

THE AFRICAN DEVELOPMENT BANK GROUP

Governance, Economic and Financial Reforms Department
(OSGE)



REPUBLIC OF THE GAMBIA

COUNTRY GOVERNANCE PROFILE

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ACRONYMS AND ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACPM	Aid-Co-ordination and Project Management
ADMCC	Aid and Debt Management Co-ordination Committee
AFET	Association of Farmers Entrepreneurs and Traders
AFROSAI	African Organization of Supreme Audit Institutions
AFPRC	Armed Forces Provisional Ruling Council
AGIB	Arab Gambian Islamic Bank
AGOA	African Growth and Opportunities Act
AMINA	ADF Micro-finance Initiative for Africa
AMSCO	African Management Services Company
BADEA	Arab Bank for Economic Development in Africa
BWIs	Breton Woods Institutions
CACG	Commonwealth Association of Corporate Governance
CAT	Convention Against Torture, Cruel, Inhuman Treatment
CBEPP	Capacity Building in Economic Planning Project
CBG	Central Bank of The Gambia
CDD	Community Driven Development
CDF	Comprehensive Development Framework
CDT	Commissioner for Domestic Taxes
CEDAW	Convention on the Elimination of Discrimination Against Women
CEF	Commonwealth Education Fund
CERD	Convention on the Elimination of All Forms of Racial Discrimination
COMESA	Common Market for Eastern and Southern Africa
CPAR	Country Procurement Assessment Report
CPIA	Country Policy and Institutional Assessment
CPIP	Country Portfolio Improvement Plan
CPPR	Country Portfolio Performance Review
CRC	Convention on the Rights of the Child
CS-DRMS	Commonwealth Secretariat-Debt Recording and Management System
CSD	Central Statistics Department
DDM	Directorate of Debt Management
DDPR	Directorate of Dispute Prevention and Resolution
DNT	Department of National Treasury
DSLGL	Department of State for Local Government and Lands
DOSFEA	Department of State for Finance and Economic Affairs
DOSJ	Department of State for Justice
DOSTIE	Department of State for Trade and Industry and Employment
EPMU	Economic Policy and Management Unit
GAA	Gambia Association of Accountants
GAMWFA	Gambian Women Finance Association
GAMCOTRAP	Gambian Committee on Traditional Practices
GAM-SEM	Gambian for Self-Employment
GBA	Gambia Bar Association
GCCI	Gambia Chamber of Commerce and Industry
GDA	Gambia Divestiture Agency
GFZ	The Gambia Free Zone
GFZA	Gambia Free Zone Authority
GICAP	Gambia Interface Capacity Building Agency
GIPFZA	Gambia Investment Promotion and Free Zones Agency

GPA	Gambia Port Authority
GPDP	The Gambia People's Democratic Party
GPPA	Gambia Public Procurement Authority
GPU	Gambia Press Union
GRA	Gambia Revenue Authority
GTTI	Gambia Technical Training Institute
GWFA	Gambia Women's Finance Association
IBAS	Indigenous Business Advisory Service
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
IEC	Independent Electoral Commission
IFAC	International Federation of Accountants
IFMIS	Integrated Financial Management Information System
IHRIDA	The Institute for Human Rights and Development in Africa
INTOSAI	International Organization of Supreme Audit Institutions
IPI	International Press Institute
IPU	International Press Union
JSC	Judicial Service Commission
KMC	Kanifing Municipal Council
LCBP	Legal Capacity Building Project
LRC	Law Reform Commission
NACCUG	National Association of cooperative Credit Union of the Gambia
NADD	National Alliance for Democracy and Development
NAGO	National Auditor General Office
NAYAFS	National Youth Association for Food Security
NCCE	National Council on Civic Education
NCLR	National Council for Law Reform
NEFCOM	National Emergency Fiscal Committee
NRP	National Reconciliation Party
PDOIS	People's Democratic Organization for Independence and Socialism
Pro-PAG	Pro-Poor Advocacy Group
PSIRP	Public Service Improvement and Reform Programme
RDS	Rural Development Strategy
SDF	Social Development Fund
SPA	Strategy for Poverty Alleviation
SPACO	Strategy for Poverty Alleviation Co-ordination Office
SSHFC	Social Security and Housing Finance Association
TANGO	Association of Non-Governmental Organization
TVET	Technical, Vocational Education and Training
UNCITRAL	United Nations Commission for International Trade and Law
UDP	United Democratic Party
VDC	Village Development Committee
VISACA	Village Savings and Credit Association
WASDA	Wuli and Sandu Development Association
WAEMU	West Africa Economic and Monetary Union
WAIFEM	West African Institute for Financial and Economic Management
WDC	Ward Development Committee

CURRENCY EQUIVALENTS
(As at May 2007)

1 UA = GMD 42.0837

1 US\$ = GMD 27.6107

1 UA = US\$ 1.52418

FISCAL YEAR

1 January – 31 December 2007

This report was prepared based on a preparation mission, which visited The Gambia in November 2006, comprising Messrs. A.N. Issahaku (Governance Expert, OSGE), and J. Zayid (Country Economist, ORWB), a Legal Consultant, a Financial Management Consultant and with contribution from Bernard Nzo-Nguti, Consultant ACBF.

EXECUTIVE SUMMARY

1. Introduction: The promotion of good governance in Regional Member Countries (RMC) is pivotal in the implementation of the Bank Group's mandate of poverty reduction. It springs from empirical analysis suggesting positive correlation between the strength of governance and national levels of prosperity, human capital and civic participation in society. The Bank's objective is to integrate "good governance" into its lending and non-lending activities to increase the overall capabilities of governments in terms of development management and institutional capacity, including legal and judiciary reforms, the strengthening of civil society and private sector participation. This will reduce corruption, strengthen accountability and improve public services, benefiting targeted and vulnerable groups by means of sustained economic development. Country Governance Profiles (CGPs) are an important instrument that strengthens the dialogue between the Bank and borrowing governments on key governance issues.

2. Context: Located on the West Coast of Africa, The Gambia is a small country with a total land area of 11,285 square kilometers bounded to the north, south and east by Senegal and to the west by the Atlantic Ocean. The River Gambia bisects the country into north and south and the capital Banjul is an island situated near the mouth of the river. It has an estimated population of 1.6 for 2006 million with a per capita income of \$300. The first British Colony in Africa, The Gambia gained its independence in 1965 and attained Republican status in 1970 following a second referendum on a Constitutional Bill. The country has practiced democratic pluralism since independence under the framework of a written Constitution.

While the country's adherence to democracy has been consistent, its post-colonial history has suffered two major governance setbacks. The first was an abortive coup d'État in 1981 when a group of civilians backed by the paramilitary Field Force attempted to take over the Government. Over a decade later, on 22 July 1994, the Armed Forces ousted the thirty-year old and only post-colonial Government in a bloodless coup, took over power and established a Provisional Government. The stated objective of the new regime was to establish a sound system of governance with a view to handing over power to a democratic elected civilian Government. Consistent with this objective, on 2 January 1997, a new Republican era was ushered in, following Presidential and Parliamentary elections under the framework of a democratic Constitution adopted by the people through a referendum in August 1996.

Before the coup d'état in 1994, The Gambia was one of the oldest multi-party democracies in Africa. In 1996 the country returned to democratic rule and with the new Constitution of 1997 that provides for a separation of powers between the Legislature (National Assembly), the executive (President and ministers), and the Judiciary (Supreme Court and other courts). Both the President and members of the National Assembly serve a five-year term with no term limit for the presidency. The latest presidential election took place in September 2006, while the latest national assembly elections took place on 25 January 2007.

3. State of Governance: The diagnosis of governance was carried out and

structured in accordance with the five elements of good governance emphasised in the Bank Group's Policy on Good Governance. They are: Accountability, Transparency, Stakeholder Participation, Legal and Judicial Framework, and Fight against Corruption.

4. Accountability: In terms of administrative accountability the capacity of the Gambian public sector to deliver quality public services has progressed, but remains limited as witnessed by difficulties in achieving the Millennium Development Goals (MDGs). Executive interference, characterized by frequent hiring and dismissals of top civil servants also undermines general morale and performance in the Gambian civil service. Government effectiveness – a proxy for political accountability - has dropped since 2000 and this serves to explain why The Gambia ranks 155 out of 177 in the UN 2006 Human Development Index. As regards financial accountability, significant progress has recently been made mainly due to technical assistance by Development Partners in the area of preparing and auditing a backlog of national accounts.

5. Notwithstanding, the National Audit Office and the Treasury Directorate, responsible for preparing the national accounts, continue to face resource constraints, notably senior level staff. The budget process as a whole needs to be improved before it can be integrated into a MTEF yet to be finalized. Budget planning and budget allocations for poverty related programmes are done with no real contribution from SPACO. Annual off-budget expenditures continue to undermine budget transparency and PRSP implementation. Such impairment in fiscal governance has been a factor in reducing donor support and limiting the availability of resources for implementation of PRSP. Internal audit as a recognised discipline in the public sector is hard to come by, and the Internal Audit Unit of DOSFEA is far from functioning as a compliant internal audit service. International audit standards for the public and private sectors are yet to be formally adopted. The central bank has been radically reformed since 2003 and presents a fine example of what can be achieved in a short period of time when incentives loom.

6. Transparency: Access to information is a fundamental human right and the first in line to uphold this right is the media. The Government has recently been accused by international media groups of having suppressed freedom of the press and media and intimidation of journalists. According to Reporters Without Borders, The Gambia ranks 149 out of 168 countries; the 168th country being North Korea. Transparency in public budget spending or local divisional decision-making seems to be out of reach for most civil society organizations with the exception of Pro-PAG, a civil society organisation.

7. Progress has been made in the area of public procurement as part of the World Bank Gateway Project. During 2001-2003 new procurement legislation was implemented creating the Gambia Public Procurement Authority as the entity responsible for all public procurement. Though the procurement framework has been improved, it nonetheless continues to experience operational shortcomings in respect of data processing and adequately skilled staff.

8. Stakeholder Participation: Democracy requires an environment where individuals can freely establish political associations and elect their political representatives. In order to ensure that true democratic practices prevail, there is need to establish an independent electoral body, whose main responsibilities are to ensure a transparent, fair, and equitable electoral process. The Independent Electoral Commission is constitutionally mandated to oversee elections. The independence of the Commission may be called into doubt given the executive's sway over it. Thus the Commission's

independence needs strengthening to be able to perform its functions credibly and effectively in a free and fair manner.

9. In the area of decentralisation, while pertinent legislation has been adopted, especially in the area of local councils' empowerment, many challenges remain in the implementation of the laws. Local councils' operations have continued to be inefficient and ineffective. The main reasons are failure to decentralise financial resources and in transferring competences leading to poor delivery of public services.

10. Legal and Judicial System: While the Constitution provides for the independence of the Judiciary, there continues to be many challenges for the Gambia judiciary to exercise and uphold its independence. The Gambia has yet to have a functioning law school, a fact that necessitates engagement of foreign judges and lawyers to administer justice, in terms of judicial responsibilities, and work as prosecutors and legal counsels with the Department of State for Justice to address the shortages of judges and lawyers. Currently, the Gambia Supreme Court Bench consists of five justices: three foreigners and two Gambians, including the Chief Justice of the Gambia. As a result of shortages of judges, each judge or magistrate has a caseload of three hundred cases, out of which only three cases are settled on a monthly basis. While the Gambia has signed and ratified most of the regional and international instruments, it has a huge backlog, in terms of reporting obligations under those instruments.

11. In addition, the executive has continued to be accused of unnecessary interference in the affairs of the judiciary, especially in the area of recruitment and dismissal of judges and case-assignment. The relationship between the executive and legal profession is shrouded with mistrust and lack of cooperation. However, the appointment of the first Gambian Chief Justice is expected to improve the working environment of the institutions of the justice system in the Gambia.

12. The Law Reform Commission and the National Council for Law Reporting have constitutionally been saddled with the responsibility of developing indigenous laws and jurisprudence of The Gambia in General. However, these legal bodies have not been functioning due to many constraints, especially human and financial resources. While UNDP, DFID, and the World Bank have been extending technical assistance to the judiciary and the Attorney General's Chambers, the Law Reform Commission and the National Council for Law Reports have yet to receive such technical assistance.

13. Anti-corruption and Money Laundering: Anti-corruption measures are weak and have not been formalised and made legally explicit, except what is found in the 1997 Constitution. According to Transparency International the Gambia ranks 121 among 163 countries and corruption appears to have increased in recent years. There is no specific anti-corruption legislation or enforcement agency. The Money Laundering Act, 2003 marked notable progress in combating international and domestic whitewash of money. At the time no enforcement agency was established to implement the law; however the central bank is in the process of creating the Financial Intelligence Unit charged with investigating and reporting suspicious transactions.

14. Priority Governance Areas: The question of leadership and how seriously the executive is committed to sound public financial management and political accountability is crucial. The dominance of the executive over the legislature and the judiciary must be sharply curtailed, and a true and genuine system of checks and balances must be established. The capacity of key governance oversight institutions like

the National Assembly together with its Public Accounts Committee, the National Commission on Governance, and the National Audit Office must be enhanced in order to perform as intended. In addition, civil society organisations must be reinforced as well as their ability and capacity to play a greater and more effective role in economic policymaking and implementation. This should be supported by legal and judicial reform and robust commitment to real decentralisation and local government. These governance areas will require greater political leadership and commitment if they are not to remain as policy agendas and plans.

15. Conclusion and Recommendations: There is a firmly held view that the litmus-test of good governance is the strength of political willingness and drive to institute good governance practice throughout the public sector. Without good governance exercised from the top there is scant hope that governance measures will take root and work effectively. With few exceptions, the institutions visited during the preparation mission, were characterised by serious resource and capacity constraints aggravated by excessive turnover of staff posing a challenge to any capacity development program. Processes and systems are mostly inadequate or non-existing limiting implementation and delivery capacity. To mitigate the deficiencies, comprehensive capacity development programmes are recommended comprising National Audit Office, the Treasury Directorate, the Judiciary, the Internal audit Unit and the Public Accounts Committee. To increase the possibility of programme complementarity and to avoid overlaps, aid coordination among the development partners and within the government should be developed. The importance of continuity in policy and programme design and implementation cannot be overemphasized in all aspects of sustainability and governance.

1 INTRODUCTION

1.1 The promotion of good governance in Regional Member Countries (RMCs) has become central in the implementation of the Bank Group's mandate of poverty reduction. The ADB policy document on Good Governance dated November 1999, defines Governance¹ as: "a process referring to the manner in which power is exercised in the management of the affairs of a nation, and its relation with other nations." This document describes governance as a priority issue that cuts across all sectors and is an essential instrument for promoting development with a focus on poverty reduction.

1.2 To support effective implementation of Bank Policy on governance, the production of Country Governance Profiles (CGPs) has emerged as the main analytical instrument for putting the Bank's policy agenda into operation. The overall objective of the CGP for The Gambia is, therefore, to provide a comprehensive analysis of the major governance issues facing the country and to identify the most appropriate areas for intervention by the Bank.

1.3 Assessment of the current state of governance is focused on five key areas: *Accountability, Transparency, Stakeholder Participation, Judicial System and Rule of Law and Fight against Corruption*. The assessment was supported by consultations² with government officials and other stakeholders including the National Assembly, government institutions, the judiciary and legal institutions, NGOs, private sector, professional associations, business and gender associations, media and in-country donor community. Extensive review of the relevant literature and published data has been used in the assessment.

2 THE STATE OF GOVERNANCE IN THE GAMBIA

2.1 Accountability

Political accountability

2.1.1 Political accountability derives from the principle of the separation of powers between the executive, the legislature and the judiciary. The National Assembly is the oversight body of government.

2.1.2 The Gambia was under British rule until 1965. Before the coup d'état in 1994, The Gambia was one of the oldest multi-party democracies in Africa. In 1996 the country returned to democratic rule and with the new Constitution of 1997 that provides for four sovereign organs of the second republic: the President of the Republic, the National Assembly, the Government and the courts. Periodical presidential, national and local elections are enshrined in the constitution as a means to hold elected officials accountable to the electorates. Both the President and members of the National Assembly serve a five-year term; no term limit for the presidency. The National Assembly has 53 members, 48 elected by secret ballot and five nominated by the President. As indicated in table 1

¹ In essence, governance is the exercise of power or authority – political, administrative and economic or any other kind - to manage resources and affairs. Good governance is the competent management of resources and affairs in a way that is open, transparent, accountable, equitable and responsive to people's needs. The elements of good governance are interdependent: a failing in one area may lead to poor governance that impedes development and that is one of the major assumptions of the current report.

² See Annex 1.

(column 1) some progress has been achieved in consolidating political accountability and democracy through the ballot box since 2000, although The Gambia is still below the average level for Sub-Sahara Africa.

Table 1: Governance Indicators for Selected African Countries

Country	Governance Indicator - Percentile Rank (0-100)*											
	Voice & Accountability		Political		Government		Regulatory		Rule of Law		Anti-corruption	
	2000	2005	2000	2005	2000	2005	2000	2005	2000	2005	2000	2005
South Africa	78.3	70.5	34.4	41.5	67.9	75.6	47.3	67.3	57.	57.	70.	69.
Botswana	69.1	67.6	73.6	81.1	79.9	74.6	77.3	71.3	68.	69.	82.	82.
Mali	53.1	60.4	52.4	48.1	24.4	38.3	51.2	34.2	30.	50.	40.	47.
Ghana	45.9	58.9	41.0	50.5	57.4	53.6	49.3	49.5	53.	48.	35.	45.
Senegal	44.9	54.6	21.7	42.0	60.8	49.8	41.9	43.1	46.	47.	40.	52.
Lesotho	43.0	53.6	76.4	57.1	50.2	46.9	30.0	29.7	48.	49.	71.	54.
Mozambique	39.1	44.4	33.5	47.2	34.0	44.0	42.4	28.2	29.	31.	43.	31.
Sub-Saharan	31.4	32.8	27.3	33.9	30.2	27.0	31.6	28.1	29.	28.	32.	29.
Gambia	17.9	28.0	55.2	51.4	52.2	31.1	44.3	38.6	44.	45.	50.	30.

Source: D. Kaufmann, A. Kraay and M. Mastruzzi 2005: Governance Matters IV: Governance Indicators for 1996-2005 World Bank Website (www.worldbank.org). The figures indicate the percentile rank on each governance indicator. Percentile rank indicates the percentage of countries worldwide that rate below each country. Higher values imply better governance ratings

Administrative accountability

2.1.3 The capacity of the Gambian public sector to deliver quality public services has progressed, but remains limited as witnessed by difficulties in achieving the MDG targets³. Spending on health and education has declined in recent years. The public sector is generally characterised by (i) extremely low salaries, (ii) absence of modern human resource management (iii) job insecurity due to arbitrary posting and dismissal of staff. The result is a high turnover of staff with discontinuity in policy design and implementation rendering capacity development largely unsustainable. The impact of this is a key factor in the country's low score on *Government Effectiveness* in table 1.

2.1.4 The Civil Service Commission (CSC) emanates from section 166 in the 1997 Constitution and is charged with recruitment, promotions and dismissal of civil servants for service grades 2 to 11; there are 12 grades and the 12th comprises permanent secretaries. Public sector administrative reform is also the ambit of the CSC according to section 174 of the Constitution. The minutes show that the CSC has mostly recruited teachers and nurses in 2006 and that other personnel has been dealt with by instruction from the Personnel Management Office at the Office of the President. The CSC voiced concern on the lack of clear definition of competence, overlap and interference vis-à-vis the Personnel Management Office compromising transparency.

2.1.5 Hence, the GOTG needs to undertake a comprehensive reform of the civil service aimed at improving service delivery. In order to retain its educated and skilled personnel, the government will also need to improve the remuneration incentives and conditions of service for civil servants and to introduce tools that would ensure the required performance of civil servants. The World Bank has recently launched a civil-service

³ MDG progress report 2003-2005, UNDP

reform study with ADB participation, and this will be a good opportunity for redressing some of the above shortcomings.

Financial accountability

2.1.6 The Gambia has been found to have a high level of fiduciary risk resulting from weak Public Financial Management (PFM)⁴ of the different elements of the budget cycle. (i) strategic budgeting, (ii) budget preparation, (iii) budget execution, (iv) accounting, internal control and monitoring, (v) reporting and audit. These PFM weaknesses in turn militate against effective poverty reduction issues.

2.1.7 The backlog of accounts for the years 1991-1999 have now been audited and submitted to the National Assembly. Another backlog of accounts for the years 2000 to 2002 are in the process of being audited and the audit reports are expected to be sent to the National Assembly (NA) in mid 2007. The national accounts for the years 2003-2005 are yet to be finalised and given to the National Audit Office. Against this backdrop the NA is deprived of effective and timely control of government spending. Three factors serve to explain the situation of the backlog. First, the delay in the Treasury Directorate in getting the accounts to the NAO. Second, the quality of accounts coming from the Treasury Directorate are such that they require substantive makeover before auditing. Third, capacity and resource gaps at the NAO in terms of qualified accountants, office facilities and budget allocation.

Budget process

2.1.8 With the Budget Management and Accountability Act, 2004 government has an updated legal framework for reform. The budget planning and resource allocation framework broadly follows international practise although budget lines are excessive and too detailed. Not all internationally funded programs are captured by the budget. Another weakness is that both the ordinary budget and development budget contains capital expenditures.

2.1.9 Although significant improvements in the budget have been made with World Bank⁵ and DFID⁶ support, much still remains to be done for the budget to be integrated within the MTEF framework. A prerequisite for a MTEF is that a macro-economic framework is validated which at the moment has been started in the context of the present PRGF 2007-2009. This will not only qualify the Gambia for HIPC funding, but also create the foundation for a MTEF and subsequent budget support encompassing more importantly MDRI debt relief.

Budget execution and monitoring

2.1.10 Current budget execution and monitoring is done on a quarterly basis backed by monthly monitoring of sector allocations and spending. Overriding approved budget allocations do occur and puts DOSFEA in a precarious position, as it has to arbitrarily cut ministries' budgets. This stop-go manner of budget execution is a product of past deficiencies in (i) budget preparation, (ii) lack of update tracking tools for revenue and expenditures and (iii) unreliable and untimely reporting.

⁴ Country Financial Accountability Assessment, World Bank, 2003

⁵ Capacity Building for Economic Management Project, World Bank.

⁶ Financial Governance Programme, DFID.

2.1.11 The commissioning of the IFMIS⁷ in January 2007 is envisaged to solve many of the deficiencies above leading to coherent public expenditure and revenue management and reporting. IFMIS will be fully implemented over a 3-year period. It is hoped that the cost of \$ 16.5m will be recovered in efficiency gains and that the staff trained in using the system can be retained.

2.1.12 The Treasury Directorate headed by the Director of Treasury (formerly the Accountant General) is responsible for the consolidated accounting, financial control and payments. Within the department, the segregation of these tasks, as required by best practice standards, is not evident. Outdated accounting systems and inappropriate computer hardware and software is a major reason why the Treasury has been unable to present timely and complete annual accounts to the National Audit Office. The situation is compounded by inadequately skilled staff and attrition.

Debt management

2.1.13 The Directorate of Debt Management (DDM) at DOSFEA monitors loans and grants using the Commonwealth Secretariat Debt Recording and Management System. Most projects have separate bank accounts and others operate on government bank accounts at the GCB. Sometimes departments do not report external grants received or expected during the year in their budget submission to DOSFEA as required by the Budget Act. Domestic debt is yet to be integrated in the system to provide a complete overview.

Internal audit

2.1.14 The Internal Audit Unit (IAU) of DOSFEA is far from working as a compliant internal audit unit. What the unit does is provide additional ex-ante and ex-post financial control of payment requests within the financial control process. The internal audit gets its staff on posting from and reports to the Treasury in contravention of fundamental principles of internal audit that require internal audit to be independent from the entities it oversees. Hence, it should be placed above and not below the Treasury and report directly to the permanent secretary in charge. There is no formal scheme of training on internal audit procedure and methodology. None of the staff holds an internationally recognised professional qualification.

Public sector audit

2.1.15 The NAO is a semi-autonomous office operating under the Finance and Audit Act of 1964 and the Budget Management and Accountability Act of 2004. It has a staff complement of 65 but with currently 18 vacancies. Significantly, the staffing vacancies are mainly at middle and senior management levels and this despite the fact that the NAO enjoys a premium of up to 10% on civil service salary levels. Among the staff only one has an international recognised professional audit/accountancy qualification; one out of two in the entire civil service. The NAO is a member of the International Organisation of Supreme Audit Institutions (INTOSAI) and the African Organisation of Supreme Audit Institutions (AFROSAI). While it is expected to promote and apply INTOSAI standards no policy decision has been taken to adopt these or IFAC standards. With DFID support

⁷ IFMIS is an Integrated Facility Management Information System providing an integrated platform for budget preparation, execution, accounting, reporting and payroll. IFMIS has 3 phases over time for various parts of the administration

the NAO has formulated a strategic development plan which if fully implemented would make the NAO compliant with INTOSAI standards.

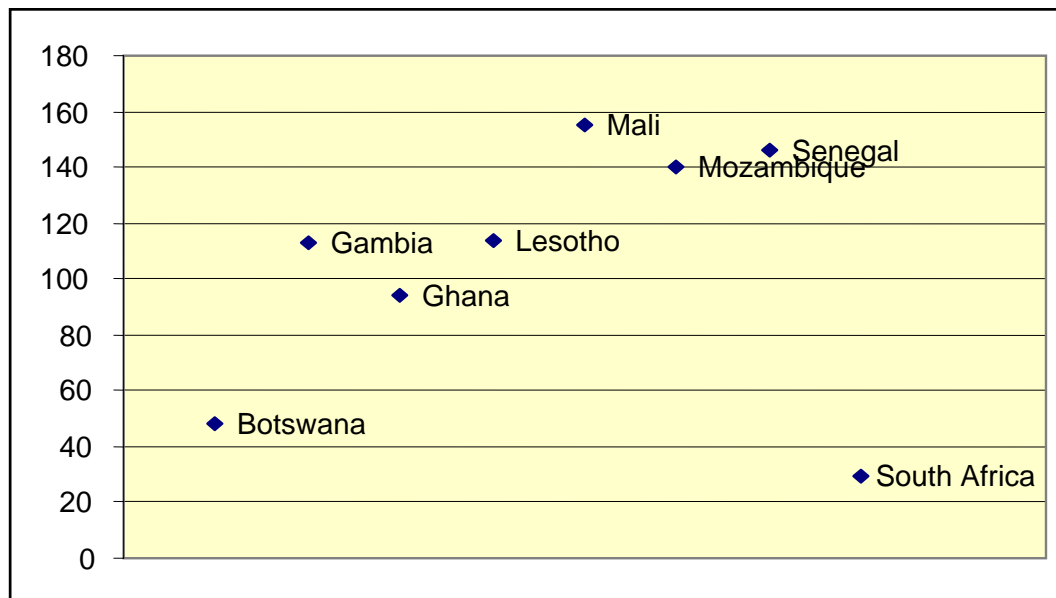
Private sector accounting and audit

2.1.16 The accounting profession is organised around the Gambia Association of Accountants with some 125 members holding professional qualifications. The association in its current form dates back to 2002. The profession is regulated by the Accountants Act of 1991. A modern Accountants Act 2004 in final draft is to be enacted. It will transform the association into an institute of chartered accountants - a professional body to (i) exercise regulatory oversight over the accountancy profession, (ii) issue qualifications in accountancy (iii) exercise control over its members, and (iv) provide statutory qualification for public sector auditors. The Gambia is yet to formally adopt internationally accepted accounting standards, but some accountants, notably the

international accounting firms operating in the country apply IFAC standards and guidelines. The Gambia Association of Accountants is looking into the possibilities of adopting International Accounting Standards in the near future.

Corporate governance

2.1.17 According to the ease of doing business index (the average of country rankings on 10 topics) The Gambia ranks 113 out of 175 countries at par with Lesotho and below Ghana at 94. Of the 10 topics⁸ The Gambia gets good scores on hiring and firing of labour (25) and cross-border trade (24), while scoring low on tax system (165), investor protection (162), getting credits and credit information (143), and property registration (130). **Ease of Doing Business Index, 2006 (1=best, 175 worst)**



Source: *The World Bank Business Report 2006*

2.1.18 Legal foundations for corporate governance are weak and lagging behind what investors expect to find today. The Business Act of 1955 is outdated in view of modern business practise and conditions. It is understood that new commercial legislation, which

⁸ Starting business, dealing with licenses, employing workers, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts, and closing a business.

is about to be drafted, will incorporate (i) a new companies act, (ii) regulatory framework, (iii) disclosure, (iv) shareholder rights, (v) insolvency and bankruptcy, and (vi) out of court settlement. The act on mortgage is also in need of improvement extending to procedures on land registration which are time consuming and cumbersome. For instance, the overriding reason why commercial banks are hesitant to lend is because of the difficult situation surrounding mortgage registration and foreclosure.

Central Bank

2.1.19 Following data misreporting to the IMF in 2003, the Central Bank of the Gambia (CGB) is today a completely different institution backed by the modern and comprehensive Central Bank of the Gambia Act, 2005. The Board of Directors is new, past annual accounts have been restated, internal audit has been put in place, powers have been segregated to ensure that controls cannot be easily overridden and a code of conduct and ethics underpins the operations of the Bank. In addition the CBG is creating a Financial Intelligence Unit (FIU) within the Bank. It will be the first enforcement agency after the enactment of the Money Laundering Act, 2003.

2.2 Transparency

Press freedom and media

2.2.1 Reporters Without Borders, an international non-governmental organization that monitors freedom of press worldwide, ranks the Gambia 149 out of 168 countries; the 168th country being North Korea. The media landscape in the Gambia comprises four private newspapers, four private radio stations and one private satellite television channel. The government operates the only national television station and a radio station. Critics have accused the Government of the Gambia of restricting free speech or freedom of expression by its introduction of pieces of legislation that restrict freedom of the press and media. Article 207 of the Constitution of the Gambia guarantees the freedom and independence of the press and other information media, while Article 208 defines the responsibility of the State owned media. However, the National Assembly passed a Bill into law in 2002, with a view to establishing a commission with powers to issue licenses. In 2004, the National Assembly, at the behest of the executive, passed into law the Newspaper (Amendment) Act, 2004 with a view to increasing the registration bond for independent news publishers and broadcasters from 100,000 Dalasi to 500,000 Dalasi. The critics consider this increase to be prohibitive and restrictive of the freedom of the private media to publish. The National Assembly passed into law the Criminal Code (Amendment) Act, 2004, which has, in effect, expanded the definition of libel and imposed mandatory prison sentences of six months to three years on offenders without the option of a fine.

Budget information

2.2.2 The annual budget speech of the Secretary of State for Finance and Economic Affairs is the most important budget information disclosure in the Gambia. The speech is delivered to members of the National Assembly during the presentation of the annual budget in November-December each year. It highlights the revenue sources, budgetary allocations to various sectors of the economy and new economic, monetary, and fiscal policies that will affect various segments of the society. The content of the speech and the budget documents are usually “too technical” for the comprehension of most Gambian citizens, whose level of basic education is very low. Transparency in public

budget spending or local divisional decision-making seems to be out of reach for most civil society organizations.⁹

Public procurement

2.2.3 The Gambia adopted the 2001 Gambia Public Procurement Act, the 2002 Gambia Public Procurement Instructions, and the 2003 Gambia Public Procurement regulations. These legal procurement instruments largely comply with international procurement rules and regulations. Indeed, the Gambia is signatory to the World Trade Organization (WTO) on Government Procurement. The Act establishes a Board as a governing body of the GPPA.¹⁰ While the Act provides for the use of open tender proceedings, it does not require procuring organizations to publicly disclose any information that would, among other things: be contrary to law, impede law enforcement, or not be in the public interest, except if it is ordered by a court of law. While these are genuine concerns, their subjective nature may indeed tempt those who may want to flout the inherent transparency in the system. Thus, although the legal framework provides for transparency, in practice, the Gambia public procurement system continues to experience some challenges in this respect.

2.2.4 Every public entity has a contract committee unit, to be supported by specialized procurement units, which is responsible for public procurement in procuring organization. A contract committee is accountable to the GPPA, as an overall oversight body, and thus it is required to submit monthly reports on all its evaluations to the Authority for review. In this sense the public procurement system is decentralized. In respect of transparency in the procurement process, the Act stipulates that procuring organizations shall make known by means of a public notice the total procurement by product area and other relevant categories, which they envisage awarding during the subsequent twelve months where the total estimated value is equal to or greater than D350,000.

2.2.5 Though the procurement system has been improved and strengthened, it nonetheless continues to experience some constraints. The GPPA does not currently have a computerized data base, a critical component of a well-established procurement system. Thus, the Authority critically needs to computerize its system in order to be internationally competitive. Government sectors lack proper planning and thus they usually disregard notification period, a fact that puts the Authority in unnecessary predicament, in terms of complying with international procurement rules. Like many institutions and organizations in the Gambia, the issue of skilled human resources remains a serious challenge to the Authority. The GPPA currently supervises sixty procurement units with only two staff members.

2.3 Stakeholder Participation

2.3.1 The involvement of CSOs and local government authorities in poverty reduction in the past was not great, particularly their roles in implementation. It is envisaged that PRSP II will see further strengthening of the role of non-state actors and the local government authorities will take a proactive role in ensuring effective and efficient delivery to the poor.

⁹ ADE/Transtee Belgium, Ingo BINNEWERG and Sambo Kinteh, Non-state Actor Identification Study, Feasibility Study and draft financing Proposal to the EC, the Gambia, June 2006, pp. 19-24.

¹⁰ Section 5

Electoral process

2.3.2 The Constitution authorized the establishment of the Gambia independent electoral commission (hereinafter Commission). Under the Constitution, the President, in consultation with the Judicial Service Commission and the Public Service Commission, appoints members of the Commission, including the chairperson.¹¹ Under the Constitution, the President does not only appoint members of the Commission per se, but s/he may also dismiss them. These presidential powers place the Gambia Independent Commission in the public service, which, by definition, makes it an integral part of the executive branch of government; notwithstanding it shares its reports annually with the National Assembly. Indeed, these presidential powers call into question the independence of the Gambia Independent Electoral Commission.

2.3.3 There is a need to strengthen the Independent Electoral Commission to be able to perform its functions efficiently and effectively in a free and fair political environment, by developing institutional and human resource capacities. There may be a need to amend the Constitution with a view to reinforcing the independence of the Gambia Independent Electoral Commission by making it answerable to the National Assembly and securing its own budget without necessarily submitting it to the National Assembly through the President, as provided for by the Constitution¹². In this respect, other governance institutions, especially civil society organizations, should be strengthened to promote accountability and transparency during the electoral process.

Local government and decentralization

2.3.4 The 1997 Constitution provides for the decentralization of The Gambia as the best strategy to deliver basic services to the people. This strategy was again echoed by the 2000 Local Government Act, which was amended by the 2006 Local Government Act with a view to empowering local councils. The 2004 Local Government and Finance Act provides for political and financial autonomy of local councils. In addition, the government adopted Vision 2020 and the National Governance Programme, which are also anchored in the decentralization and devolution of powers in the Gambia. Although elections of officers of various institutional structures of the decentralized governance systems were held since 2002, the operationalisation of these structures has been stalled by legal and political hitch-ups.¹³ Participatory planning with emphasis on improving transparency, accountability and monitoring oversight by local communities is weak.¹⁴

2.3.5 The hand over of authority to local governments as a result of the policy of decentralization is met with several challenges including low levels of human and financial resources (the LGAs are already facing huge budget deficits). In particular the transfer of full responsibility for financial management is going to strain local capacity, particularly that they will have to deal with new issues around the implementation of MTEF. At the moment LGAs are characterized by unrealistic budgeting, cash base transactions, delays in the preparation of accounts etc. Currently also, there is no transfer formula and for that matter any transfers of government subventions to LGAs mainly because of the local governments' lack of capacity for financial management.

¹¹ See Section 42 (1) (2) (3) of the Constitution.

¹² See sections 44 and 45 of the Constitution.

¹³ European Commission, Financial Proposal For Non-State Actors Strengthening Programme in The Gambia, Banjul, 2006, p. 8.

¹⁴ UNDP, Country Programming and Related Matters, Draft Country Program Document for The Gambia, New York, 2006, p. 2.

2.3.6 Civil Society Organizations and Non-Governmental Organizations: Grouped under the Association of NGOs (TANGO) with a membership of over 53 NGOs/CSOs, the Association has no statutory powers and functions to advocate and lobby on behalf of NGOs and civil society.¹⁵ There are few NGOs which have active programs in democracy, transparency and human rights. There are also a few NGOs with highly qualified staff, which have multi-faceted programs. The majority of these types of developed CSOs are mainly located in the Greater Banjul area from where most of their operations in the rural areas are launched. The civil society in the Gambia has to a limited extent been participating in the development process at different levels of the political hierarchy. Broad based participation has been maintained during various consultative processes, leading to the preparation of policy proposals.

2.3.7 Public/Private Sector Interface: The GOTG has committed itself to the enhancement of sustainable development and poverty reduction and realized that this can be achieved through partnership, interfacing and networking of all public/private sector institutions as well as civil society. The integration of public/private sector and civil society institutions provides a coherent and systematic approach to private sector development. Analysis by experts in public/private sector and civil society groups in the Gambia identified key intervention areas for the promotion of a private sector, socio-economic development in a participatory and democratic environment. These areas are: (1) building capacity of private sector organizations to enable them to make informed and educative input in policy making, i.e. “professionalize their voices; (2) building partnership between the public and private sectors to improve economic development and growth; (3) extending the partnership to a wider society in the context of creating economic and social dialogue mechanism and structure; (4) formalizing and institutionalizing the partnership and making it a permanent feature in the policy dialogue landscape; (5) reinforcing the partnership between the government and civil society.¹⁶

Gender issues

2.3.8 The office of the vice-president held by a woman oversees programs to ensure the legal rights of women. Active women’s rights groups exist as NGO’s in The Gambia. Despite the adoption of policies to promote gender equality, significant gender disparities continue to exist. For example, the GOTG has prioritized the education of girls with the revised education policy 1998 – 2003. Less than 32% of the former private sector employees are female, with less than 20% in managerial positions. Although women constitute approximately 58% of the electorate, only 10% of the National Assembly Members are women. The low levels of women in decision-making bodies is also reflected at the local level with only 14 female councilors out of a total of 147.

2.3.9 Women continue to suffer various forms of discrimination and violence against women and children in the seven administrative areas of The Gambia. The government of The Gambia has signed the United Nations Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW), the Beijing Declaration, and has rectified the Protocol to the African Charter on Human and People’s Rights and the Rights of Women in Africa. The Protocol, popularly known as the MAPUTO PROTOCOL, is the regional convention adopted to respond to issues of African women and their rights.¹⁷

¹⁵ Gumbo Touray, “Project Planning and Management in the Non-State Sector: Issues of Responsibility, Accountability, and Transparency,” *GICAP Interface Journal*, June 2004, p. 8.

¹⁶ GICAP/ACBF Brochure: Promoting Public/Private Sector and Civil Society Partnership for Empowerment, Sustainable Development and Poverty Reduction, Banjul, 2002, p. 2.

¹⁷ The Gambia Committee on Traditional Practices Affecting the Health of Women and Children, GAMCOTRAP, Half Year Report for 2006, Banjul, p. 12.

2.4 Legal System and Rule of Law

2.4.1 The Gambia Legal System, like many other legal systems in Africa, accommodates the concept of legal pluralism. It is anchored in English legal system, Sharia law system, and indigenous “customary” law system. The Gambia court system currently consists of the Supreme Court, the Court of Appeal, the High Court, the Special Criminal Court, magistrate courts, Cadi courts, and district tribunals.¹⁸

2.4.2 District Tribunals apply indigenous “customary” laws, including Islamic law, in the area of jurisdiction with respect to criminal and civil matters and Islamic law that relates to family and personal disputes. Appeals from the District Tribunals are heard by the High Court.¹⁹ The Cadi Court applies Islamic law with respect to marriage, divorce, and inheritance. It has a concurrent jurisdiction with magistrate’s courts. Membership of the Cadi Court includes a Cadi and two other Sharia scholars or Ulama. Appeals against its decisions are heard by the Cadi Appeal Panel: it is established by a Cadi Appeals Selection Committee, which is composed of the Chief Justice, the Attorney General and a member of the Supreme Islamic Council, selected by the Council. Magistrate courts have criminal and civil jurisdiction; they deal with the vast majority of cases. There are eight operational magistrates’ courts, six in the Greater Banjul Area and the remaining two in Mansakonko and Basse, which cover the rest of the country. There are currently fourteen magistrates.²⁰

2.4.3 The Special Criminal Court consists of a panel, whose membership includes a chairperson and not less than other two members of the panel, provided that the chairperson is qualified to be a judge of the High Court. Members of the Court are appointed by the President in consultation with Judicial Service Commission (hereinafter JSC). The Court has jurisdiction to hear and determine all criminal matters relating to theft, misappropriation and other similar offences in which public funds and public property are affected.²¹ The High Court consists of the Chief Justice; not less than seven other Justices of the High Court; and a judge of a superior court. The High Court has jurisdiction to hear and determine all civil and criminal proceedings and to interpret and enforce the fundamental rights and freedoms as enshrined in the Constitution. The High Court has jurisdiction in appeals from courts subordinate to it; it has also supervisory jurisdiction over all lower courts and adjudicatory authorities in the Gambia. There are currently three judges, one Gambian and two locally recruited Nigerians.²²

2.4.4 The Court of Appeal consists of the President of the Court of Appeal; not less than three Justices of the Court of Appeal; and one Judge of the High Court, provided that this Judge is qualified to be a member of the Court of Appeal. The Court of Appeal has jurisdiction to hear and determine appeals from judgments, decrees, and orders of the High Court and such appellate jurisdiction as may be conferred on it by an Act of the National Assembly. It has also jurisdiction in appeals from Court Martial.²³ An appeal also lies as of right to the Court of Appeal from any judgment, decree, and order of the High Court. In exercising its appellate role, the Court of Appeal has all the powers vested in the court from which the appeal is brought.

¹⁸ Section 120 (1) (a) (b) of the 1997 Constitution

¹⁹ Section 9 and 10, District Tribunals Act 1933, Chapter 6:03;

²⁰ See note 14, p.24.

²¹ Sections 134 and 135 of the 1997 Constitution.

²² See Sections 131, 132, and 133.

²³ The Department of State for Defence constitutes the court martial which is presided over by a Judge of the Court of Appeal or the High Court, or a senior advocate.

2.4.5 The Gambia Supreme Court is the highest Court in the Gambia. It consists of the Chief Justice; not less than other four Justices of the Supreme Court; a Judge of the Court of Appeal. The Supreme Court is constituted by an uneven number and not less than five judges of the Court. It has an exclusive original jurisdiction to interpret or enforce any provision of the Constitution other than any provision of sections 18 to 33 or section 36 (5) (which relate to fundamental rights and freedoms); over any question that relates to the constitutionality of any piece of legislation passed by the National Assembly; on any question that relates to the validity of the Presidential elections; on any question that relates to the disclosure of an official document and its aftermath in terms of state security. An appeal lies to the Supreme Court as of right from any judgment of the Court of Appeal on an appeal in any civil or criminal matter from a judgment of the High Court in the exercise of its original jurisdiction; from any judgment of the Court of Appeal dismissing an appeal from a death sentence imposed by any other court; or in such other case as may be prescribed by the National Assembly.²⁴

2.4.6 The Gambia Supreme Court currently sits as a five-member bench on an ad hoc basis, which the Chief Justice presides over and who is also the head of the Gambia judiciary. In this connection, the Chief Justice is assisted by the Judiciary Secretary, who is usually a senior magistrate. The current Chief Justice, who assumed this role in February 2006, is the first Gambian to occupy this position since independence. Indeed, there are currently two Gambian Justices and the other three Justices are contracted from other African countries (Tanzania, Zambia, and Sierra Leone) from the Commonwealth.

Judiciary

2.4.7 **Independence of the Judiciary:** The 1997 Gambia Constitution clearly provides for separation of powers and the independence of the judiciary, especially Article 120 (3), which stipulates that, in the course of carrying out their duties, the judges and ²⁵magistrates shall be independent and subject only to the Constitution. Indeed, The Constitution also empowers the Judiciary to be a self-accounting arm of government in that it will secure consolidated fund appropriated by an Act of the National Assembly. This is one of the prerequisites for the independence of the judiciary. This enabling constitutional provision is in the process of being implemented.

2.4.8 While the Gambia has provided an enabling legal framework for the independence of the judiciary and the prevalence of the rule of law, there continue to be challenges in this area. According to the latest studies or governance index, the situation of the rule of law in the Gambia has slightly improved from what it was during the period of 1996-2000. Indeed, in terms of scorecards or indicators, the Gambia scored 45.9% in 2005 more than 44.2% that it had scored in 2000.

2.4.9 Under the Gambia Constitution, the JSC is mainly responsible for the appointment of judges. It consists of the Chief Justice; a judge of a superior court; the Solicitor General; a legal practitioner of at least a five-year standing at the Gambia Bar, nominated by the Attorney General in Consultation with the Gambia Bar; a presidential appointee; and one person nominated by the National Assembly. It is argued that, with the exception of the Chief Justice and one judge, other members of the JSC are effectively President's nominees; hence the challenge with respect to the separation of powers, since the President is the head of the executive branch.

²⁴ Sections 125 to 128 of the Constitution

²⁵ See D. Kaufmann, A. Kraay and M. Mastruzzi 2005: Governance Matters IV; World Bank, Governance Indicators for 1996-2005, (www.worldbank.org.).

2.4.10 However, under article 141 (4)-(9), once appointed, a judge can only be removed from office if s/he is unable to perform her/his duties, or mentally unsound, or because of gross misconduct. In such a situation, a notice is given to the Speaker of the National Assembly signed by not less than 50% of the voting members of the National Assembly, moving a motion that the ability of judge to carry out his/her constitutional duties is impaired and that the case should be investigated. If the motion is adopted by more than two thirds of all the members, the National Assembly appoints a tribunal to investigate such allegations. Once they are validated, then the National Assembly, by a two third majority, can dismiss the judge. In addition, under article 141 (2) ©, the President, in consultation with the JSC, may remove a judge. These provisions appear to be contradicting each other in that the Constitution provides for two parallel processes of removal, a fact that makes judges vulnerable to political influences.

2.4.11 **Constraints:** The Gambia judiciary has been experiencing acute shortage of trained lawyers, a fact that has contributed to a huge backlog of cases. Some cases take three to ten years to conclude or settle. According to the Chief Justice, each magistrate and judge gets three hundred cases of which only three cases are settled in a month. The other factor is the cumbersome outdated rules of procedures, which the lawyers invoke so often with a view to delaying court's proceedings. The current 2005 Judges' Bill is expected to address this concern. Regarding the backlog of cases, the Chief Justice has proposed the establishment of hurricane courts, for which magistrates and judges could be recruited for a six-month period to clear this backlog. There is also lack of library facilities. The small legal library is housed in the Chief Justice's Office.

2.4.12 In addressing this legal professional gap in the Gambia, a legal project, supported by the UK Department for International Development (DFID) and the Commonwealth Secretariat (CS), is in place, which, in effect, contracts judges and prosecutors from the Commonwealth countries, especially from Nigeria and Ghana, to work with the Judiciary and the Department of State for Justice for a two-year fixed term, which the government may renew. Nigeria also has technical assistance for the Gambia, through which it provides one judge and seven prosecutors. The Bench has only three Gambians: the Chief Justice, one Supreme Court judge, and one High Court judge.²⁶ Contracted judges are in a majority on the Bench. This arrangement poses some challenges with respect to the issue of tenure for judges. A two-year fixed contract is too short a time to give a judge a sense of professional security. Besides, the renewal of such contracts hinges upon the recommendation of the Judicial Service Commission (JSC) and the approval of the government.

Execution of court order

2.4.13 A judiciary whose judgements and decisions are not carried out cannot efficiently and effectively fulfil its constitutional mandate. There were reports about numerous cases in which the executive either delayed in executing such orders or totally decided to ignore them. In effect, there have been reports with respect to the executive's selectivity when it comes to the executions of court orders.²⁷ It seems that lawyers who represent accused persons are perceived by the government as being members of the opposition and thus should be treated as such. Legal practitioners, on the other hand, argue that they are only complying with their constitutional obligations and duties toward those accused: constitutionally, they are innocent until proven guilty in a court of law.

²⁶ Ibid; see also DFID, Output to Purpose Review of the Legal Capacity Building Project Report, Gambia, May 2006

²⁷ Ibid

2.4.14 Department of State for Justice: This is where the office of the Attorney General is located. Its role is to represent the government in courts and other legal arenas where the interest of the government is to be protected. It is also responsible for the prosecution of accused persons; it can also sue individuals, corporations, organizations, and any other entity on behalf of government.

2.4.15 In the Gambia, the Attorney General is a member of the Judicial Service Commission, which is constitutionally mandated to recruit judges and magistrates. Thus, the Attorney General is involved in judiciary's matters in that capacity per se. In the past, there were reports about the involvement of the Office of the Attorney in the administration of justice, especially in the area of assigning cases to the judges and magistrates.²⁸ The Office of the Attorney General, for the last few years, has seen unprecedented turnover or a high attrition rate. It is reported that within a span of ten years, there have been more than eight Attorney Generals.

2.4.16 The Office of the Attorney General, like the judiciary, also experiences acute shortage of trained lawyers and prosecutors. It has only one legislative drafter, who is a Nigerian by nationality. The Registrar General's Department, which is responsible for registration of deeds, agreements, leases, companies, and businesses, has only two legal staff members: the Registrar General and the Registrar of Companies and businesses. These two staff members are not necessarily trained in this particular field. To further strengthen the capacity of the Registrar General's capacity, efficiency, and effectiveness, there is certainly a need to computerize it, in terms of its operations. It may also be necessary to make it a semi autonomous body, with a view to responding to current business challenges.²⁹ The Office of the Attorney General benefits from the DFID/CS project, which contracts lawyers from the Commonwealth countries, especially Nigeria and Ghana. It also benefits from the UNDP capacity building project. It has yet to completely computerize its operations.

Legal profession

2.4.17 The prevalence of the rule of law hinges on the partnership and cooperation between the legal profession, the judiciary, and the attorney general office. The Gambia Bar Association, notwithstanding the absence of law school, is one of the oldest bar associations on the continent. Its tradition is anchored in the English legal system and practice. There are approximately 130 legal practitioners admitted to practice in the Gambia. The current membership of the Gambia Bar Association is reported to be 80 members.³⁰ Notwithstanding lack of human and material resources, the Bar has developed some pilot projects with regard to legal training and access to legal aid. The Bar has also been engaging in issues that pertain to the independence of the judiciary.

2.4.18 In this connection, the relationship between the Bar and the judiciary has reasonably been good, except one incident in which the Bar decided to boycott one court, presided over by a Judge whom it accused to have compromised the independence of the judiciary. The Bar claimed that the former chief justice, a Ghanaian by nationality, had assigned a case in which the government had an interest therein to the said Judge. The Bar suspected the particular Judge was cooperating with the Government, when administering justice, an act that the Bar concluded to be a violation of the constitutional independence of the judiciary.

²⁸ Ibid

²⁹ See note 23, p. 11.

³⁰ See note 34, p. 42.

2.4.19 The judiciary, on the other hand, argues that if the Bar had conclusive evidence to that effect, it could have appealed the Judge's decision. Indeed, it is reported that a number of the said Judge's decisions were confirmed on appeal. Besides, some of the Judge's decisions went against the government. It is worth noting that the said Judge was appointed by the government to be the chairperson of a commission that was mandated by a decree to investigate civil servants' corrupt practices during the previous regime. It is reported that position gained him enemies.

Access to justice and legal counsel

2.4.20 Access to justice is a fundamental human right that most constitutions and international human rights instruments enshrine. The Gambia does not have a legal aid program, except in cases of murder and treason (capital offences) that carry death sentences or life-imprisonment. The Gambia Bar Association has developed a very limited pro-bono pilot project with a view to providing access to those poor and disadvantaged Gambians. In this respect, the government needs to develop a legal aid program that will help the poorest of the poor in the Gambia.

Judicial reform

2.4.21 There is an on-going judicial reform in the Gambia, which is currently supported by the UNDP, DFID, and the World Bank. Initially, the 1997 Gambia Constitution introduced some structural changes in the judiciary: the current High Court used to be known as the Supreme Court or rather the highest court in the Gambia by then. Different court divisions have been established in the High Court. Currently, the High Court has five divisions: commercial division, criminal division, civil division, miscellaneous division, and family division. Efforts are also underway to computerize the entire court system with a view to managing the caseload. There is currently a pilot project: one court has been computerized. However, there have been some challenges in this regard: a number of court transcribers, who had been trained to use the new system, decided to seize other job opportunities elsewhere.

2.4.22 The Commercial Division within the High Court was established to respond to the 2005 Alternative Dispute Resolution Act. Within this division, industrial tribunals have been established to ease the litigation process and settle commercial disputes speedily. Pursuant to the 2005 Children's Law, the judiciary has also established the Children's Court to exclusively deal with disputes that affect children. There have also been reviews of the High Court and the Magistrate Rules of Procedures with a view to simplifying them and facilitating easy access to justice.

2.4.23 All these efforts culminated in the drafting of the 2005 Judge Bill, which is expected to introduce some reform in the judiciary. This Bill has yet to be passed into law by the National Assembly. In addition, a website or a network has already been established between the Department of State for Justice and the Judiciary with a view to easing the management of cases and sharing of legal information.³¹ While there has been some progress in the area of judicial reform, the judiciary has yet to exercise its self-accounting. There is need for the Judges' Bill to be passed into law and operationalization of the independence of the judiciary, by accentuating its autonomy and independence.

Legal reform

³¹ See note 23, p. 11.

2.4.24 A pro-active legal reform process captures and creates concomitant legal dynamism, which is critical for socio-economic and cultural development. While the Gambia has been able to reform some of its laws with the support of UNDP, especially its Investment Promotion Act, 2001, which, in effect, established The Gambia Investment Promotion and Free Zones Agency,³² it has yet to update its laws in some other critical areas. In this respect, the Gambia needs to update its laws in the area of business in general. While the 2003 Company Bill and the 2003 Insolvency Bill were drafted in 2003, they are yet to be passed into law by the National Assembly. This delay certainly and adversely affects the Gambia free and liberal market economy and the overall strategies of its National Governance Policy and PRSP, and Vision 2020.³³

2.4.25 The 1992 mortgage Act imposes restrictions on the banks to foreclose mortgages prior to securing court's judgment against debtors. These restrictions have resulted in the increase of interest rate, which may be as high as 25%. There is certainly a need to review this Act with a view to addressing such restrictions. The Gambia also needs to update its legislation in the area of maritime, which continues to be governed by the British eighteenth century's piece of legislation, considering the critical role that the Gambia Port Authority (GPA) plays in promoting investment in the Gambia.

2.4.26 Legal-reform efforts in the Gambia have been hampered by a number of factors. The Gambia does not currently have a law school, a fact that has been stalling the development of its jurisprudence. Gambian lawyers are instead trained in other Commonwealth Countries, especially in Nigeria and Ghana with which the Gambia has a similar legal system. Many Gambian lawyers trained abroad tend to practice in the Commonwealth countries and those who decide to return tend to join legal private practice. There is, however, the Gambia Technical Legal Institute, which offers a two year diploma for judicial officers, clerks, interpreters and transcribers.³⁴ Government has already put in place plans to establish a faculty of law at the University of the Gambia in 2007. Indeed, interviews have already been conducted with prospective law professors. The establishment of a law school will certainly go a long way to address some existing deficits, especially in the area of legal reform.

2.4.27 **Law Reform Commission (LRC):** The Commission was initially established by an act of parliament in 1983 with a view to, among other things, codifying of the indigenous laws of the Gambia and conducting research into new areas of law that would benefit the Gambians. Notwithstanding, the Commission has been experiencing some neglect and thus it is not currently functioning, in terms of its mandate. Although members of the Commission have recently been appointed, the Commission's legal research efforts continue to be impeded by lack of requisite resources. The Commission has continued to be without any significant support; not even from the donors. However, the UNDP governance study report highlighted the plight of this critical body. In the area of the legal reform, the role of the Commission is indeed critical and cannot be overemphasized.³⁵ It is incumbent on the Gambian government to ensure that resources are made available to the Commission with a view to enabling it to fulfil its mandate.

³² The Gambia National Assembly has passed into law The Gambia Investment Promotion Act, 2001; the Partnership Act, 2005; the Business Registration Act, 2005; the Alternative Dispute Resolution Act, 2005; and the Children's Act, 2005; see also note 23, pp. 10-12.

³³ Ibid.

³⁴ See International Bar Association, *Under Pressure: a report on the rule of law in the Gambia*, August 2006, p. 42.

³⁵ See UNDP'S Report on the Gambia National Governance Programme, August 1999; Government of the Gambia, *National Governance Policy of the Gambia: Sectoral Consultations on Governance*, Banjul: Trend Enterprise, December 1999

2.4.28 National Council for Law Reform: this is a semi-autonomous body, which is saddled with the responsibility of publishing law reports of the Gambia. The principle of precedent is one of the law-making processes in the common law system of the Gambia. It is thus critical that Gambian judges, magistrates, Cadis, and members of the district tribunals document and record their judgments and decisions. It is reported that thus far the Council has published one volume of law reports that cover 1994. Since then, all the judgments and decisions of different courts are currently in certified copies.³⁶ The Council's role is currently hampered by lack of adequate human and material resources. Again, the critical role of the Council in developing the Gambian jurisprudence cannot be overemphasized. There is obviously a need to strengthen and support the Council in order for it to function efficiently and effectively.

Human rights

2.4.29 Apart from Chapter IV of the 1997 Constitution, which provides for the promotion and protection of all human rights, the Gambia has ratified most basic human rights instruments: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social, and Cultural Rights (ICESCR) ; the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); The Convention Against Torture, Cruel, Inhumane and Degrading Treatment (CAT); the Convention on the Rights of the Child (CRC). The Gambia has also ratified most of the regional human rights instruments, especially the African Charter on Human and Peoples Rights; the African Charter on the Rights and Welfare of the Child; the OAU Convention on Specific Aspects of Refugee Problems. It has also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. It has yet to sign and ratify the Protocol of the African Charter on Human and Peoples' on the Rights of Women in Africa. In addition, the Secretariat of the African Charter on Human and Peoples Commission is based in Banjul, the Gambia.

2.4.30 While it is commendable that the Gambia has ratified all these human rights instruments, it is critical that it meets its reporting obligations under these instruments. The Gambia has a huge backlog, in terms of reporting to the treaty bodies and the African Charter Commission on Human and Peoples' Rights. Such reports may indeed act as sign-posts or indicators with respect to the Gambia PRSP efforts and strategies.

2.4.31 **Conditions of Detention Centres and Treatment of Prisoners:** The conditions of detention centres have relatively improved in that the overcrowding has somewhat been reduced. However, reports about prolonged detention have continued to persist. It appears the judiciary's challenges with respect to human resources have a lot to do with the prolonged detention of inmates.

2.4.32 While the phenomenon of detaining suspects in undisclosed locations has not recently been reported, there continue to be reports about detention of individuals for a longer period without being charged with an offence or allowed to consult their legal representatives. The police and the National intelligence Agency (NIA) agents have continued to be accused of using the foiled coup attempt as an excuse to tramp on individuals' constitutional rights.³⁷

³⁶ Ibid

³⁷ Ibid, p. 51.

2.4.33 National Council on Civic Education (NCCE) is a constitutional body that is responsible for civic and human rights education in the Gambia. Its priority task is to create awareness among the Gambians with respect to the 1997 Constitution, especially their human rights and fundamental freedoms under the same. In this connection, the Council has developed a ten-year plan, which includes, among other things, decentralization of its operations by establishing council's branches, ward's branches, and village's branches. It currently launches its activities from its headquarters in the Great Banjul area, a fact that makes its activities to be very limited, in terms of its geographical coverage of the entire country.

2.4.34 The Council has actively been disseminating information to the Gambian public about the constitution, and regional and international human rights instruments. The Gambia Independent Electoral Commission, during its presidential elections, contracted the Council to launch a very successful voter's registration campaign. It is also and actively involved in the on-going training of the army, police, prison, and security personnel in human rights and constitutional rights of the Gambians. The Council pays a particular attention to security sector because of the challenges that elements of this sector faces, in terms of respect of human rights of citizens. The Council has also signed MOUs with the Department of State for Education, regarding the establishment of human rights clubs in schools, and the Office of the Ombudsman, in terms of human rights awareness.

Office of the Ombudsman

2.4.35 The universal role of the office of the ombudsman is to ensure fairness and justice in governance in general and administrative duties of government in particular. The Gambia Office of the Ombudsman is established under Chapter ten of the Gambia Constitution and the Ombudsman Act of 1997. Its main role, among other things, is to investigate actions taken by a government department or public body, which allegedly and adversely affect concerned complainants or members of the public. Its mandate extends from the lowest office in the civil service to the Office of the Vice-President, in terms of investigating maladministration allegations.

2.4.36 The Office of the Ombudsman consists of the Ombudsman and two deputy Ombudsmen, who are recommended by the Civil Service Commission (CSC) and appointed by the President and confirmed by the National Assembly. It is rather confusing that under the Act, the Office of the Ombudsman supervises the CSC, a body that the Act also requires to recommend prospective members of the Office of the Ombudsman to the President. These alternating mandates raise questions about the independence of the Office of the Ombudsman. There are also challenges in the area of "presidential affairs" and the mandate of the Ombudsman. Recent summary dismissals of a number of permanent secretaries do not apparently fall within the purview of the Office, because the dismissals were arguably effected within "presidential affairs' purview."

2.4.37 The Office has established three main units: investigation, media, and human rights. It has two offices: one main office in the Banjul area and one regional office. While it is mandated to report annually to the National Assembly, the Office has so far produced two reports since its inception in 1997. It has a very small staff because of lack of human and material resources. Its annual budget does not exceed 1.5 million dalasi. Since the Gambia has yet to establish its human rights commission, this role is currently played by the Office of the Ombudsman and thus its efficacy or efficiency is critical.

2.5 Combating Corruption and Money Laundering

2.5.1 The most widely used definition of corruption is related to “*the misuse of entrusted power or means for private gain*”. Transparency International and the World Bank are among those who base their work on this definition. The ADBs Group Policy Document on Good Governance defines corruption as the misappropriation of public assets or public office/trust for private gains and explains that combating corruption is a key indicator of the commitment to good governance.

2.5.2 Transparency International Corruption Perception Index 2006 for selected countries shown in Table 3 ranks the Gambia 121 out of a total of 163 countries scoring just 2.5 of maximum 10. Transparency International considers a score of 5.0 to be the borderline figure distinguishing countries that do and do not have serious corruption problems. According to Kaufmann³⁸ and with the score shown in Table 1, corruption has increased from year 2000 (score 50) to 2005 (score 30) reaching the Sub-Saharan average of 29. The score range is 0-100 with 100 indicating no corruption. It is alleged some top government ministers are involved and condone corruption particularly in relation to the award of government contracts although no clear evidence is adduced. Furthermore, other government institutions such as the military, police, customs and the immigration are all noted to be involved in corruption involving bribery and nepotism mainly because of poor civil service salaries. However, there is also ample evidence to suggest that government has intensified its fight against corruption.

Table 3: Transparency International Corruption Perception Index, 2006

Country Rank	Country	2006 CPI Score
1	Finland	9.6
	Iceland	9.6
	New Zealand	9.6
4	Denmark	9.5
5	Singapore	9.4
37	Botswana	5.6
51	South Africa	4.6
	Tunisia	4.6
70	Ghana	3.3
	Senegal	3.3
79	Lesotho	3.2
99	Mali	2.8
	Mozambique	2.8
121	The Gambia	2.5
160	Guinea	1.9
	Iraq	1.9
	Myanmar	1.9
163	Haiti	1.8

Anti-corruption

2.5.3 One would expect that the National Governance Commission and its Governance Secretariat under the purview of the Office of the President would have implemented some of the National Governance Program (NGP) of 1999, however, no evidence of this was found or of the activities of the governance task force mandated with (i) preparing a time-bound governance program of action, (ii) identifying the required capacity for the implementation of the governance program; and (iii) facilitating inter-institutional collaboration and co-ordination. A recent campaign coined “Operation No Compromise”

³⁸ D. Kaufmann, A. Kraay, and M. Mastruzzi, 2006,

with a committee of public inquiry set up to scrutinise civil servants' position and origin of assets has been no substitute for serious and permanent anti-corruption measures such as the creation of an independent anti-corruption enforcement agency.

Anti-money laundering

2.5.4 The Money Laundering Act, 2003 marked notable progress in combating international and domestic whitewash of illicitly acquired money. At the time no enforcement agency was established to implement the law. In the interim, i.e. from the time the law came into force till the Financial Intelligence Unit of the CBG becomes operational; the CBG has instructed banks and other financial institutions to report on suspicious transactions. Over the 3-years period no suspicious transactions have been reported to the CBG. Clearly, this shows the need for an enforcement agency like the FIU.

Development partners' activity on governance

2.5.5 The donor community active in The Gambia is fairly small. It does primarily yield support in the areas of financial reform and constitutional rule as indicated in the table below. The World Bank's: *Capacity Building and Economic Management Project (CBEMP)* and DFID's current: *Financial Governance Programme* have been instrumental in improving budget preparation and accounting. The UNDP work program 2007-2011 includes capacity building measures to strengthen governance institutions. Through the CBEMP the installation and operation of the first phase of IFMIS in DOSFEA, NAO and other institutions was completed in 2007. The World Bank and UNDP programs have also financed pertinent training programs in IFMIS and other areas. DFID has provided critical technical assistance in the area of audit and has also financed training programs relating to economic management and governance. The Bank itself has just appraised the second phase of a three year institutional support project for governance designed to support economic management and financial accountability systems including support to DOSFEA, SPACO, and the National Audit Office, taking into account the gaps left behind from initial interventions. It is significant to note that all donor interventions in governance is guided by the UNDP's governance program, which is endorsed as the national governance agenda and somewhat coordinated by the UNDP and the national governance commission to ensure alignment of donors' interventions.

Table 4 Development Partners' Activity on Governance

Areas	DFID	EU	UNDP	WB/IMF
Public finance reform	X			X
Accounting & budgeting	X			X
Auditing	X			
Revenue collection				X
Procurement				X
National Assembly			X	
Electoral process		X	X	
Commission on Good Governance			X	
Civil society	X	X		
Justice & legal reform	X	X	X	X
Central Bank reform				X

3 GOVERNMENT'S GOVERNANCE AGENDA

3.1 The government recognizes that improving the governance environment is a necessary prerequisite to sustainable development and welfare of the population. Moving towards these goals necessitate reform, which requires policy changes. The GOTG has been aware of this and has therefore been working closely with international development partners to this end.

3.2 In this context, UNDP prepared a comprehensive Governance Program in 1999 to set out the areas and scope for governance measures to be undertaken. The Program was endorsed by the government as its National Governance Policy. It serves as the overriding policy framework incorporating the Strategy for Poverty Alleviation (SPA II) also termed the Poverty Reduction Strategy Paper (PRSP) as one of its instruments. Meanwhile the first medium term plan 2007-2011 emanating from Vision 2020 encapsulates the same policies and goals. Another milestone was the creation of the National Commission on Governance to lead governance initiatives across the public sector. The Commission has a Secretariat at the Policy Analysis Unit under the tutelage of the President's Office. Implementation of the governance program is carried out by a task force working under the Secretariat. The chairman of the task force is the speaker of the National Assembly and with members representing the ministries: justice, finance, education, interior, local government and council on civic education.

3.3 Recent policy measures to strengthen good governance have comprised (i) improved budget presentation and accounting enabling tracking of PRS expenditures, (ii) re-stating of past national accounts (iii) followed by subsequent audits, (iv) creation of the National Revenue Authority by merging the Tax Board and the Customs Service and (v) reform of the Gambia Central Bank.

3.4 Nevertheless, governance structures remain weak. Inadequate political accountability erodes the quality and ramifications of the democratic system in place. At the political level, government activity is not duly monitored due to various operative and financial constraints of the National Assembly, eventually compromising its independence vis-à-vis the executive branch. On the administrative side the lack of a coherent reform strategy is exacerbated by irate changes in civil servants portfolios and arbitrary appointments and dismissals. As regards financial accountability the government has initiated a Public Finance Reform (PFR) addressing the major deficiencies of the system and its ownership at the political level.

4 PRIORITY GOVERNANCE AREAS

4.1 Priority Areas and Actions for Improving Governance

4.1.1 The question of leadership and how seriously the executive is committed to sound public financial management and accountability and the integrity of the monetary and financial system is central, as is the question of the ability of other institutions of government and civil society in general to control the executive and make it accountable. In this regard, the role of parliaments and civil society organisation is crucial. These institutions must be empowered and their capacity enhanced so that they are more or less equal interlocutors and partners with the executive branch of government. The dominance of the executive over the legislature and the judiciary must be sharply curtailed, and a true and genuine system of checks and balances must be established among the three branches of government. In addition, civil society organisations must be strengthened, and their independence from the government as well as their ability and capacity to play a greater and more effective role in economic policymaking and implementation must be greatly

reinforced. Many of these organisations simply lack the capacity and experience to be effective in economic governance and public financial management.

4.2 Political Leadership

4.2.1 Greater political leadership will be critical in intensifying good governance as to: (i) continue sound macroeconomic policies, (ii) increase the share of poverty reduction expenditures (iii) strengthening public financial management and public sector human resource management, (iv) the creation of better business environment, (v) more media pluralism, (vi) the reinforcement of the local governance policies, (vii) acceleration of the administrative and financial decentralisation process, and (viii) the enabling measures for greater participation of the civil society in governance issues. These governance areas will require greater political leadership and commitment if they are not to be more than just policy agenda and plans.

5 CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

5.1.2 With few exceptions, the institutions visited were characterised by serious resource and capacity constraints aggravated by excessive turnover of staff posing a challenge to any capacity development program. Processes and systems are mostly inadequate or non-existing limiting implementation and delivery capacity. In essence, challenges are there to be overcome. The recommendations below focus on providing sustained capacity building in governance areas that are, or are about to be working in the right direction.

5.2 Recommendations

5.2.1 The weaknesses in the governance structures and institutions should be addressed. The ideal situation would be to begin with a review of the Constitution to iron out inconsistencies and to simplify it. Here donors with the mandate and experience to deal with political accountability issues may provide support to the government to initiate a constitutional review process.

5.2.2 Capacity development targeting the institutions that are showing progress on good governance should be supported without forgetting interrelationships. Hence, the National Audit Office, the Treasury Directorate, the Judiciary, the Internal Audit Unit and the Public Accounts Committee would be the first in line. In view of its emphasis on financial accountability, ***the Bank should focus its assistance on building the institutional and operational capacity of the National Audit Office and the Internal Audit Unit.***

5.2.3 Given the challenge of increasing corruption in the Gambia, it is important that a permanent and institutionalized effort is adopted to respond to the problem, while recognizing current effort by government to deal with it. ***It is recommended that the Bank initiate dialogue with the government on establishing a permanent Anti-corruption agency.***

5.2.4 Aid coordination among development partners and within the GOTG should be developed and supported to ensure complementarity and to avoid overlaps. In this respect, it is fitting to support the Project Management and Aid Coordination Directorate, which has been established within DOSFEA in 2007. ***It is recommended that the Bank***

should consider providing support to this outfit in the context of its institutional Support for economic management and governance.

5.2.5 The importance of continuity in policy and program design and implementation cannot be overemphasized in all aspects of sustainability and governance. This calls for good governance at the highest levels including adopting a comprehensive public sector reform program that serve to motivate civil servants to stay in the country. ***To this end, the Bank should partner with other development partners to support such a program.*** The Bank together with the WB is finalizing a study on Civil Service Reform and capacity Assessment study. It is important that the Bank plays an active role in supporting the outcome and recommendations of the study.

Annex 1

ADB Mission Teams
The Gambia
List of Individuals/Institutions/Organizations Consulted
11 -30 November 2006

A. Gambian Officials:

Messrs. (unless shown differently)

Mr. Baboucarr H. M. Jallow	Ag. Permanent Secretary/Department of State for Finance and Economic Affairs (DOSFEA)
Gabriel Mende	Director/DOSFEA
Ansumana Sanneh	Economist/DOSFEA
Salkou Jawara	Economist/DOSFEA
Ms. Amie Khan	Economist/DOSFEA
Saffie Dambelleh	Economist/DOSFEA
Momodou Ceesay	Principal Economist/DOSFEA
Alieu Bah	Senior Economist/DOSFEA
Lamin L. Jammeh	Principal Internal Auditor/DOSFEA
Baboucarr Jobe	DOSFEA
Chris Willford	Budget Specialist, DFID/DOSFEA
Bubacarr Sankereh	Auditor General/National Audit Office (NAO)
Mam C. Njie	Director/Deputy/ NAO
Ms. Hanna Davis	Director/NAO
Karamba Touray	Director of Audit/ NAO
Ted Sowe	Chairperson/Public Service Commission (PSC)
Ishaku H. Bah	Senior Assistant Secretary/PSC
Ebrima Sama	Principal Policy Analyst/Secretariat/Presidency
Kemo Conteh	Director/Directorate of Governance/Department of Local Government and Lands (DOSLG&L)
Foday Marenah	Principal Decentralization Officer
Dr. Henry Carol	Solicitor General/Department of State for Justice
Grace O. Mowoe	Parliamentary Counsel/DOSJ
Dawda Fadera	PMO
Alieu Ndow	Director Gambia Bureau of Statistics
Ali D. K. Ceesay	Gambia Bureau of Statistics
Ms. Lolley Jallow	GBOS
Alieu Saho	GBOS
Bamba Saho	First Deputy Governor, Central Bank of Gambia
Ms. Oumie S. Samba	Central Bank
William Eunson	Central Bank
Hon. Sainey Mbaye	MP-Upper Saloum/Gambia National Assembly (GNA)
Hon. Ahmed Samba Sallah	MP-Niamina West/GNA
Hon. Kalifa Kambi	MP-Kiang West/GNA

Hon. Fabakary T. Jatta	MP- Serrekunda East/GNA
Hon. Sheikh Omar Njie	MP-Banjul South/GNA
Hon. J.T.K. Green-Harris	MP-Banjul Central/GNA
Hon. Musa A.K. Sillah	MP-Janjangbureh/GNA
Hon. Kalifa B. Jammeh	MP-Bakau
Hon. Nyimasata S. Bojang	MP-Nominated Member
Hon. Jain Coli Fye	MP-Lower Nuimi
Hon. Belinda Bidwell	Speaker/GNA
Hon. Churchill F. Baldeh	MP/GNA
M.K. Tambajy	Commissioner General/Gambia Revenue Authority (GRA)
John G. Msafari	Consultant/GRA
Alieu M. Jarboh	Commissioner/Domestic Taxes/GRA
Ebrima S. B. Touray	Customs Adviser/GRA
Samba E. Saye	Adviser/Domestic Taxes/GRA
James W. Johnson	Deputy Director General/Customs/GRA
Baba F. Trawally	Acting Director General/Customs & Excise/GRA
Mam Chernu Jallow	Chief Executive/Gambia Chamber of Commerce and Industry (GCCCI)
Amie Bensouda	President/ Gambia Bar Association (GBA)
Alhajie Mustapha Carayol,	Chairperson/Independent Electoral Commission (IEC) Deputy Chairperson/IEC
Alieu Momarr Njai	Member/IEC
Samboujang Njie	Director of Operations/IEC
Joseph Colley	Director of TCPA/IEC
Habib A. O. Jeng	Director General/Gambia Public Procurement Authority (GPPA)
Momodou Gassama	Administrative Secretary/National Council on Civic Education (NCCE)
Dawda A. Jallow	Program Officer/NCCE
Justice A. K. Savage	Chief Justice (CJ), Judiciary
Mrs. Nguie Mboob Janneh	Judicial Secretary (JS)
Haruna Jaiteh	Deputy Judicial Secretary (DJS), Judiciary
Alhadji Junaidi Jallow	Deputy Ombudsman
Kebba Touray	Chief Executive, Gambia Investment Promotion and Free Zones Agency (GIPFZA)
Alami Taal	Principal Legal Officer, Gambia Divestiture Agency
Yusupha Dibba	Acting Director SPACO
Mohamda Sowe	SPACO
Dr. A. B. Senghore	Principal Gambia College

B. Civil Society Organizations:

Ms. Siga Fatima Jagne	Pro PAG
Ms. Marong	Project Coordinator, Gambian Committee on Traditional Practices Affecting the Health of Women and Children (GAMCOTRAP)
Ousman M.S. Yabo	Director, the Association of Non-Governmental Organization (TANGO)
Nyathassi Jarju,	Coordinator, Commonwealth Education Fund (CEF)
Amodou Taal	Chairperson, NORLDVIEW
Matarr Balaleh	Coordinator, EFA Campaign Network

Ousman Sillah	Sub-Editor,	Foroyaa Newspaper
Cherno D. Jallow	Media Training Centre, TASKFORCE, Social Forum	
Mrs.Oley Jagne	Director,	Gambia Women's Finance Association
Cherno Jallow	Partner,	Deloitte
John Robinson	Executive Secretary,	Gambia Association of Accountants
Mamour Jagne	Chaiman of the Bankers' Association and CEO of Arab Gambian Islamic Bank	

B. International Development Partners:

Mrs.Fadzai Gwardzimba	Resident Representative/UNDP
Vitalie Muntean	Deputy Resident Representative/UNDP
Ms.Lamin Haddijatou	Acting Assistant to Resident Representative UNDP
Abdou Kolley	Economist UNDP
Shioko Momose	WFP
Ms. Edete Thiband	UNICEF
Yusupha M. Jarjinsy	UNFPA
Ms. C. Patricia Alsup	US Embassy
Ms. Claudine Mboyo	French Embassy
Patrick P. C. Chang	Taiwanese Embassy
Mrs.Cave Helene	Head of EC Delegation
Fausto Perini	Program Officer EC Delegation
Ms.Kathleen Richmond	Department for International Development (DFID)
Christian Diou	World Bank
Hoon S. Soh	World Bank
Ms. Françoise Perrot	World Bank
Ms. Tatyana Bogomolova	World Bank
Badara A. Joof	World Bank

Annex 2

List of Laws, Regulations, and Orders

S/N	Full Title	Entered into Force
1.	The Constitution of the Gambia	1997
2.	The Gambia Free Zone Act	2001
3.	Insolvency Act	31 st of December 1992
4.	Insolvency Amendment Act	29 th of September 1997
5.	The Gambia Investment Promotion Act	2001
6.	The Gambia Public Procurement Act	2001
7.	Money Laundering Act	2003
8.	Finance and Audit (Chapter 75:01) Act	1964
9.	Gambia Revenue Authority Bill	2004
10.	Government Budget Management and Accountability Act	7 th of September 2004
11.	The Accountants' Act	2004
12.	Income and Sales Tax Act	28 th December, 2004
13.	Central Bank of the Gambia Act	20 th of January, 2005
14.	Partnership Act	21 st of July, 2005
15.	Children's Act	21 st of July, 2005
16.	Business Registration Act	21 st of July, 2005
17.	Alternative Dispute Resolution Act	29 th of July, 2005
18.	General Orders (Civil Service)	1994
19.	The Local Government Act	2000
20.	The Local Government Amendment Act	2006
21.	The Local Government and Finance Act	2004
22.	The Company Act	1955
23.	The Company Bill	2003
24.	The Insolvency Bill	2003
25.	The Judges' Bill	2005
26.	The Gambia Public Procurement Regulations	2003
27.	The Ombudsman Act	1997
28.	Criminal Code Amendment Act	2004
29.	The Newspaper Amendment Act	2004
30.	Public Elections Act	2006
31.	The Copyright Act	2003
32.	The Labour Act	1990
33.	Public Assets and Properties (Recovery) (Amendment) Decree No. 14	1994
37.	International Covenant on Economic, Social and Cultural Rights	3 January 1976
38.	International Covenant on Civil and Political Rights	3 March 1976
39.	Optional Protocol to the International Covenant on Civil and Political Rights	23 March 1976

40. Second Optional Protocol to the International on Civil and Political Rights, aiming at the abolition of the death penalty adopted 15 December 1989
41. International Convention on the Elimination of All Forms of Racial Discrimination 4 January 1969
42. International Convention on the Elimination of All Forms of Discrimination Against Women 3 September 1981
43. Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or punishment 26 June 1987
44. Convention on the Rights of the Child 02 September 1991
45. Basic Principles on the Independence of the Judiciary 13 December 1985
46. Standard Minimum Rules for the Treatment of prisoners 13 May 1977
47. Basic Principles for the Treatment of Prisoners 14 December 1990
48. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 09 December 1988
49. Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty 25 May 1984
50. Code of Conduct for Law Enforcement Officials 17 December 1979
51. Basic Principles on the Role of Lawyers 07 September 1990
51. The African Charter on Human and Peoples Rights 21 October 1986
52. The African Charter on the Rights and Welfare of the Child 29 Nov. 1999
53. The OAU Convention on Specific Aspects of Refugees Problems in Africa 20 June 1974
54. The Protocol of the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights 20 Jan. 2004
55. The Protocol of the African Charter on Human and Peoples' Right on the Rights of Women in Africa 25 Nov. 2005

1. The Gambia Constitution of 1997: it provides the legal framework for the protection of all rights, including all human rights and that of private ownership of property and guaranteeing payment of adequate compensation in case of acquisition of property by the state.

2. The Free Zones Act of 2001: it provides the necessary legal framework with respect to direct foreign investment. It establishes free zones that investors may occupy and gain concomitant privileges, in terms of custom duties or special customs territory status. It also provides for the establishment of a free zones agency, whose responsibility is to administer free economic zone areas. Its main objective is, among other things, to make The Gambia a critical gateway to the West African Coast through improvement of its port and airport.

3. Insolvency Act of 1992: it provides the legal framework regarding bankruptcy in The Gambia. It has been amended with a view to addressing new challenges in this important area, in terms of investment and the challenges thereof.

4. Insolvency (Amendment) Act of 1997: apart from the fact that it provides the legal framework with respect to insolvency, it also addresses the gaps of the amended Act. **The Insolvency Bill of 2003** is expected to improve on the Insolvency

(Amendment) Act of 1997, by addressing new challenges and developments in this vital area, in terms of investment.

5. The Gambia Investment and Promotion Act of 2001: it provides the administrative and legal requirements for investing in The Gambia, with specific provisions for business incentives; settlement of disputes and transfer of funds; and protection against compulsory acquisitions.

6. The Gambia Public Procurement Act of 2001: it provides the legal framework for the public procurement in The Gambia. It establishes the Gambia Public Procurement Authority (GPPA), as the only body that is responsible for public procurement matters in the Gambia.

7. Money Laundering Act of 2003: the Act provides the legal framework to combat and fight money-laundering activities in the Gambia. It saddles the Central Bank of The Gambia with the responsibility of monitoring banks and financial institutions in this respect.

8. Finance and Audit (Chapter 75:01) Act of 19964: it provides for the management, control, and audit of public funds of The Gambia. It outlines the powers and duties of the Auditor General with respect to the auditing of public accounts and ensuring that public funds are disbursed according to budgetary line-items or purposes.

9. Gambia Revenue Authority Act of 2005: provides for the legal framework with taxes and customs and excise in The Gambia. It merges tax authority with that of custom and excise to form, for the first time in The Gambia, the Gambia Revenue Authority, or rather one-stop shop as far as revenues' collection is concerned.

10. Government Budget Management and Accountability Act of 2004: provides the legal framework for the management of government budget in The Gambia and specifies responsible government bodies, in terms of budget's preparation, presentation, and implementation.

11. The Accountants' Act of 2004: provides the legal framework for the regulation of the profession in accountancy in The Gambia. It sets out the prerequisite qualifications that would be accountants should meet before embarking on practicing as accountants in The Gambia.

12. Incomes and Sales Tax Act of 2004: this Act governs issues that pertain to incomes and sales taxes in business and revenue generating activities in general in the Gambia.

13. The Central Bank of The Gambia Act of 2005: provides the legal framework with respect to the independence of the Central Bank of The Gambia in carrying out its supervisory role as far as licensing of financial institutions in The Gambia is concerned. It also empowers the Bank to take decisive steps to address any financial challenges that may destabilize the financial system of The Gambia.

14. The Partnership Act of 2005: governs partnership financial organizations in The Gambia as opposed to companies that are governed by different pieces of legislation. It defines partnership organizations.

15. **The Children's Act of 2005:** this Act specifically protects children's rights in The Gambia. Pursuant to it, the Gambia judiciary has established children's courts to adjudicate cases in which children are involved.
16. **Business Registration Act of 2005:** provides the legal framework for registration of companies, partnerships, and other professional and business organizations with a view to conducting business in The Gambia.
17. **Alternative Dispute Resolution Act of 2005:** provides the legal framework for the establishment of legal mechanisms as part of the legal system of the Gambia. Under this Act, the Gambia judiciary has established district tribunals and industrial tribunals, which deal with matters pertaining to business or labor disputes.
18. **General Orders (Civil Service) of 1994:** these orders continue to govern relations in the civil service of the Gambia, in terms of employments, dismissals, and other pertinent issues.
19. **The Local Government Act of 2000:** provides the legal framework for the decentralization of The Gambia, by empowering local councils, wards, and village committees.
20. **The Local Government (Amendment) Act of 2006:** it has amended the 2000 Act, by further empowering the local councils, wards, and village committees in terms of their political powers or devolution of powers to the local entities in The Gambia.
21. **The Local Government and Financial Act of 2004:** provides for political and financial autonomy of local councils. The Act ensures that the devolution of powers does not only occur in political arena but also in financial arena as well.
22. **The Company Act of 1955:** provides the legal framework for the establishment of companies in The Gambia. It defines a company as a legal entity and provides basic requirements for its registration and doing business in The Gambia. **The Company Bill of 2003**, which is yet to be passed into law, will update the Company Act of 1995 and address the new challenges and developments in the field.
23. **The Judges' Bill of 2005:** this Bill has yet to be passed into law. It purports to address the shortages of judges in The Gambia and introduces new innovative procedures that will curb lawyers' delaying tactics in terms of the settlement of cases.
24. **The Gambia Public Procurement Regulations of 2003:** these regulations repealed the **Financial Instructions (Chap. 6)** that had governed The Gambia Public Procurement before the enactment of the Gambia Public Procurement Act of 2001.
25. **The Ombudsman Act of 1997:** provides the legal framework for the establishment of the Office of the Ombudsman in the Gambia and its functions, as provided by the 1997 Constitution of The Gambia.
26. **The Criminal Court (Amendment) Act of 2004:** it redefines the offence of libel and imposes mandatory prison sentence for six months for journalists who will be found guilty of libel. Critics view this Act as a violation of the constitutional right to freedom of speech.

- 27. The Newspapers (Amendment) Act of 2004:** it has amended the old act with a view to imposing exorbitant fees to be paid by those who would like to establish private newspapers. Critics maintain that the Act has been introduced to curtail freedom of the press in The Gambia.
- 28. Public Elections Act of 2006:** provides the legal framework for the conduct and administration of public elections in the Gambia.
- 29. The Copy Rights Act of 2003:** provides adequate protection for intellectual property, patents, copyrights, and trademarks. In this respect, the Gambia has ratified the WIPO Copyrights Treaty and WTO TRIPS agreement.
- 30. The Labour Act of 1990:** provides the legal framework for labour relations in The Gambia. The Act covers most conditions of employment, including dismissals, recruitment and hiring, registration and training, protection of wages, registration of trade unions and employees' organizations, and industrial relations in general. It also contains procedures for the settlement of disputes, including an industrial tribunal. The Department of State for Trade, Industry and Employment enforces this Act.
- 31. The International Covenant on Economic, Social, and Cultural Rights of 1976:** covers economic, social, and cultural rights that Member States have committed themselves to respecting, protecting, and promoting in their countries. The Gambia has ratified this Covenant and thus it is bound by it.
- 32. The International Covenant on Civil and Political Rights of 1976:** covers all civil and political rights that Member States have committed themselves to respecting, protecting, and promoting. The Gambia ratified this Covenant and thus it is bound by it.
- 33. The International Convention on the Elimination of All Forms of Racial Discrimination of 1969:** provides for the international legal framework for combating racial discrimination. The Gambia has ratified this Convention and thus it is bound by it.
- 34. The International Convention on the Elimination of All Forms of Discrimination Against Women 1981:** provides the international legal framework for fighting discrimination against women. The Gambia has ratified this Convention and thus it is abide by it.
- 35. Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment of Punishment of 1987:** prevents torture in all its different forms. The Gambia has ratified this Convention and thus it is bound by it.
- 36. Convention on the Rights of the Child of 1991:** provides the international legal framework for the protection of children. The Gambia has ratified this Convention and thus it is abide by it.
- 37. The African Charter on Human and Peoples' Rights of 1986:** covers all rights that Africans must enjoy. The Gambia has ratified this Charter and thus it is bound by it.
- 38. The African Charter on the Right and Welfare of the Child of 1999:** provides the regional legal framework for the protection of children in Africa. The Gambia has ratified this Charter and thus it is abide by it.

39. The OAU Convention on Specific Aspects of Refugees Problems in Africa of 1974: provides the regional framework for the protection of refugees in Africa. The Gambia has ratified this Convention and thus it is bound by it.

40. The Protocol of the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights of 2004: provides for the establishment of the African Human Rights Court. The Gambia has ratified this Protocol and thus it will be bound by its decisions.

41. The Protocol of the African Charter on Human and Peoples Rights on the Right of Women in Africa of 2005: provides the regional legal framework for the protection of women in Africa. The Gambia has ratified this Protocol and thus it is abide by it.

42. The International Basic Principles on the Independence of the Judiciary of 1985: these are non-binding basic principles with respect to the independence of the judiciary. However, they have assumed the status of the customary international law status and thus Member States are required to observe them.

43. The International Standard and Minimum Rules for the Treatment of Prisoners of 1977: these are non-binding rules with respect to the treatment of prisoners. However, they have assumed that status of the customary international law and thus Member States are required to follow them as guidelines as far as inmates are concerned.

44. The International Basic Principles for the Treatment of Prisoners of 1990: these principles are non-binding principles with respect to the treatment of prisoners. However, they have assumed the status of the customary international law and thus Member States should use them as guidelines.

45. The International Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of 1988: these principles are non-binding. However, they have assumed the status of the customary international law and thus Member States should use as guidelines in developing any legislation in this respect.

46. Safeguards Guaranteeing the Protection of Those Facing the Death Penalty of 1984: these safeguards are not binding; however, Member States are requested to observe them.

47. Code of Conduct for Law Enforcement Officials of 1979: this code of conduct is not binding. However, it has assumed the status of the customary international law and thus Member States are required to use them as a guide when developing their laws in this respect.

48. Basic Principles on the Role of Lawyers 1990: these principles are not binding. However, they have assumed the status of the customary international law and thus Member States are required to observe these principles when developing their laws in this respect.

Annex 3

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