

CHAPTER 103
LANDS (PROVINCES) ACT

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CHAPTER 103

16 of 1945,
9 of 1948,
13 of 1951.
L.N.
72 of 1963.

An Act to make provision for the tenure and management of Lands in the Provinces.

[1ST JANUARY, 1946.]

Preamble.

WHEREAS it is expedient that the existing customary rights of the indigenous inhabitants of the Provinces to use and enjoy the land of the Provinces and the natural fruits thereof should be preserved;

AND WHEREAS it is expedient that the existing customary laws regarding the use and occupation of such land should be as far as possible preserved:

AND WHEREAS it is expedient that provision should be made to regulate the interests in land in the Provinces which can be acquired by non-indigenous persons:

Enactment.

NOW, THEREFORE, BE IT ENACTED by the Legislature of The Gambia as follows—

PART I.—PRELIMINARY

1. This Act may be cited as the Lands (Provinces) Act. Short title.
2. The provisions of this Act shall apply to all lands in the Provinces. Application.
**
3. In this Act, unless the context otherwise requires— Interpreta-
tion.
Cap. 109
- “ Authority ” means a District Authority established under the Local Government Act.
- “ Division Land Register ” means a book of record in which are entered memoranda of terms of occupation of land and leases under this Act and the like;
- “ economic trees ” means and includes all trees, shrubs and plants which are grown or cultivated for their intrinsic value;
- “ indigene ” means a person whose parents are or were members of some tribe or tribes indigenous to the Provinces and any descendant of such a person, and includes—
- (a) any person one of whose parents was a member of such tribe; and
- (b) any person who shall have obtained a certificate from the Minister in the form set out in the schedule to this Act, which certificate the Minister is hereby authorised to grant, at his discretion, to any African who shall declare his intention of making the Provinces his permanent domicile and who shall have satisfied the Minister that he has obtained the consent of the indigenous communities concerned; Schedule.
- “ lease ” means a grant of the possession of land by an Authority as lessor for a term of years or other fixed period with a reservation of rent;
- “ Minister ” means the Minister responsible for the time being for the administration of this Act;

*This Act has been called hitherto the Provinces' Lands Act.

**i.e. to all lands in the Districts set out in Proclamation No. 1 of 1959 (L.N. 2 of 1959).

“ non-indigene ” means any person other than an indigene as in this section defined;

“ Provinces’ land ” means land to which this Act applies;

“ public purpose ” means and includes—

- (a) for exclusive Government use or for general public use;
- (b) for or in connection with sanitary improvements of any kind, including reclamations;
- (c) for or in connection with the laying out of any new Government station or the extension or improvement of any existing Government station;
- (d) for obtaining control over land contiguous to any port or airport;
- (e) for obtaining control over land required for defence purposes;
- (f) for obtaining control over land required for civil aviation purposes; and
- (g) for obtaining control over land the value of which will be enhanced by the construction of any railway, road, or other public work or convenience about to be undertaken or provided by the Government;

“ tenancy on sufferance ” means the tenancy of a person who having originally come into possession of land by a lawful title holds such possession after the determination of his title, and such tenancy is determinable without notice by the lessor;

“ tenancy at will ” means a tenancy in which the lessee holds at the will of the lessor, and such tenancy is determinable without notice by either the lessor or the lessee.

PART II.—GENERAL

Provinces’
lands vested
in
Authorities.

4. All Provinces’ lands are hereby declared to be vested in the Authorities for the Districts in which such lands are situated, and shall be held and administered for the use and common benefit, direct or indirect, of the communities concerned.

5. The occupation and use of Provinces' land by indigenes shall be governed and regulated by the customary laws obtaining in the localities in which such lands are situated:

Customary law to govern occupation by indigenes.

Provided that, where in the opinion of the Authority concerned and of the Minister it is expedient so to do, a lease may be granted to an indigene in accordance with the provisions hereinafter in this Act contained relating to the grant of leases to non-indigenes.

6. (1) Notwithstanding anything to the contrary contained in any of the other provisions of this Act, where in the opinion of the Authority concerned and of the Minister it is expedient so to do the Minister may by notice in the Gazette declare any Provinces' land to be a forest park.

Protection of forests and trees.

(2) The Minister may make regulations—

- (a) for the protection, control and management of any forest park;
- (b) prescribing that trees of any specified species shall be protected trees either throughout the Provinces or in any part thereof;
- (c) prohibiting or regulating the felling, cutting, taking, working, burning, injuring or removing of any protected tree;
- (d) prohibiting or regulating the sale, offering for sale, purchase or export of any tree, timber, rubber, gum, or other forest produce.

PART III.—LEASES AND CONNECTED MATTERS

7. (1) No Provinces' land shall be occupied by a non-indigene unless he has first obtained the consent of the Authority for the District in which such land is situated.

Conditions in which non-indigenes may occupy land.

(2) Any non-indigene who shall occupy any Provinces land without the approval of the Divisional Commissioner shall be deemed to be a tenant at will.

(3) Where a non-indigene shall, with the consent of the Authority concerned and the approval of the Divisional Commissioner, occupy any Provinces' land in respect of which no lease has been executed by the Authority as lessor and the non-indigene as lessee,

a memorandum of the terms of such occupation, consent to which shall have been first given by the Authority with the approval of the Divisional Commissioner, shall be drawn up and entered in the Division Land Register and such memorandum shall specify—

- (a) the rent to be paid for the occupation of the land by the non-indigene;
 - (b) the area of the land to be occupied;
 - (c) the duration of the term of occupation, which shall in no case be for more than three years;
 - (d) any special conditions attached to the occupation of the land; and
 - (e) whether or not the interest of the non-indigene may be assigned or, in the event of death, is intended to devolve on his executors, administrators or assigns.
- (4) Any Provinces' land occupied by a non-indigene under the provisions of this section shall be demarcated in accordance with such regulations as may be prescribed.
- (5) Where the interest of a non-indigene in any Provinces' land under the provisions of this section may be assigned or, in the event of death is intended to devolve on his executors, administrators or assigns, every such assignment or devolution shall be reported to the Divisional Commissioner and the record in the Division Land Register shall be amended accordingly.

Tenancy exceeding three years.

8. Every tenancy of Provinces' land for a term exceeding three years shall be created by an agreement in writing.

Limit of interest acquirable by a non-indigene.

9. No non-indigene may acquire a greater interest in any Provinces' land than a tenancy for a term of fifty years:

Provided that nothing in this section contained shall prevent the insertion in any lease of a clause providing for a renewal of such lease for a second or further term of fifty years.

Revision of rent.

10. (1) The rent reserved under any lease of Provinces' land shall be subject to revision every ten years by the leasing Authority, subject to the approval of the Divisional Commissioner.

(2) In determining the rent to be demanded for any land and on any subsequent revision of rent, the Authority shall take into consideration the rent obtained or obtainable at the time for similar land of similar area and amenities similarly situated, and shall have regard to all the circumstances of the case:

Principles to be observed in fixing and revising rents.

Provided that in revising the amount of any rent, an Authority shall not take into account any increase in the value of the land, the rental of which is under consideration, due to capital expended upon such land by the tenant.

(3) A memorandum of every revision of rent shall be endorsed on the lease and entered by the Divisional Commissioner in the Division Land Register.

(4) Any Authority aggrieved by the refusal of the Divisional Commissioner to approve any proposed increase of rent, and any lessee aggrieved by any approved increase of rent shall have a right of appeal to the Minister, whose decision shall be final.

Appeal.

11. Notwithstanding anything in this Act contained, an Authority may, with the approval of the Minister, grant a lease free of rent or at a reduced rent in any case where the Authority is satisfied that it would be in the interests of the community so to do:

Exception to rule as to best rents.

Provided that, unless otherwise provided in such lease, there shall be reserved to the Authority the right to impose, subject to the approval of the Minister, a rent in respect of the land which is the subject of such lease if and when it may be considered proper so to do.

12. All records entered in the Division Land Register by the Divisional Commissioner shall be admissible in evidence in all courts of law in The Gambia and shall be *prima facie* evidence of the matters therein stated.

Record and evidence.

13. A written agreement creating a tenancy of Provinces' land shall be voidable by either party unless—

Voidable deed.

- (a) it is executed by the lessor in the presence of two witnesses before the Divisional Commissioner of the Division in which the land leased is situated, and is executed by the lessee or his attorney or agent in the presence of two witnesses before either a Divisional Commissioner or a magistrate of the first class; and

- (b) there are endorsed upon it certificates of execution signed by the persons before whom it was executed; and
- (c) provision is therein made that the lessee shall not sublet or assign his interest thereunder or any part of such interest except with the consent of the Authority concerned and the approval of the Minister provided that such consent or approval shall not be unreasonably withheld; and
- (d) it contains stipulations regarding—
 - (i) the rent reserved;
 - (ii) the term;
 - (iii) the purpose for which the land is leased;
 - (iv) where buildings of a permanent character are to be erected, the rights of the parties to such buildings at the expiration or determination of the lease;
 - (v) revision of rent every ten years; and
- (e) it is registered within sixty days of execution in the Registry Office; and
- (f) a copy thereof is deposited within sixty days of execution with the Divisional Commissioner for entry in the Division Land Register.

Construction of defective lease.

14. No tenancy by this Act required to be created by written agreement shall, unless it is duly made in writing and unless the Minister has thereon endorsed his approval, be construed as creating any interest greater than a tenancy from year to year.

Determination of tenancy from year to year.

15. Every tenancy from year to year shall be determinable by either party by three months' notice in writing, such notice to expire at the end of the current year of the tenancy.

Fixtures buildings and economic trees.

16. Whether or not the tenancy concerned was created before the date of the coming into operation of this Act, in the case of a tenancy at will or of a tenancy on sufferance the reversion in all fixtures affixed to the land by the tenant, whether fences or of any other kind whatsoever, and of any building erected by him thereon, and of all economic trees, shall be in the Authority for the District in which the land concerned is situated.

17. In the case of a tenancy created by lease under this Act, in ^{Idem.} the absence of any agreement to the contrary therein contained—

- (a) any fixture affixed to the land by the tenant, whether fences or of any other kind whatsoever, and of any building erected by him thereon, which is not so affixed or erected in pursuance of some obligation in that behalf or in lieu of some fixture or building belonging to the Authority, shall be the property of the tenant, and shall be removable by him before or within two months after the termination of the tenancy:

Provided that—

- (i) before such removal the tenant shall pay all rent owing by him, and shall perform or satisfy all other his obligations to the Authority in respect of the land;

- (ii) in such removal the tenant shall not do any avoidable damage to any other fixture or building or other part of the land;

- (iii) immediately after such removal the tenant shall make good all damage occasioned to any other fixture or building or other part of the land by the removal;

- (iv) the tenant shall not remove any fixture or building without giving to the Authority one month's notice in writing of his intention;

- (v) at any time before the expiration of a notice of intention to remove any fixture or building, the Authority may, with the approval of the Divisional Commissioner, give to the tenant notice in writing of election to purchase any fixture or building comprised in the notice of intention to remove, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the Authority, who shall pay to the tenant the fair value thereof to an incoming tenant of the land;

- (b) the Authority shall pay to the tenant the fair value to an incoming tenant of the land of any economic trees which shall have been planted on the land by the tenant;

- (c) in the event of any dispute as to the value of any fixture or building or economic trees, the Divisional Commissioner shall give his decision thereon. If either the Authority or the tenant is aggrieved by the decision of the Divisional Commissioner, there shall be a right of appeal to the Minister, whose decision shall be final.

Interest
not to be
alienated.

18. (1) No tenant of Provinces' land shall alienate his interest therein, or any part of such interest, by sale, mortgage, transfer of possession, sublease, or bequest or otherwise howsoever without the consent in writing of the Authority concerned and the approval of the Minister first had and obtained, and any such sale, mortgage, transfer of possession, sublease or bequest effected without such consent and approval shall be null and void.

(2) Every assignment of an interest in Provinces' land to which consent and approval have been given under the provisions of subsection (1) of this section shall be effected by an agreement in writing.

Leases not
to be
determined
without
good cause.

19. (1) Before the expiration of the term of any lease granted under this Act, the leasing Authority may with the approval of the Minister determine such lease for good cause.

(2) For the purposes of subsection (1) of this section, "good cause" shall include—

- (a) non-payment of rent, rates or other dues lawfully imposed on the land;
- (b) alienation by sale, mortgage, transfer of possession, sublease or bequest or otherwise of the interest acquired under the lease, or of any part of such interest, contrary to the provisions of this Act;
- (c) requirement of the land by the Government for public purposes;
- (d) abandonment or non-use of the land for a period of not less than two years:

Provided that where land is allowed to lie fallow for purposes of recuperation of the soil it shall not be held to have been abandoned; and

- (e) breach of any covenant or condition contained in the lease.

Acceptance
of rent not
to operate
as waiver
of forfeiture.

20. The acceptance by or on behalf of an Authority of any rent shall not be held to operate as a waiver by the Authority of any forfeiture accruing by reason of any breach of covenant or condition, express or implied, in any lease granted under this Act.

21. Every grant or disposition of Provinces' land lawfully made by the Governor as grantor prior to the date of the coming into operation of this Act shall be deemed to have been made by the Authority for the District in which is situated the land which is the subject of such grant or disposition, and every such grant or disposition is hereby amended by the substitution for the name of the Governor as grantor of the name of the appropriate Authority:

Existing grants deemed to have been made by appropriate Authorities.

Provided that all covenants or conditions, express or implied, in such grant or disposition and whether consistent or not with the provisions of this Act shall remain in force until the expiration of the term of such grant or disposition.

22. Every indigene resident on Provinces' land leased under this Act shall remain under the jurisdiction of the Authority for the District in which such land is situated, and shall be liable to the same taxation as other indigenes resident in such District.

Indigenes resident on leased land.

23. (1) Every non-indigene claiming any title to any Provinces' land shall, within six months of the date of the coming into operation of this Act, produce to the Divisional Commissioner for the Division in which such land is situated, all documents of title upon which he bases such claim, or in the absence of such documents, a memorandum of the terms of such occupation signed by the lessor and lessee, which documents or memorandum shall be entered by the Commissioner in the Division Land Register.

Registration of existing titles to land.

(2) The claim of a non-indigene to a title to any Provinces' land, documents of title to which or a memorandum as to which have not been produced in conformity with the provisions of subsection (1) of this section, shall be disallowed by every court in The Gambia.

PART IV.—ACQUISITION OF LAND FOR PUBLIC PURPOSES

24. (1) The Minister may acquire on behalf of the Crown any Provinces' land for any public purpose for a term of years, paying such compensation and/or consideration as may be agreed upon or determined as hereinafter provided by this Act.

Acquisition of land for public purposes.

(2) Notwithstanding anything in this Act contained or any customary law or usage to the contrary, where Provinces' land is required for any public purpose, the Authority for the District in

which such land is situated may grant to the Minister on behalf of the Crown a lease of such land for a term exceeding twenty-one years.

Notice to
Authority.

25. Whenever the Minister resolves that any Provinces' land is required for a public purpose, he, or such person as he shall depute in that behalf, shall give notice in writing to the Authority concerned, and may, by such notice or by any subsequent notice, direct that the Authority shall yield up possession of such land after the expiration of the period specified in such notice, which period shall not be less than six weeks from the date of service of such notice, unless the land is urgently required for the public purpose.

Leased land.

26. (1) Where any Provinces' land required for a public purpose is the subject of a lease granted under this Act, the Authority shall forthwith determine the lease, and the Minister shall pay to the lessee such compensation as may be agreed upon or determined as provided by subsection (2) of this section.

(2) Where the Minister and the lessee are unable to agree as to the amount of the compensation payable, the amount shall be determined by a Committee of Arbitration, whose decision shall be final and binding on both parties.

(3) The Committee of Arbitration shall consist of one person appointed by the Minister, one person appointed by the lessee, and a third person, who shall be Chairman, nominated by the two persons thus appointed:

Provided that where the persons appointed by the Minister and the lessee are unable to agree as to the nomination of such third person, such person shall be nominated by the Chief Justice of the Supreme Court.

Non-leased
land.

27. Where any Provinces land required for a public purpose is not the subject of a lease granted under this Act but it is necessary to remove therefrom persons in customary occupation thereof, the Minister shall pay, in addition to any rent, such compensation as may be agreed upon or determined as hereinafter provided by this Act.

28. (1) Where the Minister and an Authority are unable to agree as to—
- Determination of amount of compensation or rent.
- (a) the amount of compensation payable under section 27 of this Act;
 - (b) the rent payable in respect of land acquired for a term of years then the amount of such compensation, or rent, as the case may be, shall be determined by a Committee or Arbitration, whose decision shall be final and binding upon both parties.

(2) The Committee of Arbitration shall consist of one person appointed by the Minister, one person appointed by the Authority concerned, and a third person, who shall be Chairman, nominated by the two persons thus appointed:

Provided that where the persons appointed by the Minister and the Authority are unable to agree as to the nomination of such third person, such person shall be nominated by the Chief Justice of the Supreme Court.

PART V.—MISCELLANEOUS

29. The Minister may make regulations for the more effectual carrying out of all or any of the provisions of this Act. Regulations.

SCHEDULE

Section 3.

The Lands (Provinces) Act

CERTIFICATE

under Section 3 of the Act

This is to certify that.....of.....
 having declared his intention of making the Provinces of The Gambia his permanent domicile, and having satisfied me that he has obtained the consent of the indigenous communities concerned, is entitled to the rights and privileges preserved to or conferred upon the indigenous

inhabitants of the Provinces of The Gambia by the Lands (Provinces) Act, Cap. 103.

GIVEN under my hand a.....this.....day of
....., 19....

(Signed).....

Minister.

CHAPTER 103

LANDS (PROVINCES) ACT

SUBSIDIARY LEGISLATION