

Environmental Laws in the Gambia

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I. Introduction

The Gambia faces strong development challenges, with a per capita income of \$330, a population density twice that of Senegal or Kenya, rapid loss of natural resources, and a population growth rate in excess of 4.1%.² The country is a small riverine state in West Africa, bordered by Senegal on three sides, and the Atlantic Ocean to the east. It has a population of approximately 989,000 and a surface area of 4,127 square miles. Its major

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One of the hallmarks of working on environmental laws in West Africa is the relative scarcity of written materials. In the case of the Gambia, these materials have been obtained through trips and correspondence with the Government of the Gambia, as well as with members of the USAID and researchers as cited. The legal framework in West Africa consists mainly of both Anglo-American and Civil law. Additional work to be consulted includes R. C. Zimmerman, Recent Reforms in Natural Resources Management in Africa: Trends in the Roles of Public-Sector Institutions (Document Order No. PN-ABQ-242), Phase II, Final Report ARTS Technical Paper No. 9 (prepared for USAID, Division of Food, Agriculture and Resources Analysis, Office of Analysis, Research and Technical Support, Bureau for Africa) (Oct. 1993); [hereinafter Zimmerman]; Depp, Rose Marie, FY 1996 Development Fund for Africa Request and FY 1996 P.L. 480 Title II Request (1995) [hereinafter Depp], a press release from the USAID, available from internet USAID.gov site.

²Depp supra note 1, at 1.

natural feature is the Gambia River, which runs east/west the length of the country, or approximately 300 km.

The Republic of the Gambia functions with a common law system established by the British Government in the 19th Century, which was imposed on an already extensively imbedded system of customary law. While the Gambia is not an Islamic Republic, local law is based on Muslim tradition and still reigns supreme in many important areas of environmental law, particularly with respect to land tenure.

The Gambia was colonized by the British, who instigated a common law tradition at the national level,³ but became independent in 1966. Today the Gambia has a parliamentary system, containing a unicameral legislature and headed by a President. It retains the constitution it adopted on April 24, 1970 after independence.⁴

The Gambia is in the early stage of controlling of the future of its natural resources by the use of environmental laws and regulations, as well as through the use of non-regulatory incentives. The debate between regulatory and economic methods rages on in the United States, and because of the availability of U.S. funding, the debate has now been extended to the Gambia.⁵ One can only guess that a mixture of regulations and economic

³Environmental laws in the Gambia have evolved in the Anglo-American tradition. As a new nation, the Gambia does not have some of the problems of re-codification and coordination. It can also take advantage of some new trends beyond command and control, the major one being the cooperation between law and economics through programs of economic incentives written into the laws.

⁴Depp, supra note 1, at 1.

⁵Since the military coup in July, 22, 1994, the USAID has been forced under US legislation to terminate its program of direct support for development until the country can be re-certified as meeting democratic principles due to the provisions of Section 508 of the FY 1994 Appropriations Act. However, under section 508, U.S. national interest justifies U.S. assistance

incentives will enhance the chances for success in a country that now appears to be strongly committed to environmental protection.⁶ Therefore, the country currently utilizes three approaches to environmental management. First, it relies on a statutory framework, as seen both in the passage of the National Environmental Management Act in 1987 and in the establishment of an overall policy framework for the environmental area in the Gambia Environmental Action Plan.⁷ Second, it attempts to reform the land tenure system.⁸ Finally,

through non-governmental organization (NGO) programs that address U.S. interest in the Gambia. USAID has been able to continue a limited grant to build democratic institutions and has included a small component (\$32,956 of \$2,088,000!) for environmental activities. *Id.*

⁶The Gambia's commitment to the environment is evidenced by its membership in nine international conventions relating to the environment. These include the Convention of the African Migratory Locust, 486 U.N.T.S. 103 (Nov. 18 1963); Treaty Banning Nuclear Weapon Testing in the Atmosphere, in Outer Space and Under Water, Aug. 5, 1963, 14 U.S.T. 1313, 480 U.N.T.S. 43; Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205; Convention for the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 27 U.S.T. 37; International Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087; Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and Protocol, Mar. 23, 1981, 20 I.L.M. 746; Protocol Concerning Regional Cooperation in Combating Pollution in Cases of Emergency, Mar. 23, 1981, 20 I.L.M. 756; UN Convention on the Law of the Sea, U.N. Doc. A/CONF 62/122 (1982); and the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa, Jan. 30, 1991, 30 I.L.M. 775, 31 I.L.M. 164. In addition, the Gambia plans to become a member of the Ramsar Convention on Wetlands of International Importance Especially Waterfowl Habitat and 1982 Protocol, Feb. 2, 1971, 11 I.L.M. 963; the International Convention for the Prevention of Pollution from Ships, Mar. 23, 1981, 20 I.L.M. 746, 756; and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Mar. 22, 1989, 28 I.L.M. 657. The Gambia Environmental Action Plan, 1992 -- 2001, The Republic of the Gambia, Banjul, The Gambia, July 1992 [hereafter GEAP] at 47.

⁷See *infra*, note 6 and accompanying text.

the Gambia is striving to establish systems of economic incentives for environmental protection.⁹ As background to this on-going debate to the proper role of regulatory and non-regulatory approaches to environmental protection and management, this paper first presents a general description of the environmental regulatory structure for the Government of the Gambia. We then go on to a discussion of the customary laws now active in the Gambia.

II. Environmental Law Within the Gambian Legal Framework

In order to understand environmental law in the Gambia, we must view it in terms of its statutory, administrative, institutional and customary law framework.

A. Statutory Framework

Major environmental issues and legislation in the Gambia have focused on matters related to human health, and use and protection of the natural resources. Few regulations deal with industrial waste or chemical pollution because, as one might expect from the country profile, these are not currently major issues. The Gambia is a developing rural economy, which is presently struggling with problems of excess population and depletion of

⁸Land "[t]enure is simply the term for the rights which individuals and communities have in land and other natural resources." Land Tenure Center, Tenure Constraints and Opportunities in Natural Resource Management in the Gambia 1 (Land Tenure Center, University of Wisconsin-Madison (Nov. 20, 1990) [hereinafter *Tenure Constraints*]). See infra, Section IID.

⁹As discussed in section III below.

natural resources. To allow national institutions to deal with these issues, therefore, most of the environmental legislation is designed as social engineering.

The Government of The Gambia began its pursuit of sound environmental management by the passage in 1987 of the National Environmental Management Act,¹⁰ which established a National Environmental Management Council at the executive level (which reports to the President and coordinates with the work of the Ministry of Natural Resources and the Environment and the national Environmental Management Committee at the technical and managerial levels to support the Council. The major policies of the Council presently is to implement The Gambia Environmental Action Plan (GEAP), which in 1992 established an overall policy framework. The Council is now involved in two important aspects: The Gambia must now establish appropriate regulations (which in some cases will be adverse to customary practices) and an administrative structure to carry out the program.

The Government of The Gambia is composed of working Ministries, each with a responsibility for carrying out government functions (determined by legislation) in different areas. The present principal Ministries and the laws they enforce with respect to the environment, as discussed in the GEAP, are described below.

¹⁰GEAP, note 6. supra. at 2.

The Ministry for Local Government and Lands (MLGL) is the basic administrative body. The Gambia is divided into five provincial administrative units¹¹ and the Greater Banjul Area (GBA)¹². Each has a Commissioner under the Ministry of Local Government and Lands.¹³ Each division is divided into districts and villages.¹⁴

A second administrative unit is the Department of Community Development (DC) , which was established in the MLGL in the First Five Year Development Plan 1975-80. In

¹¹Upper River Division, MacCarthy Island Division; Lower River Division; North Bank Division. GEAP, note 6. *supra*. at 6

¹² Which is comprised of the Banjul Administrative Area and Kanifing Municipal Areas and together function for planning purposes only. GEAP, note 6. *supra*. at 20.

¹³ *who is responsible for general administration of government services and to carry out magisterial duties and is "assisted by a Local Government Officer, the head of the Area Council, who is responsible for the general administration of the council's functions such as revenue and tax collection, food aid distribution, and problems related to rural development."* GEAP note 6, *supra*, at 6.

¹⁴ "Each district is administered by an elected chief, who has primary administrative and judicial duties in his district, being particularly concerned with problems relating to marriage and land rights. The chief is assisted by a council comprising the village headmen (Alkalolu) of his district. The village has two basic sub-divisions: wards (kabilo) and the compounds themselves. The kabilo varies in size from a few to a considerable number of compounds. The ward of the founding patrilineage has a central position of authority and prestige in the village. The compound is the basic focus of communal and territorial organization. The most important man in the village is the headman (Alkalo) who is generally the oldest male member of the founding patrilineage in the village. The Alkalo plays a dominant leadership role in village affairs. He is assisted by the village elders as a consent group (village assembly) through whom he achieves his policy objectives. The size of this group depends on the number of compounds in the village and consists of the Alkalo, his assistant, the heads of the wards and the heads of all compounds. Superimposed on this institutional framework of socio-political organization is a functional administrative structure. All government agencies involved in rural development are represented in each division and are directly linked to their respective agency headquarters in Banjul." *Id.*

this plan in order to facilitate public participation.¹⁵ The DCD helped form development committees at village, district and divisional level.¹⁶ The DCD, together with the Directorate of Health Services, is responsible for rural sanitation and operation of the Appropriate Technology Centre located in Brikama.¹⁷

Land resources are regulated by the Department of Physical Planning and Housing of the MLGL under the Physical Planning Act of 1984 (now superseded by the Physical Planning and Development Control Act of 1991).¹⁸ The Act of 1991, in conjunction with the new State Lands Act,¹⁹ has now in the process of establishing separate planning authorities for the GBA and the Divisions. These Planning Authorities (working with the proposed new Land Administration Boards, under the State lands Act) are intended to take over administrative decisions on land allocation from the Minister; the DPPH would further assist in administration. These changes have not yet been implemented by legislation.

¹⁵ *which was in accordance with the Gambian philosophy of TESITO (self-help). Id.*

¹⁶ "Major objectives were to empower communities to manage their own resources (human and natural) and to persuade governmental and non-governmental agencies to work in partnership with local committees for the benefit of the community." GEAP, note 6. supra. at 20.

¹⁷ GEAP, note 6. supra. at 20.

¹⁸ Id.

¹⁹ See note 54, infra, and related text.

Under the sixth administrative division, the GBA, The Banjul City Council (BCC) and Kanifing Municipal Council (KMC) serve as the units of local government,²⁰ and have responsibility for establishment and maintenance of public freshwater, street lights and toilets (including the payment of water bills and electricity to GUC).²¹ They are also responsible for collecting solid waste and "maintaining a sanitary environment (Cleansing Service)", which has been constrained by lack of funding.²² The Ministry of Health and Social Welfare (MHSW), a unit of the Central Government, supports the Cleansing Service of GBA by providing most of the funding as well as technical and managerial assistance.²³ The MHSW has additional responsibilities under The Public Health Act 1989, including environmental health management and the establishment of a Public Health Laboratory.²⁴

²⁰ "The institutional and political framework reflect the recent past rather than the present day reality. Although covering a smaller area and population, BCC, with its own mayor, is the principal local authority in the country. The Chairman of the KMC, with jurisdiction over a much more populous part of the GBA, carries less importance. Neither of the local authorities have any planning functions. Their environmental responsibilities are defined under the Public Health Act 1989."GEAP, note 6. supra. at 20.

²¹GEAP, note 6. supra. at 20.

²² *Funding is expected from the Central Government, which it intends to support by raising taxes and fees. GEAP, note 6. supra. at 20.*

²³ The MSHSW does the latter through the assignment of a senior member of the staff of its Directorate of Health Services to head the Cleansing Service. GEAP, note 6. supra. at 20.

²⁴"Although this Act is intended to consolidate and update the provision of the Public Health Act (Cap. 154) of 1965, and to provide strict control and swifter action in terms of addressing violations, weaknesses still persist in sections of the Act dealing with appeals especially relating to the serving of abatement notices. There has been no establishment of a Public Health Laboratory in The Gambia."GEAP, note 6. supra. at 20.

Responsibilities for natural resources are divided between several administrative units. The Ministry of Natural Resources and the Environment (MNRE) has "overall responsibility for environmental matters within the country and is charged with coordinating the Gambia Environmental Action Plan."²⁵ Within the MNRE The Environment Unit is responsible for "monitoring coastal erosion, preparing EIAs for proposed development, as well as general coordination [as well as] the day-to-day supervision and coordination of the preparation of the GEAP."²⁶ The Planning Unit of the MNRE is responsible for "natural resources policy analysis and formulation, and programs and project planning and control functions of the Ministry."²⁷ The Department of Water Resources under the Water Resources Act of 1979 has responsibility for "development, exploitation, conservation and preservation of the nation's water resources."²⁸ The Department of Wildlife Conservation is responsible for managing

²⁵Id.

²⁶Id.

²⁷ Id.

²⁸ "The Act [establishes] a National Water Resources Council assisted by a National Water Resources committee. There is a sub-group to the Committee, the water and sanitation working group, which coordinates activities in water supply and sanitation. The Act also contains provisions for the institution of regulations to implement the provisions of the Act. Since the Act came into existence, a number of problems have arisen which have rendered the Act inadequate. These include abnormal increases in population and livestock numbers, contamination and pollution of water bodies and the need for planning new industries.

In the area of water resources legislation, there are few enforcement provision to force compliance with the Water Resources Act of 1979. The existing legislation on pollution control and waste disposal in the country is very limited in scope and not enforceable because of lack of the necessary legal instruments to back it up."GEAP, note 6. supra. at 21.

national parks, national reserves and local sanctuaries.²⁹ The National Environmental Management Act, 1987,³⁰ addresses biodiversity issues. The Department of Forestry has responsibility for forestry administration and management.³¹ The Fisheries Department is

²⁹ "The Wildlife Conservation Act, assented to by the President on the 14th February 1977, provides for the conservation and rational management of wildlife, for the establishment of national parks and local sanctuaries, and for the creation of a Department of Wildlife Conservation. The Act sets out the procedures for the creation and repeal of protected areas, and empowers the Director to control hunting in areas adjacent to national parks and reserves. The Wildlife Conservation Regulations (Legal Notice Nos. 32, 33, 36), 1978, outline regulations and rules applicable to all national parks and reserves." *Id.*

³⁰ *Id.*

³¹ "The head office is in Banjul, with representation in all divisions of the country. In 1955, 66 forest parks were created totalling 34,029 hectares, 3.0 percent of the total area of the country. Thirty-four of these forest parks, occupying an area of 22,239 hectares, were set aside for protection purposes, whereby burning and cutting of vegetation is prohibited except by permit.

The Forest Act (No. 9), assented to by the President on 25 February 1977, provides for the establishment of forest parks, protected forests and wind erosion areas, and stipulates that all existing forest parks are deemed to have been designated under and in accordance with the provisions of this Act. It also sets out: the powers and responsibilities of the Minister, Conservator (now Director) and supporting forestry officers; the disposal of fees and royalties; the appointment of a Reserve Settlement Officer, who is responsible for inquiring into and determining land rights in connection with the establishment of forest parks; and offenses and accompanying penalties in association with the Act. Each of the Divisions has an autonomous Forest Committee, chaired by the Commissioner with the Divisional Forest Officer as adviser and District Chiefs and Alkalolu as members, which is responsible for forest protection authorizing of felling and burning. Steps to combat the rate of destruction of the forest by banning the production and sale of charcoal are believed to have had some impact. *A similar law relating to the felling of live trees has been unsuccessful, and today firewood collectors are reported to ringbark healthy trees before returning to collect the dead timber."*

GEAP, note 6. *supra*. at 21-22.

responsible for managing the aquatic resources of the country under the Fisheries Act of 1991.³²³³ The Department of Water Resources (DWR) is responsible for regularly monitoring water quality in the area around the sea outfall and the beaches.³⁴ The Ministry of Agriculture (MOA) is the principal government agency responsible for agricultural development in rural areas. Within it, The Department of Planning has overall responsibility for planning and the Department of Agricultural Research (DAR) and the Department of Agricultural Services (DAS) are responsible for providing crop research and extension services, respectively.³⁵ The Soil and Water Management Unit, under the DAS, is

³²which provides for the management of fisheries and the development of the fishing industry. GEAP, note 6. supra. at 22.

³³ "The fisheries sector is divided into the artisanal and industrial sub-sectors. Zones of operation are set for different classes of fishing vessels. Industrial fishing vessels are not permitted to operate within seven nautical miles of the shoreline. The artisanal sub-sector is estimated to produce 80 percent of the total domestic fish catch and to provide direct or indirect employment to some 20,000 nationals. Of the 71 fishing vessels in the industrial sub-sector, only 12 are locally owned.

Measures implemented by the Fisheries Department under the new Act include the following:

- delineation of fishing zones, monitoring and surveillance;
- ban on the use of the beach seine net and the setting of gill nets in breeding areas;
- enforcement of net mesh size regulations; and
- enforcement of codes of practice for fish processing.

GEAP, note 6. supra. at 22.

³⁴Id.

³⁵ *The DAS has six Divisional Agricultural Offices and 30 District Extension Centres while the DAR operates at the two main research stations of Yundum and Sapu. Id.*

charged with "improved methods of soil and water conservation integrated at the farm level".³⁶ The Directorate of Livestock Services (DLS)," in addition to being responsible for animal disease control under the Disease of Animal Control Act (1933), is charged with the introduction of innovations in range management."³⁷

Ministry of Trade, Industry and Employment (MTIE) has responsibility for "conventional and renewable energy resources development, coordinating all population-related activities, regulating the location of industries and industrial pollution."³⁸ The Energy Division will act as the secretariat of the National Energy Council (which has not yet been established) to advise the Cabinet on energy matters.³⁹ The Gambia Renewable Energy Centre (GREC) is planned as a technical group of the MTIE responsible for "research, development and utilization of renewable energy resources".⁴⁰ Two other

³⁶Id.

³⁷Id.

³⁸Id.

³⁹"The division is specifically responsible for petroleum exploration and monitoring the importation, utilization, distribution and pricing of petroleum products. It is also responsible for formulating energy policy and legislation and ensuring that the sectoral objectives are met." Id.

⁴⁰"It is also responsible for the coordination of all national renewable energy development activities and promotion of renewable energy systems. The Centre was set up under the aegis of the Regional Centre for Solar Energy in Bamako, Mali, with donor-assisted funds but lacks the requisite professional capacity to carry out meaningful research work in the vast area of renewable energy resources of the country." GEAP, note 6. supra. at 23.

sections of the MTIE with environment-related responsibilities are the Human Resources Division (HRD) and the Industrial Unit.⁴¹

B. Other Institutions

Non-Governmental Organizations (NGOs)

According to the GEAO, there are about 100 NGOs in the country of which 50 are registered with The Association of Non-Governmental Organizations (TANGO).⁴² Most NGOs are involved in food aid or community services such as education, literacy and maternal/child health. Although the food aid programs are more motivated by food production rather than environmental matters per se, they serve useful environmental roles such as working with tree planting and soil conservation. An example is the work of Catholic Relief Services (CRS) and Action Aid in promoting sesame production; the NGOs' interest in the development of dry-season vegetable gardens is another.⁴³ About 11 of the registered NGOs have environment-protection related activities. These include Action Aid

⁴¹"The HRDD as the Secretariat of the National Population Commission established in 1991, is responsible for coordinating all population-related activities including the supervision of population planning. The Industrial Unit is concerned with location of industries and industrial pollution. While this area is planned for the future there is presently little enforcement." *Id.*

⁴²*Id.*

⁴³*Id.*

"which is in the process of establishing a full-fledged reforestation program."⁴⁴ Other NGOs have been active in wildlife conservation (e.g. WWF in Kiang West.).⁴⁵

C. Parastatals

In addition to government and non-government organization, the Gambia has setup quasi governmental organizations, which are private organizations supported or sponsored by the Government. The Gambia Utilities Corporation (GUC) is the only parastatal with substantial environment-related activity⁴⁶ and has works in public water supply and sewerage services in Banjul. Main drainage is confined to Banjul. Phase I of the Banjul Sewerage and Drainage Project is in the process of being completed. It is a piped system to which all compounds in Banjul will eventually be connected.⁴⁷

⁴⁴Id.

⁴⁵Id.

⁴⁶Id.

⁴⁷

"After mechanical screening, sewage is pumped via a sea-outfall pipe some 950 meters into the estuary. No sewage treatment works were installed. The design of the outfall and its location in the estuary is considered by GUC to be without any significant health hazard to the population of the city and those using the beaches.

The project, financed by grants from the Federal Republic of Germany and the Economic Development Fund and a loan from the African Development Fund, was necessary as the city depended on pail latrines, septic tanks and leach fields, which, because of the high groundwater table, were constantly overflowing. The sewerage system is expected to ensure a cleaner and healthier environment for the city of Banjul. A tariff, based on the volume of water consumed, has been set to recover the annual operating costs of the sewerage scheme from beneficiaries.

D. Customary Land Use

Land Tenure Under Statutes

Since the colonial period, the state has undergone efforts to replace customary tenure systems with state-conferred tenure.⁴⁸ Customary tenure has been seen as contributing to the degradation of natural resources because it contains limited features that ensure long term sustainability of common areas.⁴⁹ This section provides an overview of the statutory and customary land tenure systems.

The statutory legal framework for land tenure in the Gambia has its origins in the colonial period. Separate legal regimes apply in the urban areas of Banjul and Kombo St. Mary, on the one hand, and to more rural areas of the country on the other. Customary land tenure applies in the provinces of the Gambia under Lands (Provinces) Act(Cap 103)

The drainage component of the project was to consist of the rehabilitation of the Box Bar Drain and the Ring Drain, which receive the storm water and some domestic wastes from the city drains, and the refurbishing of the Bund Polder pumping station in order to evacuate storm water from the city. Instead of rehabilitating the Ring Drain, the main drains from the city were extended into the polder area. This has resulted in a large pool of water in the area providing a breeding ground for mosquitoes.

With the exception of the drainage problem, the health environment of the city has been greatly improved, but no such benefits have been extended to the residents of the Kombos and the provincial growth centers who rely on septic tanks and pit latrines which pollute groundwater. The prospect of installing main drainage in the Kombos and the growth centers becomes increasingly remote as the settlement patterns are allowed to become dispersed and as planned layouts are transgressed. " GEAP, note 6. supra. at 23-24.

⁴⁸See Tenure Constraints, supra note 8, at 4.

⁴⁹ *Id.* It may well be that customary land tenure worked well to protect natural resources in earlier times. However, population growth and the recent decade-long drought have convinced the Government of the Gambia that it must adopt changes to this system. U.S. Agency for International Development, Agriculture and Natural Resources Support Project 635-0236, 15 (1992) [hereinafter USAID].

("Provinces Act").⁵⁰ It does not apply to Banjul and Kombo St. Mary's Division, which are governed by Lands (Banjul and Kombo St. Mary's) Act (Cap 102) of the laws of the Gambia under the administration of Lands and Surveys Department ("Banjul and Kombo St. Mary's Act").⁵¹

Until recently, the Banjul and Kombo St. Mary's Act regulated land tenure in these areas. Under this act, the British Crown has obtained clear title to the land from the local chiefs, while some land is available to individuals and institutions (by ownership or long-term leasing; the Crown land became Government of Gambia land after independence.⁵² Recent court challenges argued that the land was "encumbered" and also held by titles to the chiefs; this placed over half the land in Kombo St. Mary in doubt.⁵³ To correct this situation on April 23, 1991, the Government of the Gambia signed into law four new land acts: the State Lands Act, 1990; the Physical Planning and Development Control Act, 1990; the Surveys Act, 1990; and the Land and Compensation Act, 1990.⁵⁴ The State Lands Act replaced the earlier Banjul and Kombo St. Mary's Act, and "confirm[ed] the ministry's authority to

⁵⁰GEAP, supra note 6, at 24.

⁵¹Id.

⁵²Id.

⁵³Id.

⁵⁴Mark Freudenberger & Musa Suso, *Institutions and Natural Resource Management in the Gambia: A Case Study of the Foni Jarrol District 13* (Provisional Final Draft, Land Tenure Center, University of Wisconsin, 1992) [hereinafter Center Study].

convert the remaining customary rights into 99-year leaseholds."⁵⁵ This coordinated with the Physical Planning and Development Control Act, 1991, to establish the Planning Authority as advisor to the Land Administration Board on applications for land leases and changes in land use.⁵⁶

The Provinces Act governs tenure in land outside Banjul and Kombo St. Mary (approximately ninety percent of the country).⁵⁷ All land in these areas is vested in the District Authorities (who functions as a trustee for the land for the benefit for the local inhabitants), each of which is headed by a Seyfo. The use of the land by local people ("indigens") is governed by the customary laws influenced by Islamic law, especially with respect to inheritance) prevailing in each locality.⁵⁸ However, neither the District Authority nor the District Tribunal can affect the family allocation of lands,⁵⁹ but may lease land to nonlocals ("non-indigens") with concurrence of the Divisional Commissioner and the Minister; local people can obtain leases for a shorter term. Leases have been mostly for commercial and residential properties in towns and, in the Western Division, for fruit orchards.⁶⁰ The State Lands Act of 1990 has made length of the leases uniform and

⁵⁵Id.

⁵⁶Id.

⁵⁷Id.

⁵⁸Id.

⁵⁹"Protection from deprivation of property in the absence of compensation is enshrined in the Constitution under the protection of fundamental rights and freedoms." *Id.*

⁶⁰Id.

abolished the distinction for locals versus non-locals with respect to this shifted the authority for leases from the District Authorities to Land Administration Boards at divisional levels.⁶¹

III. Non-Statutory Customary Land Tenure

A. Customary practices

Customary practices with respect to land are an important source of both rights and conflicts in the Gambia.⁶² They are binding practices at least at the village level, but conflict with statutory laws. The customary concept of land in the Gambia is "the basis of livelihood, . . . something to be owned and utilized but is not the creation of humans [and] Gambia that . . . should not be sold but can be granted forever or subject to a condition or a term; to sell [or granted or loaned] it would be an offense to God."⁶³ Villages allocate open space for "streets, mosques, sacred areas, the cemetery, and the Bantaba, where elders meet

⁶¹Id.

⁶² *The Author is indebted to discussions with Mark Freudenberger and his paper, Center Study, supra note 54, which form the basis of this section of the study.*

⁶³The question "who owns those lands to the east of the village" is answered in most sedentary villages as "they belong to our family." One might ask in the village, "how did your family get those lands?" The answer is it was obtained from the ancestors who were the founders of the village. The questioner asked further, "why haven't you sold part of it for cash in order to buy other things of life?" The respondent laughed and said "to sell land which is created by God will offend against (sic) our customary norms of living together as a community as well as bring about family feuds." Center Study, supra note 54 at 6.

during the day for discussions dealing with matters of immediate concern to the community,"⁶⁴ as well as land for family use. ⁶⁵Fallow lands are those that are uncultivated for a year or more, usually because of religious or cultural beliefs, but occasionally because of dispute over land ownership, etc.⁶⁶

Under customary law, the savanna woodland (the commons) "begins from the point of the last known clearing of one village to the last known clearing of a neighboring village and [generally] . . . one cannot clear the part of the forest which is next to another family's fallow lands without first obtaining that family's consent."⁶⁷ Thus under these rules the forest does not belong to one family and no one can be excluded. The uses include grazing by domestic animals and gathering of firewood and wild fruits without limitation.

⁶⁴ *Bantaba is also a meeting place for young men and women, although the genders usually meet separately. The meeting place is also used for social and sports gatherings. Id. at 7.*

⁶⁵

"Every extended family owns its home by mutual understanding and consent from the founding settlers of the village. Behind every family home there are family-owned inner fields for the purpose of growing early millet and maize as well as sweet potatoes and vegetables. Family-owned outer fields are cultivated in field crops such as groundnuts (peanuts) and late millet and sorghum.

⁶⁶ "All the lowland areas of a village cultivated in rice fields are also owned by families. The family as an entity can and does exclude all non-family members from its home, inner and outer fields, and fallow and rice lands." *Id.*

⁶⁷ "The customary rule on the forest also applies to the forest or oil palm groves adjacent to the swamp areas. Similarly, the general rule regarding fruit trees is that wild fruits (fruits from trees that have not been planted) can be gathered wherever they may be found by anybody for the family's consumption. However, the fruit gathered in this way must not be sold. Some special land tenure rules apply with respect to fruit trees." Center Study, *supra* note 54, at 7.

Land is acquired by late-comers or new arrivals to a village by their choosing a village family as a host and "serious land disputes can arise when some families in the host village refuse to grant land to the guest village for its settlement or for farming."⁶⁸ Land-owning families can "give rice lands to their daughters as gifts [and] such gifts of rice lands confer ownership to the daughter and her issue forever."⁶⁹ A family may give land to others in the village but this does not confer rights of ownership.⁷⁰ Since the male head of the family controls a family's land, he allocates lands (mostly to the male members) and provides for inheritance by allocation of land to younger brothers or his sons.⁷¹

In disputes over land, an informal process of "compromise and reconciliation" is required before court action.⁷² The process is to bring the matter to the Kabilo, which is the head of a group of the founder families. If the dispute continues then it is arbitrated by

⁶⁸Id. at 10-11.

⁶⁹ However, in the rare case of divorce or death without issue, the rice land reverts to the woman's family of origin. Id.

⁷⁰ However, the lending family can expect to regain the land only after harvest, but never whilst the land is under cultivation. Society makes sure that any person who wants to farm has sufficient land to do so for any cropping season. Ten percent of the produce of any farm goes to the Imam [the religious leader of the village, a Muslim "priest" who oversees the local community] if the farmer is a Muslim. These tithes are destined for the poor and the needy. Id.

⁷¹Id.

⁷²Id.

the alkalo, the Imam, all the Kabilo heads, and other influential leaders.⁷³ If the matter is still not resolved, it comes before the District Tribunal, which reviews the case and makes a binding legal decision; the case may be subsequently appealed to higher authorities or courts.⁷⁴

⁷³ "In the cases where the disputed land is cultivated in rice, the women rice cultivators may wish to keep the matter from the knowledge of men. The dispute generally occurs when women are tilling the rice land, and it is more or less over the boundary or heaping of weeds on another's rice land during weeding. In these situations, the dispute is referred to the "Ngansimba" (the head of the female community) for advice and reconciliation. In a typical village no woman will turn down the considered advice of the Ngansimba. Center Study, supra note 54, at 11.

⁷⁴ "Every district has a single district tribunal as a court of first instance in land disputes. There are 35 district tribunals and five group tribunals in the provinces of the Gambia. The district tribunal is composed of members recommended by the seyfo (chief)

and supported by the commissioner before appointment by the Minister for Local Government and Lands. The members are selected for their knowledge of customary law and for their high moral rectitude and social esteem. In addition, every division has a group divisional tribunal composed of at least three seyfolu (chiefs) and selected members from single district tribunals in the division. The seyfo is the president of the single district tribunal of his district and in his absence the most senior court member presides. One of the three seyfolu heads the group district tribunal as president and is assisted by a vice president who is also a seyfo. Membership is always in odd numbers for any proceedings to be valid and there must be a quorum of at least three members, including the president.

The group district tribunal and single district tribunal are both courts of first instance. Therefore the single group tribunal need not follow the decision of the group tribunal. The district authority can be viewed as the 'parliament' of the district, as it can in full session make prohibitive decrees or edicts forbidding some actions. These courts of first instance are important examples of the flexibility of customary legal systems of how local state institutions can be constituted to create rules governing land use at the local level.

The district tribunal hears cases concerning land within the district. The group tribunal hears cases remitted to it by the commissioner or the Supreme Court where the land dispute involves two villages or is such that the particular district tribunal cannot hear it because of the relationship of its members with the parties in dispute.

The divisional commissioner has reviewing powers over the decisions of district tribunals and group tribunal. This is provided in Cap. 52 of the Laws of the

B. Protection of Common Lands

The government is now addressing environmental problems on common land by use of statutory law. Section 5 of the State Lands Act of 1990 "empowers the Minister to designate any provinces land as state land to be vested in and administered by the state for the use and common benefit of the community in which such land is situated."⁷⁵ The Physical Planning and Development Control Act of 1990, while not interfering with proprietary rights in land, provides expanded authority to plan more rationally the future development of urban centers such as the greater Banjul area.⁷⁶ It establishes a planning authority for Banjul and Kombo Saint Mary and for each division. 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,

Gambia. At least every month the records of the tribunals are sent to the Commissioner for review. The Commissioner makes sure that the principles of natural justice have been observed. He can confirm the decisions of the tribunals in land cases or he can revise the decisions and substitute his own decision. He can remit the case for retrial either before the same tribunal or another tribunal. Before the records even reach the Commissioner, a dissatisfied litigant can go to the Commissioner as a complainant on the decision or can engage a lawyer for the purpose of appeal to the Supreme Court. The Commissioner is not a court, but is a reviewing officer and goes only by the record of the case. The Supreme Court hears cases including land cases on appeal. It does what all appellate courts do and grants rights of appeal to the Gambia Court of Appeal. As land suits are civil suits any party with the leave of the Gambia Court of Appeal can appeal to the Judicial Committee of the Privy Council in London. Id.

⁷⁵"While not yet tested in the courts, the majority opinion of the legal profession is that compensation will be paid to the owners of lands so designated by the Minister." Center Study, supra note 54, at 14.

⁷⁶ Id.

divisional, and local levels.⁷⁷ National plans include guidelines and policies regarding the locations of urban and rural settlements, traffic and transportation routes, and resource utilization and economic activities, and the preservation of national and environmental reserves. These national plans provide the framework for divisional development plans, which are the basis for preparing comprehensive local plans.⁷⁸ The Act also establishes the right to "physical planning clearance" which is analogous to zoning laws in the United States.

The various forest acts and regulations created forest parks and forest reserves in many places in the provinces. Since they now cover some lands (such as fallow land in villiages) controlled by customary law they have now created conflicts.⁷⁹ There are other cases in which the government obtains lands without compensation for use by non-government organization such as schools, health centers, veterinary posts, and mixed farming centers.

Natural resource policy is in many ways the key to a successful environmental program in the Gambia since "it sets the course for the future, and, more importantly,

⁷⁷Id

⁷⁸Fifteen to twenty year development plans are to be prepared for any area designated by the Minister. Id.

⁷⁹Traditional fallow land may, in many cases, essentially be abandoned due to the lack of resources to farm them. In addition, the Forestry Department has ordered that no forested areas be cleared. As a result, fallow lands are left uncleared and thus are unusable for agriculture. Center Study, supra note 54, at 15.

prepares a roadmap for getting there."⁸⁰ The solution to the present problems, which are largely due to a need for changes in responsibility towards the commons (public lands) is threefold:

- 1) make some person responsible for the environmental health of the commons. This "person" can be an individual or a government entity. If it is the latter, then there should be local involvement so that the connection is tangible and reflective of the particular situation;
- 2) develop incentives for acts that lead to positive environmental quality (which generally means developing economic and social incentives for the users); and
- 3) develop disincentives for acts that lead to negative environmental quality (which generally requires various government regulations, but may also be accomplished by peer pressure and community disapproval)⁸¹.

⁸⁰Id.

⁸¹Generally acts that lead to resource degradation might include excessive harvesting of wood from a common woods (i.e. "publicly used woods or forest), overfishing, or overgrazing of a common area. In the past, individual acts of harvesting, fishing or allowing cattle grazing were seen as appropriate, although collectively they lead to destruction of the resource. It was never a disadvantage for an individual to harvest more wood, etc. (which would always benefit them individually) -- in fact they would be forgoing their "use" of the resource now to conduct the individual acts. Peer pressure or community disapproval might take the form of frowning on one's use of more than a fair share (an allocated portion of the resource). Alternatively, the resource might be managed collectively by the community and an individual could only use it with the consent of the community (which, in theory, would have a sustainable management plan). Finally, some kind of stigma associated with use of a specific geographical area might also prevent utilization of that resource by an individual (for instance in India, the tree-hugging movement and philosophy holds trees to be a sacred resource that should not be killed).

Under funding from the United States Agency for International Development(USAID), the Government of the Gambia is establishing a policy working group that will work with an inter-ministerial working group to focus on questions of coordination and cooperation between ministries.

The tragedy of the commons⁸² is the overriding problem in the Gambia, and has been brought about by population pressures, low rain, and a variety of societal problems.⁸³ In this kind of situation there is a common area, such as a pasture, which everyone uses for grazing cattle. Although everyone depends on the commons as a food source for their cattle, few, if any, have a particular interest in preserving the natural capacity of that area to grow fodder. Thus, no one is a "trustee" for the area. In fact, it is always in the individual user's interest to graze an additional head of cattle, since less grazing will result in fewer cattle for that individual. Because of customary land tenure traditions, coupled with more recent problems of population pressures and drought, the Gambia faces difficult regulatory hurdles in managing the commons at the federal level. While the government has begun to put in place statutory reforms for land tenure, it is widely recognized that there is little federal

⁸² See Gerret Hardin, The Tragedy of the Commons, 162 Science 1243 (1968) (discussing how the lack of specific responsibility and groups responsible for the protection of an area used by everyone leads to the destruction of a natural resource used in common).

⁸³The major societal problems are increasing population and competition for resources, as well as some breakdown in traditional control of community behavior. Also, as discuss in customary law section, traditional practices do not protect commons areas (or at the very least lead to conflicts in interpretations that can lead the commons to be the loser in the debate).

involvement at the local level. Thus, the Gambia is also looking to other types of reforms that may help rapidly address, the degradation of the commons. Principally, it is now looking to the use of non-regulatory reforms in this process. The next section is devoted to a discussion of this approach.

C. Role of Non-Regulatory Reforms⁸⁴

With the support of USAID, the Gambia is in the process of setting up an environmental policy group based on three overriding principles.⁸⁵ First, the group will represent key interests in the natural resources, and will have a perspective that encompasses these interests.⁸⁶ Second, it will represent the institutional part of a decision-making process in which key interests will participate, and in the end, accept as policies of their own.⁸⁷ Third, the group will have the power to implement, as well as coordinate, the policies.⁸⁸

Achieving the natural resource policy goals requires recognition of different roles necessary for private enterprise in economic growth and of nonprivate activities to manage implications of private enterprise which fall beyond the natural scope of its interests. A

⁸⁴ The Author would like to thank Robert Weaver, Professor at Pennsylvania State University, for his substantial contribution to this section.

⁸⁵ See USAID, supra note 49.

⁸⁶ Telephone Fax from Robert Weaver, Professor at Pennsylvania State University at 3 (Jan. 15, 1993) (detailing the requirements and structure of a program providing grants to NGO's through USAID activities) [hereinafter Fax].

⁸⁷ Id.

⁸⁸ Id.

partnership between private and nonprivate entities is necessary for effective management.⁸⁹ It must be based upon an effective enfranchisement of the nonprivate entities by individuals; i.e., individuals in the local community must see a positive role for government in training, research, funding of programs and other activities. In short they must see that government helps to achieve broader social goals.

Both individual consumers and producers will have a role to play, namely in the utilization for private benefit and management for common or social benefit, respectively.⁹⁰ These distinct functions emanate from two distinct institutional bases. First, because of the competitive conditions needed for maximum efficiency in a market-based system, decentralized private sector enterprise (PSE) bears the primary responsibility for identification and management of enterprises utilizing and exploiting natural resources. However, as exemplified with the tragedy of the commons, many of the implications of activities involved with private enterprise utilization of natural resources fall beyond the scope of the private sector's interest. Thus, secondly, these justifiably will be managed by nonprivate sector organizations (NPOs) representing collectives of stakeholders in the natural resources. While the structure of the NPOs may differ, their function will be to ensure that someone is watching over the commons, so that it will be available for all in the future.

⁸⁹ See *Id.* at 5 ("The cornerstone of the partnership between the national government, NGO's and local communities will be the implementation of CNRMA's.").

⁹⁰ Telephone Interview with Robert Weaver, Professor at Pennsylvania State University (Jan. 8, 1993) [hereinafter Interview].

In order to achieve sustainable economic activity based on limited common-use resources, these two institutional components (private enterprise and nonprivate organization) must be linked and interrelated effectively to operate in unison or in partnership, rather than in competition or in conflict. In the absence of such an effective partnership, the social costs of natural resource management increases as the relationship between the PSE and NPO elements of the system move toward conflict.⁹¹ The benefit in the end is positive incentives to overcome deficiencies in traditional land management practices like customary land tenure.

The rationale for the community-based approach and acceptance of management of common areas as good for all interests is, as stated by its proponents,⁹² as follows: the first component solution to the tragedy of the commons is to make one person or one entity responsible for the environmental health of the commons. Next there will be a recognition that the commons are finite and therefore limited in their capacity to support unlimited human activities. Finally, there will be an assessment of the carrying capacity of that resource, i.e. how much use or activity is supportable in the long term. The process of arriving at a suitable answer must arise from local community support. For instance, if the community does not trust the way in which carrying capacity is calculated, or if the group

⁹¹Id.

⁹²USAID, supra note 49. The proponents are generally those in the GOG (as well as external environmental forces, such as the USAID) who see the degradation of the commons as a major problem. The protection of the commons to achieve sustainable development is needed to stabilize the country's economy, as well as protecting natural resources for tourism, etc. The USAID sees economic development as key to the solution to the country's problems and sees that a degrading environment puts more pressures on other resources and leads to inefficient use of the commons areas. (personal communication with USAID).

preparing the assessment is not respected by the various interests of the community, then the community will not accept the assessment. If it is not accepted, it will not be enforceable. Thus, there is a need to centrally manage nonprivate interests at the local level with a partnership with the Government of the Gambia.

At the heart of the conceptual base of the natural resource program is the premise that the natural resources of the Gambia can be effectively managed at the local level.⁹³ In order to succeed, an effective enabling environment must be established to satisfy five necessary conditions for effective local community management.⁹⁴ First, there must be adequate local capacity to manage the natural resources. Next, there must be a local interest in such resource management. Third, there must be incentives to stimulate change at the local level. Fourth, the Government of the Gambia must provide guidance to local communities. Finally, the timing of the implementation must sufficiently take finances into account. These steps are planned in the USAID program⁹⁵ and are discussed below.

D. Local Capacity for Resource Management

⁹³ See Fax, supra note 85 at 4 ("An important prerequisite to developing a successful NGO Grants Program is to assure that the NGO's and local communities are fully aware and can participate in the original design of the program.").

⁹⁴ Interview, supra note 85.

⁹⁵ USAID supra note 49.

Local capacity to manage natural resources must be adequate. Establishment of this capacity ultimately will rely upon policy at both the individual level and at the community level. At the individual level, this will rely on diffusion and adoption of technologies which allow for sustainable common-use resources. At both levels, sustainability will require a social consensus that resource management for broader social interests is necessary. This may best be achieved by empowering a locally-based nonprivate organization to manage those broader social interests. Finally, sustainability will require a capacity at the community level to manage the nonprivate interests in the local resources.

In addition, while sustainable technologies must reduce the impacts of the production activity on common-use resources, they must also involve improvements in physical productivity and value-added in the use of the limited common use resources. For example, adoption of improved pasture management practices must simultaneously reduce the degradation of forest area pastures and enhance the productivity of dedicated pasture lands.

In the Gambia, common-use resources are limited and under threat due to demands imposed by an expanding population. For a sustainable use policy to be successful, it must expand the value-added uses of the resources through further processing of harvested raw materials. Where the productivity and value-added yields of these limited resources are unstable and uncertain, sustainable use will also necessitate a diversification of productive uses of the resource base to ensure stable productivity of the base and stable incomes to populations dependent on the resource base.

E. Local Level Interest and Stakes in Resource Management and the Role of Community Resource Management Agreements

A second necessary condition for the success of the local management option is the establishment at the local community level of economic, political, and social interests or stakes in the management of natural resources. Operationally, community natural resource management agreements (CNRMAs) will create these interests and stakes.⁹⁶ These agreements will serve as contracts between the Gambia and the local community, and will establish the terms and guidance for the local community's management of local natural resources. At a minimum, the CNRMAs will specify which members of the "community" are to be entrusted with the management responsibility, the scope of their resource management responsibilities, the operational tasks required to manage the resources, incentives and regulations concerning the resource management, and the distribution of the responsibility and incentives within the community.

Given the heterogeneity of typical communities in the Gambia,⁹⁷ and the need for consensual participation in the agreement by all individuals and sub-communities, it is likely that the CNRMA concept will involve a series of subcontracts with relevant interest group sub-communities (e.g. women, pastoralists, livestock processors, etc.). In many cases, these subcontracts may establish countervailing responsibilities and actions among various sub-

⁹⁶ See Fax, supra note 85, at 4-5 (discussing the establishment of a program designed to implement and monitor CNRMAs).

⁹⁷USAID, supra note 49, at Annex E.

communities to facilitate performance and monitoring of performance with respect to the overall features of the CNRMA.

Experience from past attempts in forest management illustrate the need to deal with heterogeneity in the policy area. Heterogeneity within the community implies that members of various sub-communities (e.g. cattle owners, youth, Fulani, Mandinkas, wealthy, poor) place different personal values on the forest resources — a circumstance which exists for most common use resources.⁹⁸ The social goal in management of such resources is to establish economic incentives that reflect the value of such resources to society as a whole. Thus, heterogeneity in valuation of the resources implies that any social management plan must incorporate or treat different sub-communities in different ways. For example, cattle owners may personally value the forest land at a very low level in comparison to those who cut timber for sawlogs, or who cut saplings for poles. In order to establish a community-wide interest in managing the forest resource, each of these groups or sub-communities must be led to recognize their own interest or stake in the community-wide interest. In many cases, their personal interests or stakes may be in direct conflict with the community interest. Consider the case of cattle owners who might benefit from the burning of under brush which might place at risk species of great value to timber cutters, or saplings of value to pole cutters. In sum, the CNRMA will establish a community-wide consensus for the management of the locale's natural resources.

⁹⁸USAID, supra note 49, at E-11.

A key element to establishing a successful local level of interest will be to identify design elements of the CNRMAs to ensure that a definite stake in resource management is established within the local community. It must be remembered that the heterogeneity of the communities affected by the CNRMAs will require that there be flexibility in the creation of these agreements and that these will vary across communities. One of the tasks of the policy component will be a menu or opportunity set of possible instruments that may be used in the CNRMAs.

To ensure and enhance the community's participation in the process of development of the CNRMA, it will be necessary to ensure that policy analysis is incorporated in dialogues with community members and is accessible and responsive to the community's demands and concerns.⁹⁹ In this sense, the participating communities will be given access to policy analysis as a resource to facilitate management of their local common-use resources through the established nonprivate organization forms. The potential role of traditional institutions in the process of development of necessary nonprivate organizations appears to be substantial in the Gambia.

F. Incentives for Local Level Resource Management

The third necessary condition for success of the local management option is the creation of appropriate incentives and information to stimulate change in local behavior of both individuals and the community. Achieving this condition will require the simultaneous

⁹⁹This will be done partially through NGO involvements and partially through other community organizations supported by the federal or divisional government. Fax, supra note 85, at 3.

dismantling of disincentives and the creation of market-based incentives for local management of natural resources. Here, the key concern is finding ways to link sustainable resource use with growth in rural household income.¹⁰⁰

As noted above, the root of many of the problems is the different levels of importance given to the commons by the individual and by the larger community. A conventional but improper approach to creating an incentive for management of the resource in the social interest would be to introduce taxes or subsidies as financial incentives which would drive market incentives to more accurately reflect the social value of the resource.¹⁰¹ Proponents of a market-based approach offer several reasons why this approach is undesirable.¹⁰² Aside from severe difficulties in estimating the size of these taxes or subsidies (especially given different interests in a community), decades of experience have shown that it is largely infeasible to distort market-generated incentives using taxes or subsidies without introducing high enforcement costs of regulations.¹⁰³ These regulations are necessary to prevent natural private sector response to the opportunities for profitable enterprise, based solely on the distortions of market incentives. Experience in the Gambia with lumbering license and permit fees illustrates this universal point.

¹⁰⁰Increased household income is still realistic -- but has been hurt by the decision of France not to support the value of the CFA (which influences prices throughout West Africa and has led to a devaluation in the currency), as well as fluctuations in commodity markets.

¹⁰¹Interview, *supra* note 89.

¹⁰²*Id.*

¹⁰³The lessons of the enforcement costs generated by taxes or subsidies have motivated "Structural Adjustment" programs throughout the world.

G. Incentives for Local Management for the Broader Interests of the Gambian Society

A fourth necessary condition is the creation of guidance for the community to manage local natural resources in the interest of Gambian and global society rather than within the more limited local interest. The Government of the Gambia must be the ultimate steward of the Gambia's natural resources while allowing local community nonprivate organizations to play a decentralized role.¹⁰⁴ While there is common agreement that there is a need to

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Three approaches have been proposed for this element: 1) direct and indirect financial incentives, 2) regulations including standards and directives, and 3) provision of public services. Caveats which must be recognized with respect to the usefulness of direct financial incentives such as taxes or subsidies or regulation of individual private enterprise were discussed in the previous section.

In contrast to approaches based on direct financial incentives, a simple system of performance conditions based on negotiated standards and goals combined with collective incentives is proposed. In particular, the collective incentives can be viewed as elements of a menu of public goods, services, and rights which might be financed and provided in part by the Government of the Gambia in return for achievement of the negotiated performance conditions. In addition, collective incentives might include lump-sum grants from the Government of the Gambia based on satisfaction of contracted goals. An important advantage of the use of collective incentives is that they facilitate the creation of a collective interest. Further, they create strong incentives for self-monitoring among the members of the collective, reducing the monitoring costs of more central agencies. As discussed below, because of the extra cost in the short-term of using sustainable management, these grants may help to build incentives to incur these costs in exchange for long-term benefits in the use of the commons.

Operationally, the collective incentives might be administrated through local nonprivate organizations. A menu of such incentives might include:

enhanced rights, such as limited tenure over use of common use resources;

provision of public services including export facilitation, marketing services, extension services such as technical crop or livestock

decentralize governmental operations in the natural resource arena, there is also a need for strong central regulations that allow consistency towards environmental issues and thus prevent the creation of "pollution havens," e.g. local areas which have lower standards of enforcement. To do otherwise would result in the shifting of undesirable practices from one area to another. The mix between centralized and decentralized governmental operations might be summarized as a need to develop strong central policy and regulations (with local involvement in setting the policies), and a need for enforcement and administration at a local level.¹⁰⁵

The concept of sustainable development suggests that there needs to be lower utilization of a resource in the short-term in order to allow adequate resources in the long-term. In many cases, this means that there is additional cost in the short-term, because of the need to use a resource in a more controlled manner. This "investment" in the future is then recouped by spending less in the future to obtain these resources. For instance, in the tragedy of the commons, this means that fewer cattle are grazed in the commons, resulting in fewer cattle for the individuals in the short-term. However, in the absence of the controls,

production services, policy analysis, micro enterprise development services, technical research services, constraints analysis, forest fire monitoring; or

provision of public goods, such as market infrastructure, transportation infrastructure, health and education enhancements."

Interview, supra note 108.

¹⁰⁵See, World Bank, Morocco Environmental Discussion Paper (1991).

the entire commons will be depleted in the long-term and individuals must purchase cattle products rather than grazing their own.

Thus, there is a public policy issue of obtaining resources that argue in favor of these investments in the short-term. These costs must be borne by someone, and if they are borne by all individuals, the government often has the role of setting the limits on the use of the resources and providing loans and other economic incentives in order to help individuals.

Finally, there are additional ways of reducing the pressures that have been increased by a larger population. Incentives encouraging people to have smaller families (without affecting the personal rights or desires of the individual family) can be developed in natural resource policy. For instance, if wage earners in the family are able to receive higher pay, there is less need for all members of a large family to work to meet the needs of the family. This might be accomplished by shifting some energy away from agricultural activities to service activities such as tourism. The shift from agriculture to processing might increase wages and lead to fewer imports. As appropriate and in accordance with the other activities, other shifts that might be considered might include development of agroforestry, processing plants for raw materials, or mechanization of farming activities.

H. Proper Timing of the Institution of the Enabling Environment

A fifth condition for establishment of the enabling environment is the proper timing of its institution if community-wide consensus is to be built and an effective CNRMA is to be initiated. An important element of the community-based strategy presented above was the use of collective incentives for local resource management. In order for such a strategy to be feasible, it must be financed. Importantly, a prerequisite of sustainable resource use that results from the natural resource program is Gambia's Government's capacity to finance such collective incentives. This capacity must be sustainable as well. As is apparent from the Gambian experience with differentiation fees¹⁰⁶ for forest extraction across live and dead wood, the study of fees must carefully consider the individual behavioral response to any fee or nonfee regulation. While some value can be placed in understanding the behavior of resource users under the current fee systems, studies must focus on identifying bases for establishing individual and collective (subcommunity) or community interests in resource management. In so doing, the two distinct uses of fees must be carefully acknowledged: (1)

¹⁰⁶Differentiation fees are use of a fee schedule that differentiates between different items -- in this case between live and dead wood. Greater fees were charged for live wood than dead wood in an attempt to get harvesters to stop killing live trees. Instead of achieving that goal, what happened was that harvesters found ways to "kill" trees and then retrieve them as dead wood, which had the lower fee. Thus there were changes in harvesting behavior that "outsmarted" the economic planning. These behavior changes at the individual level might be avoided by fees that are assessed at a community level. For instance if the use of fees after wood has been collected, but before its transport might lead to less intensive use of some forestry areas (which may now be overexploited). More importantly, the point of this section is that the cost of monitoring activities can be very high (e.g. needing lots of forest agents to look at harvesting in the forest) and that these can be kept much lower by having fees associated with activities that are easier to monitor -- such as transportation of wood along the road ways.

signalling of the social cost of limited resources to ensure efficient extraction, use, or management of the resource; and (2) public finance.¹⁰⁷

The extent to which access to the resource can be controlled constitutes a crucial issue in determining the feasibility of the use of fees as a means of establishing efficient use of limited common-use resources. Where access is costly to control, use of access fees may not be desirable. Studies must provide an assessment of the feasibility and cost of controlling access to common use resources, as well as the behavioral response of users to alternative methods.

Many of these concerns can be avoided through the use of fees levied on the community's value-added and productive use of the resources or fees imposed at points in the resource use process which are less costly to monitor. The use of fees for transport of harvested resources is a good example. The mandated studies must identify and analyze the relative effectiveness of use of allocative fees at alternative points in the resource use processes.

Finally, the studies must identify strategies which base fees on the public provision of rights, services, or goods to the private sector activities. Under such systems, collection of fees become feasible when they are perceived as equal in value to the value of rights or public goods or services associated with the payment of the fees. As an example, access fees

¹⁰⁷Interview, supra note 89.

could be based on estimated social costs. However, where such social costs exceed the perceived value of the resource in the mind of the user, clandestine extraction or high enforcement costs can be expected. As an alternative, fees might be set at levels that are reflective of user perceptions of the differential cost of alternative modes of accessing the resource.

From the fiscal perspective, use of fees which are below what users are willing to pay results in inadequate funds for nonprivate organizations to provide public goods and services which might facilitate the efficient extraction and use of the limited resource. Nonetheless, alternative financing may be preferable using revenues collected from more general economic activity. In order to ensure that revenues are efficiently collected, the mandated studies must identify and assess the relative efficiency of alternative roles of community nonprivate organizations, NGOs, and the Government of the Gambia in collecting revenues. Finally, the studies must recognize the necessity of separating the revenue collection question from that of institutional responsibility for allocating, managing, and spending collected revenues. Studies must consider alternative institutional organizations through which these functions can take place.

IV. Conclusion

The Gambia is in the early stage of taking control of the future of its natural resources by the use of environmental laws. It has now established a solid plan (through the

GEAP) and process (which is in transition) in preparing an operational statutory framework. The major problem with this approach is that it require extensive legislative activity (which has largely not occurred) and that it does not coordinate well with many aspects of customary land use (in particular the utilization of resources on common lands). The statutory approach may well work (as it has done in other English law systems).

The second approach taken by the Gambia is to consider approach non-regulatory approaches to environmental protection -- namely the use of economic incentives to form actions that are protective of the environment. This approach, in theory, would not require monitoring and enforcement needed in the statutory approach and therefore can achieve the same end more efficiently. In fact, there are those that argue that only this approach can work (see recent book by Gregg Easterbrook, *A Moment on Earth*), Viking 1995). Certainly given the solid tradition of customary laws in the Gambia, it may well be that the economic approach may succeed over the statutory approach (which may simply not be able to change cultural practices in a timely manner).

Thus the Gambia has wisely chose to use both regulatory and non-regulatory approach and incentives. The regulations versus economics debate rages on in the United States. Because of the availability of United States funding, it has now been extended to the Gambia. One can only guess that a mixture of the two devices will enhance the chances for success in a country that now appears to be strongly committed to environmental protection.

Appendix of Acronyms and Abbreviations

BCC- Banjul City Council

CITES- Convention on International Trade in Endangered Species of Wild Fauna and Flora

CNRMA- Community Natural Resource Management Agreements

CRS- Catholic Relief Services

DAR- Department of Agricultural Research

DAS- Department of Agricultural Services

DCD- Department of Community Development

DLS- Directorate of Livestock Services

DPPH- Department of Physical Planning and Housing

DWC- Department of Wildlife Conservation

DWR- Department of Water Resources

EIA- Please provide

GBA- Greater Banjul Area

GEAP- Gambia Environmental Action Plan

GREC- Gambia Renewable Energy Centre

GUC- Gambia Utilities Corporation

HRD- Human Resources Division

KMC- Kanifing Municipal Council

MHSW- Ministry of Health and Social Welfare

MLGL- Ministry for Local Government and Lands

MNRE -Ministry of Natural Resources and the Environment

MOA- Ministry of Agriculture

MTIE- Ministry of Trade, Industry and Employment

NGO's- Non-Governmental Organizations

NPO- Nonprivate Sector Organizations

PSE- Private Sector Enterprise

TANGO- The Association of Non-Governmental Organizations

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