrastructure

Day 2: Exploratory (Simple)

Study of resources, livelihoods, trends, preferences

Day 3: Exploratory (Complex)

Seasonality, identifying resources, wealth ranking, class and caste stratification, conflicts, causes and effects

Day 4: Convergence

Identifying opportunities, listing priorities and "best bets", Identifying roles and responsibilities (defining responsibilities of various partners)

Day 5: Concluding

Operational Plan, documentation, next steps

(Summary of Mascarehnus 1992, p.11)

development agencies active in the selected districts. The Foni Jarrol District should also be incorporated into this initiative since it was the subject of an earlier tenure study by an interministerial group and the Land Tenure Center.

The five districts represent a cross-section of the socioeconomic and ecological conditions of The Gambia. Much is known through the case studies conducted by the Working Group and the Land Tenure Center about the unique ecological and socioeconomic problems and opportunities of each district. The ANR program should work with the various agencies and organizations in these five districts to determine how it can most effectively assist the on-going activities of a wide range of governmental, donor, and nongovernmental agencies but also further new initiatives in the environmental domain.

The participatory planning process should consist initially of an assessment to identify how the program might best contribute to the promotion of improved management of the natural resources of the particular district. The analysis should be conducted as a collaborative initiative of key governmental and nongovernmental development agencies active in each one of the districts.

The assessment should be launched by forming an inter-ministerial planning team (consisting of both ministry technical services and representatives of interested nongovernmental organizations working in the district) to conduct a participatory planning exercise with the various resource user groups in the district. A skilled facilitator experienced in participatory planning should be engaged to train this initial team in participatory planning approaches and techniques. The initial planning initiative might take six to eight days per village. From the

outset, the inter-ministerial team and key village leaders would be trained in participatory planning techniques so that in the long-term village leaders could replicate the planning process themselves in other villages.

The village level planning exercise would result in the generation of village development plans and specific programs of action. The development institutions of the district would be encouraged to apply to the ANR program, and other projects, to secure any technical support and funding that might be necessary. Policy obstacles confronted by the rural communities through the planning process would be addressed through the aegis of the ANR program. The participatory planning process would lead to the creation of resource-management agreements outlining the responsibilities of the various actors involved in the planning initiative.

From the outset a monitoring system would be set up to assess the impact of the planning exercise. The data gathered through the Working Group case studies and the ANR ecological monitoring data base would be a good baseline from which to assess the impact of the later interventions. The maps and other pictorial data generated by the project could also be useful for planning purposes.

The participatory planning exercise leading to the preparation of village development plans should be designed to be replicable by villagers themselves across the district and division. If properly trained, villagers can take hold of the planning process to improve their futures. Provided with proper institutional support, villagers can become "para-professional" planners. But this is conditioned upon the existence of a set incentives to merit the investment of villagers' time in planning exercises. If the planning process is useful for the rural communities in identifying problems and specific solutions and generates concrete results, experience from other parts of the world suggests that rural communities will continue to expand the participatory planning approach (Shah 1994; Mascarenhas 1992).

Most of the five sites studied by the Working Group present excellent opportunities for promoting participatory management of natural resources. This would permit full exploitation of the knowledge generated by the case studies and meet the need to turn research results into initiatives that can directly assist the community. At least one member of the Working Group case study teams should return with the planning team to facilitate sharing of information and building linkages with the rural communities.

Implementation of a participatory planning exercise will certainly highlight opportunities for designing innovative resource-management projects. For instance, villagers in the Karantaba (Sami District) and Dumbutu (Sandu District) expressed interest in the regeneration of rhun palm trees. Farmer-to-farmer visits could be organized to Senegalese villages that have successfully embarked on rhun palm tree rehabilitation (i.e., Fandène, Département de Thies; Bagana Serer, Département de Mbour). In both Dumbutu and Karantaba, there is much interest in rehabilitating bamboo, a once vital source of income. An applied research program, conducted with the villages, could look into ways to rehabilitate this important species. Villagers interested in community management of forest commons could visit the Foni Brefet project and attend workshops organized by the villagers themselves.

2. Tenure and community resource-management agreements

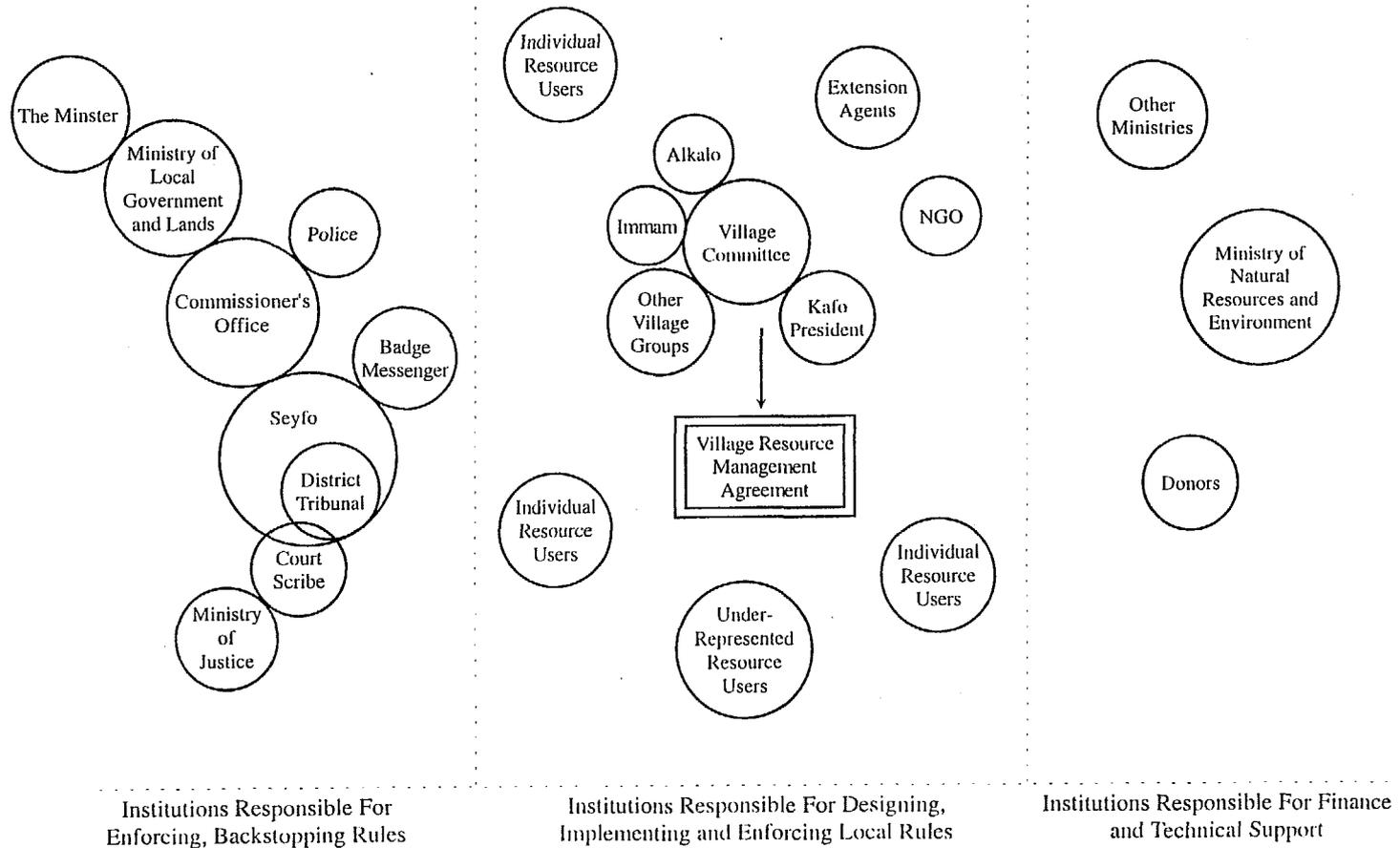
Development practice in many parts of West Africa currently encourages the establishment of contractual arrangements between recipients of development assistance and the government/donor agency. Through a process of negotiation, the donor indicates to the recipient the nature, duration, and extent of the aid package offered. The rural community recipients similarly indicate the contributions of cash and kind that it will provide to the joint endeavor. These contractual arrangements are written down, notarized, and filed with the government and the donor agency and often have the force of law. Rural communities in Senegal and Mali have taken the donors to court on occasion because obligations were not met.

The concept of contractual arrangements between the state and local communities has been extended to the environmental domain. In these cases the government/donor agencies collaborate with a range of village and extra-village institutions to establish a resource-management plan. These plans may be devised through a PRA process, as described in the previous section, leading to the formulation of a Community Resource Plan. The project serves the function of subsidizing the transaction costs of bring diverse interest groups together to negotiate new tenure arrangements. A resource-management plan should not be viewed simply as a map of preferred land uses, but it should also be a document that summarizes agreements reached within the community on the rules and regulations that will govern the use of natural resources. Since rule-making and enforcement is conducted by various institutions, it is necessary for a wide spectrum of interests to be intimately involved in the planning activity at the appropriate time (i.e., *kafo* groups, representatives of defined user groups, Village Development Committees, *alkalo*, *alkalo* from neighboring villages, *seyfo*, *seyfo* from neighboring districts, district tribunal members, forestry department agents, Livestock Services Agents, Area Council members, commissioner) (see chart 1: Institutions Involved in Designing, Implementing, and Enforcing Village Resource Management Agreements). From the very outset of the planning process it is critically important to identify all the resource stake holders in a community and to avoid marginalizing women and less powerful social categories.

These plans should consider how changes in tenure arrangements might improve the use of natural resources. For instance, a resource-management plan might entail the determination of new rules regulating the dimensions and location of cattle tracks. The plan might demarcate areas of rainy season grazing and field crop production for cattle and small ruminants and list sanctions against those not respecting the land use plan. The plan can spell out the conditions of loans of land to facilitate tree planting by land borrowers or women. The plan might indicate clearly who possesses rights to use forest products in a particular area, the rates of extraction of these products, and sanctions against abusers. The community might develop a strategy to protect seedlings of *kadd* (*Acacia albida*) trees growing in fields. Rules might be developed leading to the exclusion of livestock from fields on a rotational basis for a specified period of time in order to facilitate the growth of the young trees. Sanctions might be set up designed to prohibit excessive cutting of predetermined

Chart 1:

Institutions Involved In Designing, Implementing, And Enforcing Village Resource Management Agreements



species of trees. Villagers in Karantaba (Sami District) suggested that the forests falling under the jurisdiction of the village be divided upon among the *kabilo* who would then be vested with responsibilities for managing all resources found therein. Contractual agreements would need to be set up with the forestry department and other government agencies spelling out the conditions of devolution of resource-management control to the local community.

Based on a community resource plan, a covenant would then be drawn up between the state and local institutions spelling out the actions to be implemented by the various interested parties. These agreements should be written down, translated in Arabic and local languages and filed with the village and appropriate legally constituted bodies. Resource-management plans represent negotiated agreements to modify tenure arrangements at the local level, and thus, these plans need to be officially received and accepted by the legally constituted purveyors of customary law-*alkalolu*, *seyfolu*, district tribunals, and commissioners.

A resource-management agreement is a covenant of trust-an expectation that both the resource users and the state will carry out their promises. Covenants and social contracts are often broken and for this reason it is necessary for communities engaged in resource planning to consider how to enforce agreements. Communities involved in participatory planning should be encouraged to develop not only new local-level rules and regulations governing the use of resources in a particular locale, but also a series of "graduated sanctions" against those (both state and rural resource users) who contravene the negotiated agreements (International Center for Self-Governance 1994; Ostrom, personal communication).

The assumption in the literature on environmental planning is that an "external enforcer" is necessary to enforce contracts and rules set up through a resource-management agreement (see box 17: Covenants and Rule Enforcement). Evidence from both the cases studies conducted by the Working Group on Resource Tenure and evidence from elsewhere suggests that rural communities in West Africa and The Gambia have repeatedly shown their capacity to organize themselves, establish credible commitments, monitor each others' behavior, and impose sanctions on those who break their commitments (Ostrom et al. 1992). A wide variety of internal sanctioning mechanisms exist in rural communities already exist in The Gambia and thus development projects should try to identify and build on these structures. The *tango* arrangement discussed earlier in this paper is but one illustration of the strength of local rule-making and enforcement capacities.

Resource-management agreements can take on many forms. They may be complex tenure agreements emerging out of a communitywide planning process, but they can also be much simpler contractual agreements between two or more individuals. Government and projects should encourage the public to employ written contracts to specify land borrowing arrangements, sharecropping, rental agreements, or user-group uses of particular natural resources in a village territory. These agreements should be notarized and legally recognizable in courts.

The Working Group research team is concerned about the long-term viability of any resource-management agreements. Agreements may be negotiated and "protected" throughout the duration of project intervention. Projects have a tendency to use their considerable financial

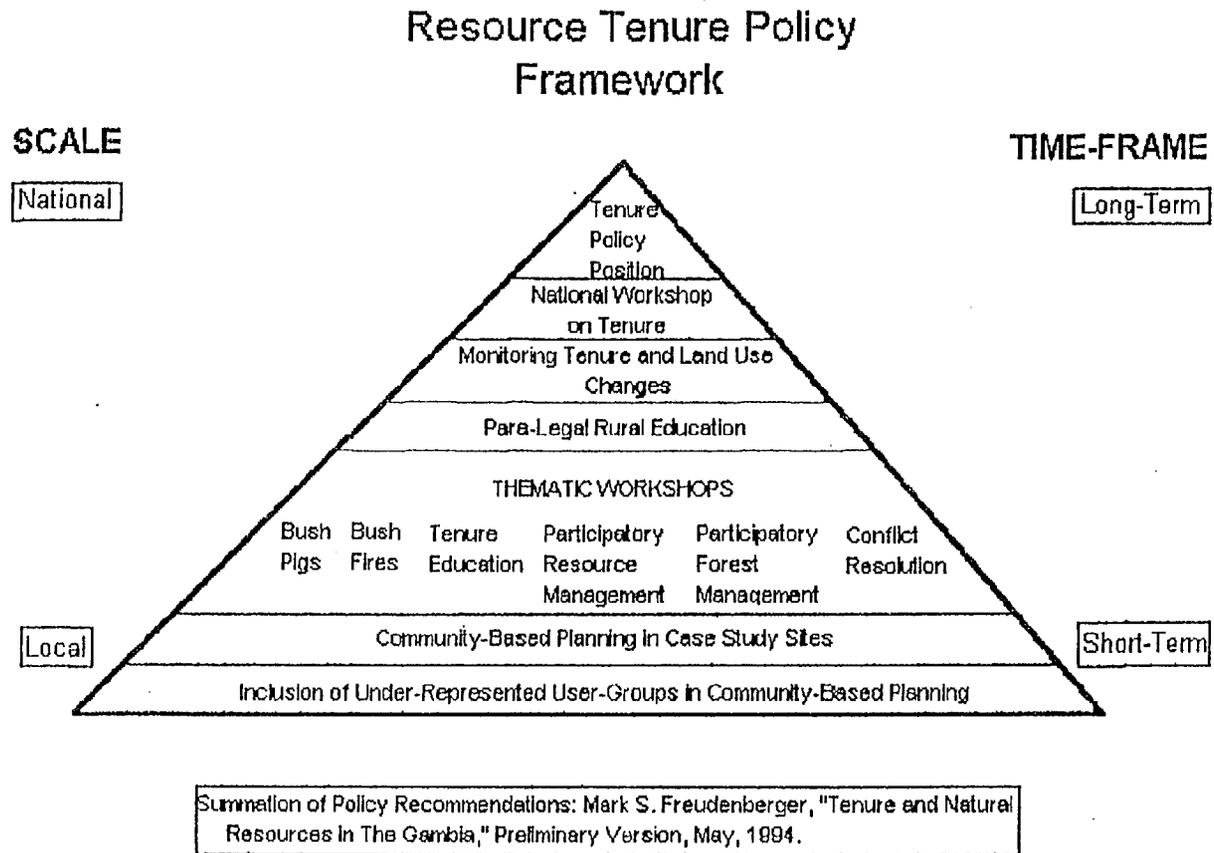
leverage to force the creation of new resource use conventions. There is, however, an implicit danger in this approach. Following the termination of the project, such agreements may collapse. This has occurred in The Gambia around tenure

Box 17: Covenants and Rule Enforcement

The decisive question is whether the players can make enforceable agreements, and it makes little difference whether they are allowed to talk to each other. Even if they are free to talk and to negotiate an agreement, this fact will be of no real help if the agreement has little chance of being kept. An ability to negotiate agreements is useful only if the rules of the game make such agreement binding and enforceable (Harsanyi and Selten 1988 in Orstrom et al. p.404).

arrangements negotiated around allocations of land for irrigated plots (i.e., Sami District Case Study) as well as in other Sahelian countries. It is thus very important to work closely with traditional rural authorities from the outset in the design and implementation of resource use arrangements in order to avoid agreements that are ephemeral products arising from externally driver project concerns.

Chart 2:



IV. Tenure and public policy

A. Public policies to promote tenure security in the short, medium, and long terms

The recommendations below spell out several ways to respond to the tenure constraints and opportunities discussed in this report. The thrust of these recommendations is to promote greater public involvement, through various policy dialogue mechanisms, in decisions affecting resource tenure in The Gambia. They list specific ways to create opportunities for a wide array of public interests to address pressing tenure realities encountered at the local level. Out of the *process* of informed public debate encouraged here, the members of the Working Group on Resource Tenure and Land Use Planning and the Land Tenure Center are convinced that innovative policy guidelines and responses will emerge.

1. Short-term responses

a. National workshops

National workshop on resource tenure in urban/Peri-urban and rural areas of The Gambia

The Working Group suggests that the Agricultural and Natural Resources (ANR) program of the Ministry of Natural Resources and Environment sponsor a 4-5 day long national workshop on resource tenure in late 1994 to review current research findings on tenure issues in The Gambia, explore policy options to increase security of tenure for rural and urban populations, and search for consensus on policy approaches to respond to the problems identified.

Through the presentation of papers by government, researchers, and informed members of the public, the workshop would first explore land tenure constraints and opportunities encountered in Africa and The Gambia in order to present a foundation for the subsequent review of policy options available to The Gambia. Presentations on the tenure issues of The Gambia would be complemented by presentations of guest speakers from other African countries. Following this introductory phase, the workshop would then shift its attention to the likely outcomes of various policy scenarios. The advantages and disadvantages of the courses of action suggested in Section 5, "Tenure Policy Options," (the "replacement," "comanagement," "adaptation," and "laissez faire" approaches) would be debated through the mediums of papers, panels, and small-group discussions. Towards the end of the workshop, the participants would propose future courses of action. The national workshop conference would lead to the preparation of a workshop paper spelling out specific policy proposals.

The national workshop should be preceded by a public debate on tenure organized at the district and divisional level. Representatives of farmers' groups, women's associations, nongovernmental organizations, entrepreneurs, and government should be encouraged to meet at selected districts and all divisions to discuss the types of tenure issues confronting the area

and list the types of policy options suggested by the public. These divisional and district level seminars would be used to incorporate public input into the national workshop. Representatives of the various divisions and districts would attend the national workshop. These people would represent a cross-section of the rural and urban population of The Gambia. There have been experiences organizing such processes of public preparation for national workshops on tenure in Mozambique, Tanzania, and in some of the CILSS member states preparing for the CILSS/Club du Sahel Regional Conference on Tenure and Decentralization.¹³

The Working Group suggests that the National Environmental Agency (NEA) take the next step by helping to coordinate the national workshop and the division and district level workshops. A Task Force on Resource Tenure should be created within the NEA to further the tenure dialogue process. The Working Group has served its function as an ad-hoc inter-ministerial coordinating body designated to generate initial information and proposals for next steps. Now responsibility should shift to a more formal institution to help further the tenure debate and discussion of specific policy options. Without the support of an inter-governmental coordinating body like the NEA, it will be difficult to plan and implement a broad based public policy debate on resource tenure options.

National workshops and applied research on the "bush pig problem"

The tenure case studies in all five districts uniformly identified the destruction of field crops by bush pigs as a priority issue. Villagers feel helpless to effectively manage their resources because they cannot control invasions of bush pigs due to legal restrictions on the use of fire, weapons, and other pest control techniques. This problem may seem mundane, if not amusing, to urban-based policymakers, but for rural populations the war on bush pigs is a very serious matter. The villagers of the Sami, Kiang West, and Foni Jarrol District case studies noted that the number one problem in the area was the annual invasion of their fields by a rapidly rising population of bush pigs. Despite numerous attempts (e.g., fences, scarecrows, smoke, firecrackers, hunting), villagers have been unable to control the problem.

The Working Group recommends that a national workshop on the bush pig problem be convened by the ANR program. This workshop should invite villagers, *alkalolu* and *seyfolu* to share their perspectives with technical advisors from the Ministries of Agriculture, Natural Resources, and Local Government. Prior to the workshop, Radio Gambia could air interviews

¹³ For further information on the possibilities and difficulties of organizing national workshops on tenure, see: Boubakar BA (CILSS, B.P. 7049, Ouagadougou, Burkina Faso. fax: (226) 30.72.47) for the CILSS member countries; Issa Shivji for Tanzania (Faculty of Law, University of Warwick Law School, Coventry, Warwickshire, England. fax: (44) 0203-524105); Greg Myers for Mozambique (L.T.C./Mozambique, c/o USAID/Mozambique, Ciaxa Postal, 783, Maputo, Mozambique. fax: (258) 49.20.98).

with villagers describing the bush pig problem and possible solutions.¹⁴ The press should be invited to attend the workshop and publicize findings. Wildlife management specialists with experience in dealing with wild game pests such as bush pigs should be invited to discuss measures to control the problem. Some export-oriented entrepreneurs are interested in exporting bush pig meat to the European market. These individuals should be invited and previous attempts at bush pig meat export to Ghana should be reviewed. From this workshop, recommendations should emerge to guide policy and action. This workshop and subsequent follow-up activities would signal the interest of government and donors to respond to a pressing priority that has been identified by rural populations.

National workshops and research on the "bush fire problem"

The bush fire problem in The Gambia is both a tenure and a resource-management issue. Fires play a central role, both negative and positive, in the ecology and economy of the country. The control of bush fires is a tenure issue; the central question resides in who should possess the authority to use fire as a management tool. Control over the use of fire as a resource-management instrument often pits the state and the scientific community against a variety of rural interest groups. While rural respondents consulted during the Working Group case studies lamented the high incidence and ecological destruction caused by bush fires, they also noted the importance of well-timed fires for promoting re-growth of pastures, controlling pests, and protecting settlements against the destructive effects of late dry season fires. In each of the case studies villagers made creative suggestions on how to control and combat forest fires.

The ANR program should build upon the interest of rural communities and government in bush fire control by promoting informed public debate on the issue. This should be done in a way that taps not only the knowledge of the scientific community, but also the indigenous knowledge of rural populations. Rural resource user groups should be explicitly incorporated into the debate on the bush fire problem. This can be done in several ways. Seminars and workshops should be held at the district and divisional level to allow villagers to present specific suggestions regarding means to control dry season burning more effectively. As with the Bush Pig Seminar, Radio Gambia should present a series of interviews on the causes, consequences, and possible solutions to the bush fire problem. Interviews should be held with villagers to solicit their input and recommendations. National workshops on bush fire control should be timed to coincide with radio programs and press articles. Key rural leaders should be invited to these workshops.

The use of fire as a resource-management tool is the subject of much scientific and policy making interest. Neighboring African countries have invested considerable resources in trying to understand and combat the problem. The expertise of the Centre de Suivie Ecologique in Dakar (Racine Kane) should be consulted and the experience of the government of Mali, which instituted a national dialogue on the bush fire problem, should be reviewed.

¹⁴ Land Tenure Center researcher Nancy Sheehan and Radio Gambia reporter Ami Bojang conducted interviews with the villagers of Dumbutu on the bush pig problem.

b. Training programs

Programs to incorporate new actors into the resource tenure dialogue: women and nongovernmental organizations

The Working Group on Resource Tenure is an interministerial body with limited outreach to the broader public. Other sectors of Gambian society need to become more aware of how tenure relations may contribute to or hinder the sustainable use of natural resources. Two institutional actors could benefit from greater exposure to the debate on resource tenure: women's associations/interest groups and nongovernmental organizations involved in rural development activities.

The Working Group has not succeeded in thoroughly incorporating women's interest groups into the heated debate on access to land and other natural resources. Donor development organizations have sometimes been reluctant to involve themselves in issues of women's land rights. This may be due to a perception that, because such issues are determined by tradition, they are somehow "off-limits" to the "culturally sensitive" outsider. In other cases, development organizations are blamed for interfering in gender conflicts that are viewed as "political" issues rather than "development."

The debate on tenure is poorly articulated within some of The Gambia's preeminent women's organizations. Urban-based professional women have ill-formed notions about rural women's tenure constraints. From the Working Group's initial positive experience working with the Women's Bureau we are convinced that educational programs that create opportunities for women's interest groups to learn more about resource tenure issues will stimulate a more informed policy dialogue and enhance women's contribution to this dialogue.

The Agricultural and Natural Resources program should help provide learning mechanisms to expand informed debate on gender and tenure issues. Women's interest groups should be encouraged to go to rural and peri-urban areas to conduct high quality case studies of tenure problems confronted by women in The Gambia. Rapid Rural Appraisal research methods are appropriate for this type of field research. Qualified women familiar with the Gambian gender and tenure debate and skilled in field research have worked extensively with the Working Group, and their experience should be used further in this domain.

The Government of The Gambia and donor projects should assess the interest of Gambian women in forming an association (formal or informal) to address concerns about women's landownership and access to natural resources. Seminars and other educational activities designed by and for women could be set up.¹⁵ The initial objective would be to elicit the opinions of women on issues of tenure as a first step towards designing more appropriate public policies.

¹⁵ Donor agencies should be encouraged to sponsor participation of women to the Land Tenure Center short course on "Tenure and Resource Management in Sub-Saharan Africa" held in Madison, Wisconsin, from September 19-October 14, 1994.

The Agricultural and Natural Resources program could address an invitation to key women leaders to meet to discuss possible programs.¹⁶

Nongovernmental organizations (NGOs) were excluded from participation in Working Group research activities because they were not viewed by the GOTG as actors in policy decisions concerning land matters. This was a regrettable omission since in fact nongovernmental organizations play a major role in modifying tenure relations through their project activities and as advocates.

The Agriculture and Natural Resources program should promote an educational process where nongovernmental organizations are provided the opportunity to explore how tenure issues impinge upon project planning and implementation. The information generated from the tenure case studies could be used in the preparation of seminars on land tenure, funds could be used to train NGO staff in the use of RRA to improve their understanding of tenure relations in the project context, and NGOs could be asked by government to participate more actively in public policy forums.

Similar programs of applied research should be proposed to the nongovernmental organizations. The proliferation of NGOs active in environmental issues continues unabated in The Gambia. As this report has indicated, projects create new tenure arrangements yet often these are not taken account of by development projects. The ANR program could propose to nongovernmental organizations like TANGO the sponsorship of seminars on resource tenure issues utilizing the research findings of the Working Group, applied field research and training programs in tenure, and small grants provided to NGOs conducting research on tenure issues within their own projects. Such small grant programs for applied research have been very successfully used by the Canadian *Solidarité Canada Sahel* to promote education on tenure issues within their own membership.¹⁷

Training in participatory resource management

The Government of The Gambia and interested donors should review the successes and set-backs of government and nongovernment programs in The Gambia in promoting

¹⁶ Suggested preliminary list of interested government and NGO representatives includes: Mrs. Amie Bensouda, Ministry of Justice; Ms. Awa Ceesay, Ministry of Justice; Mrs. Cole, Ministry of Justice; Mrs. Amie Joof Cole, Radio Gambia and President of National Women's Council; Mrs. Amie Bojang, Radio Gambia; Mrs. Michelle Sagar Mende, Dept. of Social Welfare; Mrs. Wilamena Sarr, Dept. of Social Welfare; Mrs. Safiatou Sengateh, GAMTRAP; Mrs. N'Dey Isatou N'Jie, National Environmental Agency; Ms. Isatou Sawaneh, Private Consultant; Mrs. Haddy M'Boge, Gambian Women's Finance Corporation; Exec. Dir. Gambian Women's Finance Corporation.

¹⁷For further information on this approach, contact Mr. Rejean Piché, Solidarité Canada Sahel, Montreal, Canada. (514) 597-2334; tel: (514) 597-2288.

decentralized management of public resources. Numerous governmental and nongovernmental programs have embarked in participatory planning with villagers. Nongovernmental organizations active in the promotion of sesame presses, public health programs, and informal education have experience in rural planning, as does the Community Development Department. Lessons need to be learned from these experiences prior to launching new training programs in participatory resource planning. Additional training or support can be provided as needs are identified through this assessment.

As indicated above, training in participatory resource planning and management should be a hands-on experience. Training should be conducted as a joint exercise involving village target groups, nongovernmental staff, and government agency staff. The variety of planning skills and techniques developed in The Gambia should be incorporated into the design of any training program. Particular care should be made to incorporate gender sensitive approaches into the training programs, since experiences to date show that participatory planning approaches are not automatically gender-sensitive (Guijt 1994).

The Agriculture and Natural Resources program should finance a collection of materials on participatory planning. These should be housed in the documentation center of the Ministry of Natural Resources and Environment. A preliminary list is suggested in appendix 2: Selected Bibliography on Participatory Rural Appraisals.

Training program in resource-management agreements

The Agricultural and Natural Resources program should sponsor a consultancy on methods and techniques to construct resource-management agreements. The study should initially consist of a literature review of the experiences of development programs engaged in crafting resource-management agreements between the state and local-level user groups in Africa, Asia and Latin America. The study should focus on the types of institutional arrangements set up between the community and the state. The experience of the Gambian-German community forestry project in Foni Brefet should be examined closely.

Following the initial literature review, the ANR program should convene a workshop of field workers from various projects in West Africa engaged in the preparation of resource-management agreements. For example, the workshop organizers should invite members of the Land Tenure Center team of Labé, Guinea, who have worked extensively with villagers to construct resource-management agreements.¹⁸ Similar initiatives are being started by CARE International in Mali at the Segue Forest (McLain and Sankaré 1993) and also by the Near East

¹⁸ Contact Julie Fischer, USAID/Guinea, Conakry, Guinea. Telephone in Labé: (224) 51.01.11.

Foundation in Douentza, Mali (McLain 1992).¹⁹ Again, the Gambian-German Forestry Project experiences should be fully integrated into the workshop.

The village planning process described above would create the opportunity to design and implement resource-management agreements. Resource-management agreements should be prepared as soon as opportunities emerge in the five case study sites and should be registered with the appropriate authorities.

Workshop and applied research on participatory forest park management

The case study of the Kiang West National Park indicated that management problems jeopardize the long-term viability of the park. The Working Group suggests that measures be taken to increase the institutional capacity of the Kiang West Park Technical Advisory Committee (TAC) to better manage the park. This study should consider innovative ways to increase the involvement of all the communities and resource user groups who exploit natural resources in and around the park, based on experiences of participatory park management in other countries.

The Agricultural and Natural Resources program should take the lead in working with the Department of Wildlife and the Department of Forestry to promote more participatory institutional arrangements governing state reserves. Several models of innovative resource-management arrangements governing state reserves should be investigated closely. These include the CAMPFIRE program in Zimbabwe (Murombedzi 1991; Murindagomo 1992; Metcalfe 1993), national park management in Tanzania (Wells and Brandon 1992; Western 1993), establishment of new National Parks in Madagascar (Wells and Brandon 1992) and game ranching in Burkina Faso (Fries and Heermans 1992; Wells and Brandon 1992).

Workshops should be held at the national level to disseminate the results of the study described above. Just as important, villages surrounding the Kiang West National Park should be involved in assessing the successes and set-backs of the TAC committee. Community leaders including *seyfolu*, *alkalolu*, district tribunal members, Area Council representatives and other key leaders should be extensively involved in this process. Without this, the project may encounter growing opposition and resistance from the surrounding villages to park management initiatives.

Training in conflict resolution around natural resources

Development projects promoting the sustainable use of natural resources will invariably confront tense and divisive conflicts in villages. The case study in the Sandu District and the village of Darisalami illustrates the terribly complex and destructive nature of these conflicts.

¹⁹ For further information on these interesting experiences, contact Rebecca McLain, Institute for Resources in Society, University of Washington, 304 Anderson Hall, Seattle, Washington 98195. tel:(206) 543-0102. fax:(206) 528-6019.

There is always a risk that projects will exacerbate such conflicts. Indeed, the participatory planning process and the negotiation of resource-management agreements is nearly certain to cause latent conflicts to surface. Unless these are resolved at the outset, they may destroy community initiatives. Rather than avoid these situations, as is often the case, projects should actively promote dispute mediation and conciliation.

The Agricultural and Natural Resources program should sponsor a study of both western and indigenous Gambian conflict resolution techniques. Fascinating examples of successful conflict resolution techniques abound, but these are rarely incorporated into project planning activities. For example, a project of the Free University of Berlin has successfully used role playing exercises with villagers involved in conflicts to help resolve severe tenure crises with rural communities.²⁰ District tribunal members, *seyfolu*, and *alkalolu* should be interviewed to inquire about the techniques they use to resolve conflictual situations. Workshops at the district level should be held with key community leaders to discuss how rural leaders try to resolve contentious disputes over resources.

Following this initial research program, the ANR program should offer a series of workshops on conflict resolution techniques to nongovernmental organizations, community development workers, and technical advisors in the various ministries. These workshops should encourage hands-on training appropriate to the cultural context of The Gambia. The teams involved in participatory planning should receive training in conflict resolution techniques.

2. Medium-term responses

a. Monitoring tenure and land use change

The ANR program should set up a process to monitor the influence of the Lands Act and Physical Planning and Control Act on tenure and resource-management arrangements in different parts of the country. As this report has suggested, implementation of the new acts may cause tenure insecurity in the rural areas of The Gambia, especially in peri-urban zones. The creation of tenure "monitoring points" is being tried in other West African countries. Through support from the French government, Mali and Senegal have set up *observatoires fonciers* (Kintz 1992; Le Bris et al. 1991). Data generated from periodic studies of the changing tenure systems in the monitoring sites feeds into the policy dialogue arena. The five case study sites studied by the Working Group on Resource Tenure and Land Use Planning and the Land Tenure Center could serve as one group of tenure monitoring sites. In addition, several sites closer to rapidly growing urban areas should be carefully followed.

²⁰ Thomas Bierschenk of the Free University of Berlin specializes in this technique. Address: Free University of Berlin, Institute of Ethnology, D-1000 Berlin 33, Germany. Bara Gueye of the Institute for Environment and Development in Dakar, Senegal has also been trained in the approach. It has been applied to the village of Fandene (Département of Thies, Senegal) with good results.

The monitoring of the new Lands Acts and associated legislation should place particular attention on the activities of the new Land Boards. The studies should be designed with an aim to improving the institutional capacity of the Land Boards, especially in "designated areas" of the country. The Ministry of Local Government and Lands (Lands and Surveys Department) should be actively involved in the monitoring of these acts.

b. Regulatory reforms

Community involvement in the determination of "designated areas"

The State Lands Act of 1990 grants the Minister the authority to create "designated areas" subject to conversion of customary tenure to a leasehold or freehold tenure. Government should consider the establishment of systematic criteria for judging when and where to create "designated areas." Rural populations should have a major voice in affirming or rejecting plans to create these new tenure domains. Regulations should be put in place that require government to explain clearly the rationale and intent of creating "designated areas." The option might be explored of allowing rural populations to vote by referendum on whether a particular division or district should be subject to the conversion process.

c. Legislative reforms

This report has suggested that legislation governing the use of land in The Gambia is contradictory, vague, and open to considerable interpretation. The intent of different legislative acts varies considerably because they were designed and enacted at different periods to meet specific problems defined at the moment. The role and function of government and the citizenry of The Gambia with respect to the management of natural resources differs from one legislative text to another. Considerable confusion exists over the sometimes competing and contradictory roles of village development committees, *kafo* groups, *alkalo*, *seyfo*, Area Councils, district tribunals and government technical agencies with respect to the jurisdictional limits of each institution and their roles in the use and control of natural resources.

The National Environmental Agency should undertake a comprehensive review of all legislation pertaining to natural resources to determine how various legal texts may be harmonized in support of the policies that emerge from the tenure debate described above (district, divisional, and national workshops). In particular, the functions of various institutions responsible for resource management should be articulated more clearly. Special attention should be directed to unifying policy approaches in the following legislation: Land (Provinces) Act, Lands Act, Physical Planning and Control Act, Forest Act, Wildlife Conservation Act, Local Government Act, and District Tribunal Act.

While The Gambia Environmental Action Plan identifies broad policy orientations, these orientations must be incorporated into the various texts regulating land use in rural and urban areas.

d. Rural para-legal education

Rural populations, as well as some elements of the administration, lack a full understanding of the legal system and how it can protect people's rights. Rural populations can use the law, such as the forestry legislation, to better manage village resources. But unless villagers know the provisions of legislation, this is impossible. The "Tenure and Natural Resources" project has been financing the translation of the Law Reform Commission paper Customary Laws and Usages of The Gambia into national languages as a way to generate debate on customary land norms. These translations into Fula, Jola, and Mandinka should be more widely distributed through both oral and written means of communication.

Translation and simplification of legal texts would also be useful for the forestry laws, the Land (Provinces) Act, and the Lands Act of 1990. Translation into local languages does not necessarily need to be in a written form. Cassette tapes of key legal texts and oral debates on policy issues could also be prepared. Radio Gambia should play a central part in the establishment of radio programs of legal education. The Law Reform Commission and the African Society of International Comparative Law might help conceptualize legal education activities that could be carried out by both government and nongovernmental agencies. The experience of the Senegalese nongovernmental organization AMRAD would be instructive; it has translated many legal texts into Fulbe and it is developing a village legal education program.

The Working Group recommends that the Ministry of Local Government and Lands undertake an awareness building campaign to inform both divisional and district authorities about the implications of the State Lands, the Physical Planning and Development Control, and the Compensation Acts along with the Forestry, and Wildlife Acts, etc. The ministry should work closely with nongovernmental agencies to facilitate the flow of information to rural populations. Focus group meetings organized by development organizations and key rural interest groups can be used to inform populations of their legal rights and responsibilities. These activities should all make special efforts to reach women who have the most to lose from not knowing about new land laws and much to gain from this knowledge.

e. Legal education of district tribunal members

Legal education programs are also needed at the level of the district tribunals. Tribunal members have expressed interest in knowing more about the new Lands Act and associated legislation. Government currently engages in various forms of legal education of the district tribunals, but donors should increase support for these initiatives. The Law Reform Commission of The Gambia should be more involved in these educational activities.

Government should act on suggestions of district tribunal members on ways to improve the functions of the institution. Donor development agencies might work with the Ministry of Justice to finance joint studies on ways to improve the decision making capacity of the district and group tribunals. Magistrates interviewed by the Working Group research teams suggested, for example, that they review district tribunal cases in order to improve the quality of decision making. Tribunal members emphasized the need for scribes to be assigned to each judicial

district and for improvements to be made in the storage of court records. All of these suggestions should be the object of concerted reflection.

3. Long-term responses

a. Land policy statement

The Working Group advocates the adoption by government of a land policy built upon an informed, coordinated and inclusive national debate. The task of promoting a dialogue and creating a consensus on tenure issues might be delegated to a legally recognized task force created by the National Environmental Agency and supported actively by the President's Office. The final product of this national debate could be a Government White Paper identifying the tenure issues confronting The Gambia, spelling out the policy choices available, and recommending specific legislative, administrative, and judicial reforms. The development of national consensus should be an internal matter for The Gambia. International donors should actively support the process of dialogue, but ultimately the decisions must rest with the people of The Gambia. Support of an informed debate on land and tenure issues will encourage policies that reflect the diverse interests and concerns of the Gambian population whose well being ultimately depends on the health of its natural resource base.

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Appendices

Appendix 1: Participants in working group on resource tenure and land use planning case studies

Fasainy Dumbuya	Ministry of Natural Resources and Environment, Planning Unit
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Saul Secka	Ministry of Agriculture, Soil and Water Management Unit
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Tamsier Bobb	Ministry of Agriculture, Department of Livestock Services
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Alhaji Marong	Law Reform Commission of The Gambia and Ministry of Justice
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Amie Bojang	Radio Gambia, Rural Programming Division
Haddy M'Boge	Gambia Women's Finance Association, Direct Lending Programmer
Fatou Nyangado	Women's Council
Fatou Cee	Women's Bureau
Isatou Sowaneh	Consultant
Mark Schoonmaker Freudenberger	Land Tenure Center
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Appendix 2: Selected bibliography of participatory planning materials

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Appendix 3: Trainers in participatory rural appraisals and participatory planning

The following individuals and organizations should be contacted for training in participatory rural planning using the Participatory Rural Appraisal approaches and methodologies.

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Appendix 4: Matrix of policy options

Options/ Attributes	Replacement of customay tenure regimes	Comanagement of natural resources by state and rural civil society	Adaptation of customary tenure regimes	Laisser faire (nonstate intervention)
Description	State Replacement of Customary Tenure Regimes with Freehold or Leasehold System	Negotiation of State and Rural Civil Society Roles and Responsibilities over Natural Resources	State Encouragement of Incremental Change in Customary Tenure Regimes	Acceptance of Current Situation and No Interference by the State
Assumptions	<p>1) Customary Tenure System: Inadequate</p> <p>2) State: Play active role in instituting conversion process; preponderant role in designing leasehold and freehold system</p> <p>3) Civil Society: Accept national legislation and regulations; limited role in defining laws and regulations</p>	<p>1) Customary Tenure System: Ambivalent but not hostile</p> <p>2) State: Negotiate of rights and responsibilities of resource user groups; Monitor changes in ecology and social relations; Define respective management roles between state and rural society; assist in resolution of resource disputes</p> <p>3) Civil Society: Central actor in negotiation of use of natural resources</p>	<p>1) Customary Tenure System: Supportive but recognize need for modifications</p> <p>2) State: Active role in legal education, dispute arbitration, and defense of traditional tenure regimes; central and strong role of judiciary in monitoring social impact of changes in tenure system</p> <p>3) Civil Society: Central role in defining and implementing changes in tenure regimes</p>	<p>1) Customary Tenure System: Of no concern</p> <p>2) State: Ad hoc response to tenure conflicts. No intervention at village level</p> <p>3) Civil Society: Let things sort themselves out as they will</p>
Legislative Framework	Institute national land legislation to allow leasehold and freehold tenure, i.e.: Lands Acts and Physical Planning and Control Acts	Modify legislation to devolve resource management responsibilities to local institutions (i.e.: forest, water, land, mining, fisheries, wildlife)	Maintain key provisions of Provinces Act; Create a Land Charter to define resource use norms and principles at national level, but allow Districts and villages to implement specifics	None

Options/ Attributes	Replacement	Comanagement	Adaptation	Laisser faire
State Administrative Practice	<p>State Administration:</p> <ol style="list-style-type: none"> 1) Implement land conversion process through granting of land titles 2) Implement land planning mechanisms 3) Institute cadastre and land registration system 	<p>State Administration:</p> <ol style="list-style-type: none"> 1) Negotiation of resource use rights and responsibilities between different resource user groups; arbitrator in resolution of disputes; assist in invention of participatory planning tools <p>Non-Governmental Organizations:</p> <ol style="list-style-type: none"> 1) State promotion of active involvement of NGOs with villages in design of land use plans 	<p>State Administration:</p> <ol style="list-style-type: none"> 1) Respect of customary tenure regimes 2) Encourage dispute resolution over natural resources at District Tribunal and village level 3) Legal education and support for District Tribunal and District Authorities 	<p>State Administration:</p> <ol style="list-style-type: none"> 1) Resolve conflicts over resources on an ad hoc basis, otherwise do not intervene in rural matters
Government and Nongovernment Development Practice in Rural Areas	<ol style="list-style-type: none"> 1) Public Education: Create legal education programs in new legislation 2) Institutional Innovations: Creation of Land Boards and Planning Boards 	<ol style="list-style-type: none"> 1) Public Education: Explanation of co-management principles; creation of environmental awareness 2) Institutional Innovations: Community Level Resource Management Agreements; Village NRM Committees; Inter-village NRM Federations 3) Provision of technical support and extension advice to rural communities 	<ol style="list-style-type: none"> 1) Public Education: Legal Education programs for District Tribunal and District Authorities 2) Institutional Innovations: In-depth discussion with District Authorities and Tribunal of land tenure problems and options. Formulation of revised land use principles for Districts and villages. 	<p>No planned rural development programs</p>

Options/ Attributes	Replacement	Comanagement	Adaptation	Laisser faire
Judicial Practice	<p>1) Courts: Review litigation and appeals from Land Boards at all levels of judicial system; look into cases of abuse in land registration system and inappropriate application of land laws</p> <p>2) Assess constitutionality of Lands Acts and other legislation</p>	<p>1) District Tribunal: Enforce resource use agreements and conventions; encourage development of new tenure norms for resource use</p> <p>2) Courts: Monitor constitutionality of resource use agreements</p>	<p>1) District Tribunal: Enforce new land norms and principles through adjudication process</p> <p>2) Translation of legal texts into local languages</p> <p>3) Recording of customary norms and practices</p> <p>4) Improvement of court transcription and record keeping</p>	<p>1) Courts: Hear disputes and appeals as necessary</p>
Expected Outcome	<p>Positive: Improved planning of urban land areas; greater security of land holdings through titling process; women might be able to legally own land; those with capital can purchase land.</p> <p>Negative: Land speculation, land grabbing, state sanctioned corruption; landlessness for dispossessed former holders</p>	<p>Positive: Improved management of natural resources at village level; improved rule making capacity; improved planning capacity of state and village institutions</p> <p>Negative: Creation of "islands" of resource management innovations but no replicability; project guaranteed tenure arrangements but no long-term sustainability</p>	<p>Positive: Greater tenure security for primary rights holders; specification of responsibilities of primary rights holders vis a vis secondary rights holders; modified tenure regimes to suit local situations</p> <p>Negative: Maintenance of traditional power structures; status quo land allocation patterns maintained; limited access to resources by vulnerable groups and women</p>	<p>Positive: System will adapt as it will; little state interference</p> <p>Negative: Considerable social conflict as land markets and privatization emerges; disenfranchisement of traditional land holders</p>
Financial Costs	<p>Very high costs of implementation of cadastre and land surveys born by public and government; high litigation costs during tenure conversion process born by disputants and state</p>	<p>High cost of initial development projects and public education; high costs of extension; expected lower costs if villages construct new resource management arrangements autonomously</p>	<p>Lower cost than other options; cost of public education, national dialogues not as expensive as village level extension</p>	<p>Few direct administrative costs; high costs of litigation by disputants</p>

Options/ Attributes	Replacement	Comanagement	Adaptation	Laisser faire
Institutional Proponents in The Gambia	<ul style="list-style-type: none"> -Dept. of Lands and Surveys -Donors: GTZ Urban Planning Program -Entrepreneurs -Land Speculators 	<ul style="list-style-type: none"> -Ministry of Natural Resources and Environment -Ministry of Local Government and Lands -National Environmental Agency -Donors: USAID, GTZ and others -NGOs: Some 	<ul style="list-style-type: none"> -Ministry of Justice -Law Reform Commission -Ministry of Local Government and Lands 	<ul style="list-style-type: none"> -Alkalos in Kombo-Saint Mary -Land speculators -Entrepreneurs
Experiences in Africa	Kenya Botswana	Projects in Sahelian countries, especially Burkina Faso (PNGT)	Gambia	Peri-Urban and Urban areas throughout Africa