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# **A REVIEW OF CUSTOMARY LAND RIGHTS PROTECTIONS IN SOUTHERN KORDOFAN AND BLUE NILE STATES, SUDAN**

## **USAID Customary Land Tenure Program**

An Assessment and Program to Promote Equitable  
Legal and Institutional Mechanisms for Registration  
and Administration of Customary Land Claims







## **A REVIEW OF CUSTOMARY LAND RIGHTS PROTECTIONS IN SOUTHERN KORDOFAN AND BLUE NILE STATES, SUDAN:**

An assessment and program to promote equitable legal and institutional mechanisms for registration and administration of customary land claims

Prepared for USAID by Nigel Thomson, ARD Inc

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Header Photography: by Nick Thomas



**Figure 1** Sudan and its main towns and roads (<http://www.emro.who.int/sudan/Media/PDF/Sudan-states-2006.pdf#search=%22southern%20kordofan%20map%22> 21 August 2006)





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## II ABBREVIATIONS AND TERMINOLOGY

### ***General Use of Abbreviations and Terminology***

An attempt has been made to limit the use of abbreviations in this paper. Abbreviations and contractions are used, however, where they are commonly understood or where they are defined on the same page.

### ***Common Abbreviations***

|                               |   |
|-------------------------------|---|
| <b>Blue Nile (BN)</b>         | Blue Nile State, Sudan (refer to Figure 1 below)  |
| <b>CLSP</b>                   | Customary Land Security Project (USAID Pilot Project precursor to the CLTP)   |
| <b>CLTP</b>                   | Customary Land Tenure Program   |
| <b>CPA</b>                    | Comprehensive Peace Agreement   |
| <b>FAO</b>                    | Food and Agriculture Organization of the United Nations   |
| <b>GNU</b>                    | Government of National Unity  |
| <b>GOS</b>                    | Government of Sudan   |
| <b>GOSS</b>                   | Government of Southern Sudan  |
| <b>IDP</b>                    | Internally Displaced Person (a homeless person or a person who is unable or unwilling to return to his or her home, and within the borders of his or her own country) |
| <b>INC</b>                    | Interim National Constitution   |
| <b>NCP</b>                    | National Congress Party   |
| <b>NGO</b>                    | Non-Governmental Organization   |
| <b>Southern Kordofan (SK)</b> | Southern Kordofan State, Sudan  |
| <b>SPLM/A</b>                 | Sudan People's Liberation Movement/Army   |
| <b>TAG</b>                    | CLTP Technical Advisory Group   |
| <b>UN</b>                     | United Nations  |
| <b>UNHCR</b>                  | United Nations High Commissioner for Refugees   |
| <b>USAID</b>                  | United States Agency for International Development  |
| <b>World Bank</b>             | International Bank for Reconstruction and Development   |





### III EXECUTIVE SUMMARY

The Land Law in Sudan has been, and continues to be, complex and uncertain. The long civil war that was 'ended' with the signing of the Comprehensive Peace Agreement (comprising a number of Protocols signed between 2002 and 2004), has done nothing to change this. Not surprisingly, the situation has become worse with new complexities being added to the mix that reflect the difficulties of post-conflict land administration. Yet it seems that despite the civil war customary law has retained a place as a source of social order when written law (if it ever effectively applied) failed. In the context of the continuing importance of customary land tenure to many Sudanese in Blue Nile and Southern Kordofan States, the objectives of this Report are to provide:

- a review of applicable laws in Blue Nile and Southern Kordofan impacting on customary land tenure rights with a view to ascertaining their ability to provide real 'protections'; and
- provide a program of legal interventions to assist each state government in developing legislation conducive to protection of customary land rights.

The protection of customary land rights is not simply a matter of 'protection', it is a matter of political and administrative reality. Since customs play such an important role in the day-to-day lives of peoples in these regions, it is practical and sensible from both the perspective of conflict mitigation and good governance not only that these rights be 'protected' but that they be *embraced*.

#### **Legal Assessment of Protection of Customary Land Rights Protection**

At a State level there is no clear framework for the protection of customary land tenure outside the Comprehensive Peace Agreement (**CPA**) and the Interim National Constitution (**INC**). In Blue Nile there is constitutional protection but no promulgated legislation. Even if there was, the security of those protections may be eroded without the support of the national government. In Southern Kordofan, it is understood that a Constitution has just been adopted. But a translation to English does not yet exist and it is difficult to assess the current situation.

Draft legislation was prepared as part of the Customary Land Security Project (**CLSP**) to support CPA and INC directives in the area of State Land Commissions and these have been the subject of discussion with Sudan Peoples Liberation Movement (**SPLM**) representatives in Blue Nile and Southern Kordofan. But there has been no engagement with the legislative process from the National Congress Party (**NCP**) in these areas. Furthermore, legislation for the establishment of a National Land Commission (**NLC**) - from which the State Land Commissions (**SLCs**) will derive their power - was rejected last year. The current state of the NLC is uncertain although the United Nations Food and Agriculture Organization (**UN FAO**) is proposing to host a conference on the issue early in 2007 (perhaps February).

In this context, the following points are made.

### ***Draft State Land Commission Law***

1. The draft prepared under the CLSP rightly seeks compensation or restitution for those individuals and communities to lost rights on account of government actions on or after the commencement of the *Unregistered Land Act 1970*. This clearly supports the objectives of the Project and the recognition of customary land tenure rights.
2. The creation of two new institutions (SLC and Land Court) complicates the restitution/compensation process but is probably implied by the terms of the Wealth Sharing Protocol and the INC. It may be the case that the jurisdiction of the Courts in these matters can only be invoked in certain circumstances; thereby, giving the SLC an administrative decision-making function. This avenue requires further investigation. If possible under Sudanese law, it could potentially stream-line the process and ease the strain on a weak Court system.
3. Because there is no National Land Commission Law in place, the draft has no detailed legislation from which to draw (although it does have its roots in the CPA and INC and Blue Nile Constitution). Therefore, there seems little way in which this draft can move forward without coordination with the drafters of the NLC Law (noting also that the first draft of legislation for the NLC was rejected by the GNU Council of Ministers).
4. There has been little or no engagement with the NCP in the development of the draft and, therefore, there seems to be limited hope that progress can be made towards promulgation of legislation until that happens.
5. The creation of the SLCs will probably require substantial investment (probably from government and donors) at least initially in terms of establishment, procurement and capacity building. There are likely to be fundamental issues of sustainability facing these institutions and some idea of potential costs should be considered in institutional and legislative design.
6. The level of procedural detail within the draft may limit the ability of the Commission to respond quickly to changing or unexpected circumstances. As such, it may be useful to consider moving some elements of procedure to a regulation. It may be more politically expedient for a 'streamlined' draft/Bill to pass through the State Parliaments in due course.

### ***Draft Land Law***

1. The draft prepared under the CLSP rightly provides the necessary acknowledgement of customary land tenure in the context of the *Civil Transactions Act*. These early provisions could, if required, form part of a separate, smaller piece of legislation should there be difficulties with the passage of the whole draft.
2. Aside from a lack of comprehensive discussions with both political sides, it may still be difficult to pass such a large piece of legislation. Therefore, a "Plan B" may be desirable.
3. Because there is no National Land Commission Law in place (and hence no State Land Commissions), linkages between the *draft Land Law* and the State Land Commission will not operate at all or as intended. If, of course, both pieces

of legislation can be passed together, the problem disappears. But it is impossible to determine the likelihood of this now.

4. The institutional requirements under the draft Land Law are substantial. Furthermore, so are the public education requirements. It will probably take many months (even longer) for the institutions and systems contained within the draft to become fully operational. There are likely to be fundamental issues of sustainability facing these institutions and some idea of potential costs should be considered in institutional and legislative design.
5. If required, a “Plan B” approach could be to focus on the acknowledgement of customary land tenure rights (Chapter 4 provisions) as a stand-alone legislative draft, if it is considered practically and politically expedient. This means that the draft could be considered outside the context of the State Land Commissions (and other institutions established by the draft), potentially, permitting customary tenure acknowledgment to move forward more quickly. This approach would provide the minimal legal protections for customary land tenure.

In summary, the recommendations in relation to legislative development comprise:

1. Any preferred option for legislative development should be offered in the context of the need for engagement of both political parties to the process. Unless both NCP and SPLM are engaged in the process the chances of progress are greatly reduced.
2. If it is likely that the proposed draft legislation (both the *draft Land Commission Law* and the *draft Land Law*) will fail to be passed, it is suggested that a step-by-step approach be followed to develop appropriate policies laws and institutions.
3. Working in conjunction with the other findings in relation to institutional capacity and sustainability, new legislation could borrow from the existing drafts (especially the *draft Land Law*) to embrace customary rights (i.e. extracting the rights embracement provisions of the *draft Land Law* now and working on the establishment of new institutions later). This approach may have greater bipartisan support and, therefore, be easier to pass.
4. It may be prudent to focus efforts on legislative reform on the *draft Land Law* and leave the *draft State Land Commission Law* on the ‘backburner’ for now. While it may be legally possible to create a new institution before the creation of a National Land Commission, such an approach is likely to be politically, legally and practically fraught. Pursuing the SLCs before the establishment of the NLC may lead to expensive back-tracking in the future.
5. An assessment of the capacity, funding and costs to operate the various institutions (especially those proposed under the draft Land Law) should be undertaken. This may provide guidance on the form of the institutional structures and provide policy options for government.
6. In the context of the establishment of the NLC and SLCs, it is suggested that the project work closely with projects of other donors on land legislation projects such as the UN FAO in its work with the development of an NLC. This will enable the projects to coordinate their approaches and legislative and policy development strategies (something that is required in terms of NLC and SLC operations by the CPA and INC).

## **Assessment of Parliamentary Capacity to Protect Customary Land Rights**

It appears that a Constitution for Southern Kordofan was adopted in November 2006 (after the author left Kenya) although it is probably the case that there is no Parliament and, therefore, no Parliamentary capacity to speak of. In Blue Nile State, while there is a Parliament, the SPLM representatives (who comprise 45% of the voting power) are understandably lacking in capacity to develop legislation and advocate on its behalf. The situation may be different with NCP representatives (who comprise 55% of the voting power) but this block has not been engaged in the draft land legislation development process.

It was proposed that an assessment of parliamentary capacity be made directly with Parliamentarians in Sudan but this was not possible during this project activity because the author could not enter Sudan in the timeframe provided. Despite this, secondary assessments were undertaken in consultation with project employees, consultants and others who had met SPLM Parliamentarians at least. The general consensus was that SPLM Parliamentary capacity was very low. In other words, a lot of support would be required to support Parliamentary activities relating to the Project (e.g. the development and passage of legislation).

There seems to be little knowledge of the capacity of NCP representatives at a State level and, indeed, those representatives, for whatever reason, were not engaged in the process. It, therefore, seems clear that for legislation to be developed there must be a concerted effort to engage the NCP in legislative and policy development process in respect of embracing customary land tenure systems.

## **Program Activities for the Protection of Customary Land Rights**

Due to programming difficulties brought about by security and access concerns in Blue Nile and Southern Kordofan, programming activities have been limited to the period ending 31 January 2007 whereupon they will be reviewed again. Nevertheless, an overview of activities for the whole project (and not just legal interventions in accordance with Task 8 of the Project Proposal) is provided in the following Table set out in section 4.2 of the main Report. A more detailed description of proposed activities is also set out under section 4.2. Associated Scopes of Work appear in the Annex, section 6.6.

In short, the following activities are proposed for the period to the end of January 2007.

- Senior Land Law Advisor is required to provide some interim support in term of the development of draft laws. A mid-level African Law Advisor is required to provide some support.
- A Long-term Legal Adviser is required to undertake longer term legal strategy planning during the period from January 2007 to July 2007
- A Public Information and Education Specialist is required to devise a strategy for the dissemination of information concerning customary land law, legislative development and relevant institutions, with an accompanying budget.
- A Land Administration Institutions expert should assess the current institutional capacity to operate effectively the institutions currently proposed in Blue Nile and Southern Kordofan for the purposes of providing options to the respective State Governments on sustainable institutional development, including budget options.



## **A REVIEW OF CUSTOMARY LAND RIGHTS PROTECTIONS IN SOUTHERN KORDOFAN AND BLUE NILE STATES, SUDAN:**

### **An Assessment and Program to Promote Equitable Legal and Institutional Mechanisms for Registration and Administration of Customary Land Claims**

## **1 INTRODUCTION AND OVERVIEW**

### **1.1 Statement of Work (SOW)**

The objectives of this Report revolve around two main objectives: a legislative review and legal interventions programming. More specifically, the SOW states that the objectives are:

Assess the effectiveness of existing/proposed state constitutions and land legislation for protection and administration of customary land law, in the context of the Comprehensive Peace Agreements (CPA) and its protocol for Southern Kordofan and Blue Nile.

Propose a CLTP program to assist each state government in developing legislation conducive to protection of customary land rights

To these ends, the SOW requires a number of tasks to be undertaken in arriving at the objectives. These include the review of relevant legal documents applying to the Blue Nile and Southern Kordofan States; a capacity assessment of parliamentarians in those States; the development of legal guidelines for the protection of Customary Land Tenure; the development of legal interventions to facilitate the protection of Customary Land Tenure rights; and the development of a program for Technical Assistance, training and educational needs to relevant groups. Specifically, the primary tasks are:

- a. Review and analyze available constitutions (drafts or approved versions) for land provisions, and draft land legislation (where it is available) under discussion in the two states. Reference to the CPA, and to the national constitution of Sudan, and of South Sudan, and a model constitution for states in South Sudan will inform this analysis
- b. Assess the capacity of parliamentarians in the two states to recognize, debate, amend and defend legislative proposals to protect customary rights to land ownership and use rights.
- c. On the basis of a) and b), propose a program of legal and legislative activities for CLSP that will promote equitable legal and institutional mechanisms for registration and administration of customary land claims and documentation. This program will include TA needs (CLTP staff and short-term), public information and education and targeted education and training for key interest groups.
- d. Provide guidelines for minimal legal provisions that protect customary land rights in the context of Southern Kordofan and Blue Nile States, such that these guidelines can be used as part of an advocacy program for customary rights promoted by CLTP.

There were a number of limitations on information gathering for this report and these are set out in more detail in section 1.3 below.

## 1.2 Methodology and Overview

The approach taken by the author has been as follows:

- Review of recent relevant literature on the subject
- Consideration of primary legal instruments
- Conversations with knowledgeable persons on the subject matter

The author is particularly indebted to Professor Patrick McAuslan who continues to take an interest in the development of land-rights related legislation in Blue Nile and Southern Kordofan States. In addition, Paul de Wit, a consultant for the UN FAO, kindly provided his thoughts and comments on the status of the development by the Government of National Unity (**GNU**) of a National Land Commission.

The author also proposed to visit either or both Blue Nile and Southern Kordofan states for the purposes of getting a first hand knowledge of some of the myriad customary land tenure issues in those places and assess the capacity within government to deal with those issues. Regrettably, because of a number of factors (including an uncertain security situation, limited plane flights and the closure of the Sudanese Embassy in Nairobi at the relevant time) the author was unable to enter the project area. Therefore, all research was conducted outside Sudan, from the Kenya Project Office.

## 1.3 Limitations and Qualifications

As noted above, the author has not personally discussed issues within Sudan (stakeholder groups) – relying on testimony from Non-Governmental Organizations (**NGOs**), Project staff, staff from other USAID Projects, Consultants etc

The current situation both from a political and a security perspective is highly fluid. There is considerable doubt as to the political incentives that would encourage the NCP actively to participate in the process of establishing the National Land Commission and the State Land Commissions in Blue Nile and Southern Kordofan States. In addition to this, the governors in each of the States is due to change (to their opposite NCP or SPLM counterparts towards the end of 2006 – although the precise date seems to be uncertain). So policy development is in limbo.

This Report is not an anthropological study of customary laws in Blue Nile and Southern Kordofan States although some reference is made to some of the peoples that inhabit those regions and anthropological studies of similar peoples in Southern Sudan.<sup>1</sup> This Report is essentially a review of written laws (formalized and draft) for consideration of their effect on customary land tenure.

## 1.4 Overview

As noted above, one of the primary tasks under the SOW for the consultant is to *“assess the effectiveness of existing/proposed state constitutions and land legislation for protection and administration of customary land law, in the context of the*

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<sup>1</sup> For example, Jok, Justice Aleu Akechak, et al *A Study of Customary Law in Contemporary Southern Sudan* (March 2004)



*Comprehensive Peace Agreements (CPA) and its protocol for Southern Kordofan and Blue Nile.*” It is critical to note, however, that any perceived ‘effectiveness’ of state constitutions and the laws enacted under them are subject to a number of other factors.

The reality is that state laws, no matter how ‘good’, dealing with customary land tenure and its protection are subject to Sudanese national policy and legislation (and all the political and practical machinations that go along with that) at one end and the political and practical (including institutional) limitations at the state end. In other words, these potential limitations on State laws in respect of customary land tenure can and, indeed, most likely *will*, cut across the security of customary land tenure in Blue Nile and Southern Kordofan States.

At this point, a comment must be made about the nature of customary land tenures and their context. Customary Legal/Social Systems by their very nature are organic. They vary to greater or lesser degrees with the changing circumstances of life. By analogy to Anglo-Saxon legal concepts, “common law” systems are a form of customary law. Those laws have developed over time through various practices and in accordance with prevailing circumstances of the day. A critical aspect, then, of customary systems could be said to be their organic nature. They are not static and not “ancient”, or necessarily “traditional”. Neither are they likely to be homogeneous across broad areas. For these reasons, the approach to customary land rights taken and the complex social interrelationship between those rights and the way peoples live their lives, is not treated in this report as a finite set of rules that should either be ‘frozen in time’ through documentation or hermetically sealed from the influence of external ideas. We must acknowledge, however, that the attempted, simplistic application and enforcement of outside legal mechanisms and models to customary systems has often had a sorry history. But this is not to say that alternative forms of approaching customary legal systems should be absolutely prohibited.

While this report reviews the ‘technical’ side of proposed legal drafts purporting to protect customary land tenure, it also looks at ways of dealing with some of the practical limitations on those protections. Therefore, this report will also touch upon some of the practical legal, political, and practical issues that could be addressed if we are to think about *real* protections for customary land tenure rights in Blue Nile and Southern Kordofan.

A substantial amount of work on the development of protections for customary land tenure has been undertaken by Patrick McAuslan, Professor of Law, Birkbeck College, University of London. Indeed, he was the lead drafter of two documents considered in this report:

- Draft Land Commissions Bill
- Draft Land Act

He has (and will again in December 2006) discuss these drafts with representatives of the State Parliament of Blue Nile State. Professor McAuslan has also provided commentaries to these draft documents that canvas much of the recent history of customary land tenure protections (or the destruction of them) in Sudan. Where there is a specific issue to deal with in the context of this report, the author will not cover that ground again.

## **1.5 Report Structure**

Section 2 of this Report sets out the basic legal instruments actually and potentially affecting customary land tenure rights in Sudan. It provides a very brief overview of the legal history in respect of customary land tenure as well as outlining the current major legal instruments applicable. A brief commentary on the relevant instruments is provided that point to issues that need to be addressed in the course of Project activities.

Section 3 deals with the assessment of Parliamentary capacity to defend customary land tenure in Blue Nile and Southern Kordofan. This section is necessarily limited because of the fact that direct contact with the Parliamentarians was not possible during the reporting period.

Section 4 sets out a program of legal and other activities for the period until January 31, 2007 that can be undertaken in the context of promoting the protection of customary legal rights. This program is based on the findings set out in sections 2 and 3. It provides a general draft Work Plan for project activities across the project while also providing specifically targeted activities that relate to legal objectives (Task 8 under the Project Proposal). In addition to activities it references specialists and Terms of Reference for achieving the proposed activities.

Selected references appear in section 5 while section 6 provides the relevant primary resources in one place for further scrutiny. During the course of research for this Report, it became clear that relevant documents (draft legislation and the like) were difficult to source. The Annex (section 6) attempts, in part, to address this problem by placing the main documents in one place.



## **2 REVIEW OF LEGAL INSTRUMENTS AND DRAFTS**

### **2.1 Introduction**

Sudanese Land Law is complex and its interpretation has been confused. And little has really changed since the 1960s when Cliff Thompson made the following observation.

The land law of the Sudan is a unique combination of Sudanese legislation, judge-made rules, customary law, and Shari'a law. Many of these rules are wholly of local origin, whereas others have been received from abroad with a varying degree of modification in the Sudan.<sup>2</sup>

The situation remains complex and confused but with additional gusto. Now, in addition to the sources of law noted by Thompson, there is the CPA, an INC and, in the case of Blue Nile and Southern Kordofan States, new Constitutions. Each of which has (at least in words – deeds add another level of complexity) attempted to re-assessment the importance of customary laws in governance. These words at some levels, however, have attempted to acknowledge a socio-political *reality* and not just a wish.

Legislation enacted over the years has tended to be considered the overriding (strongest) form of legal source and its enforcement has often led to conflict. This is at least partly because the 'formal' law of the statute books has been seen to run rough-shod over the ways that many peoples have traditionally interacted. Nevertheless, the practical situation appears to be that in many cases the 'formal law' does not necessarily agree with local practice.

...in order to determine the land tenure practices being followed in the particular locale in the Sudan, one should physically inspect the area in question, and speak to the respective regional and local officials for the district, as well as persons in possession of or interested in the subject land. A study of the land legislation is an important starting point in an attempt to determine the applicable rules, but one must keep in mind that the customs and practices actually being followed may vary from the legislative scheme...<sup>3</sup>

Despite the long civil war in Sudan, this situation in relation to the applicable law within the regions still holds. This author did not speak to the local officials and others interested in the land but others have. It has been noted in relation to Southern Sudan that:

During the past twenty years of civil war [customary law] has been the principal source of social order and stability within the region; it remains the predominant source of law in contemporary southern Sudan. Over 90% of day-to-day criminal and civil cases are executed under customary law.<sup>4</sup>

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<sup>2</sup> Thompson C, *The Land Law of the Sudan: Cases and Materials* Khartoum, 1965, as cited by Gordon CN, *Recent Developments in the Land Law of the Sudan: a Legislative Analysis* 30 [1986] 2 JAL 143, at 145.

<sup>3</sup> Gordon CN, *Recent Developments in the Land Law of the Sudan: a Legislative Analysis* 30 [1986] 2 JAL 143, at 146.

<sup>4</sup> Jok, Justice Aleu Akechak, et al *A Study of Customary Law in Contemporary Southern Sudan* (March 2004) at 6.

While the focus of this report and the Project which it seeks to serve is not “Southern Sudan”, (the subject areas - Blue Nile and Southern Kordofan - are neighbouring regions populated by some of the same peoples) there is no evidence to suggest that the rules guiding the operation of the day-to-day activities of peoples in these areas are substantially different from other parts of Southern Sudan.

Customary Law still plays a vital role in the day-to-day lives of the populations in Blue Nile and Southern Kordofan. This means that attempts by Central or local governments to impose legal principles that cut across these customs is likely to contribute to legal uncertainty and conflict. Indeed, ‘legal’ grants of land use rights to mechanised farming operations in the past by Governments have been a significant contributor to continuing conflict in the region. In any event, it makes good sense from both the perspective of conflict mitigation and good governance that central and regional governments acknowledge the importance of customary law as instruments that contribute to security and development.

In the context of conflict prevention, mitigation and management, customary laws have traditionally had an important role. Indeed, in Southern Sudan, it is understood that:

(t)he basic tenet of customary law is reconciliation, a vital tool in conflict resolution. In the immediate post-conflict period, old disputes will resurface and new disputes are inevitable. Conflict resolution through customary law will be essential to a peaceful and fair society.<sup>5</sup>

Again, this suggests that there are persuasive reasons for customary law not only to be protected but *embraced* in the ‘formal legal system’<sup>6</sup> so far as possible in the context of governance and, so far as we are concerned in this Report, with land rights.

The purpose of this section is to look at real and potential customary land tenure ‘protections’ for Blue Nile and Southern Kordofan. But an important qualification in the terminology is required here. “Protection” can bring with it connotations of patronage – ideas that there is a weaker group which needs to be protected in a way that only the stronger group knows how. This is not what we should be talking about. By *embracing* (as distinct from ‘protecting’) customary practices (particularly in the area of land rights) we are not trying to cocoon some ancient practices of anthropological interest. Instead, the State is acknowledging that these practices are an essential way of current life. They are not frozen in time. They are organic and, therefore, flexible in the ways that they deal with current situations.

The so-called legal ‘protections’ for customary land laws work on a number of levels. In a strictly legal sense, they operate at National and State levels. They also work in the context of the CPA. But these laws have, of course, a cultural, political and social context that can and, indeed, almost certainly do, cut across the legal definitions. First, however, there is a need to outline the bases on which the various legal instruments and institutions are supposed to work.

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<sup>5</sup> *Ibid.*

<sup>6</sup> The author uses the expression “formal legal system” only because it is more likely to be understood by readers as the distinction between written laws and customary laws. But it is plainly incorrect to suggest that a non-written system of laws that guides the conduct of peoples is not truly formal.

Blue Nile and Southern Kordofan States are not part of the area known as “Southern Sudan.” Technically, they comprise part of the “north”. Because of their special significance in the peace process, however, these States have a special Protocol under the Comprehensive Peace Agreement.<sup>7</sup> The legal foundations for the protections of customary land tenure (where they exist) lay within (in addition to customary institutions), the CPA, the Sudan Interim National Constitution (**NIC**), national legislation and, in the case of Blue Nile State, within that State’s Constitution.<sup>8</sup> Nevertheless, there is some draft legislation that has been drafted and discussed for both Blue Nile and Southern Kordofan. These legal sources are discussed in more detail in the following section.

On top of these legal sources we are also faced with the political, cultural, institutional capacity and economic realities on the ground. Indeed, it may even be arguable that these are the defining elements of the equation and not “the law”. Because these factors are of critical importance in the practical side of legal protections for customary rights, they will also be discussed separately. This important area of thought also requires further detailed analysis as part of the ongoing development of legal protections and institution-building in Blue Nile and Southern Kordofan States as the transition to peace builds momentum in the coming years.

The primary legal sources relating to land and, in particular, customary land tenure rights can be summarized as follows.<sup>9</sup>

### **Comprehensive Peace Agreement**

- Wealth Sharing Protocol, Article 2
- Naivasha Protocol, Article 9

### **Sudan Interim National Constitution**

- Land Regulation, Article 186
- National Land Commission, Article 187
- National Powers, Schedule A (15 National Lands and National natural resources; and 21 National Institutions as envisaged under the Peace Agreement or as set forth in the Interim National Constitution;
- Concurrent Powers, Schedule D (17 Environmental management, conservation and protection; 18 Relief, Repatriation, Resettlement, Rehabilitation and Reconstruction)

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<sup>7</sup> The “Naivasha Protocol” signed 26 May 2004, in Naivasha, Kenya.

<sup>8</sup> As noted above, it is understood that the Constitution for Southern Kordofan has been adopted. An English translation was not available at the time that this Report was finalized.

<sup>9</sup> It should be noted that the provisions set out here are selected for their particular relevance to Blue Nile and Southern Kordofan States. Provisions that relate specifically to Southern Sudan are, generally speaking, not included in this list.

## **National Legislation**

- Land Resettlement and Registration Act, 1925
- Land Acquisition Act, 1930
- Unregistered Land Act, 1970 (repealed)
- Civil Procedure Act, 1983
- Civil Transactions Act, 1984 (with amendment, 1990)
- Mechanized Farming Corporation Act (1968)
- Investment Encouragement Act (1999)
- Local Government Act (1995)
- Forest Act 1989 (+ Forests and Renewable Resources Act (2002))

## **Blue Nile State**

- Organization of Lands, Article 94 Constitution
- Land Agreements, Article 95 Constitution
- Traditional Authorities Act (passed in November 2006)
- State Powers, Constitution Schedule C ((8) State Land and State Natural Resources; (13) The management, lease and utilization of lands belonging to the State; (14) The establishment, maintenance and management of reformatory institutions; (21) The development, conservation and management of State natural resources and State forestry resources; (23) Laws in relation to Agriculture within the State; (32) Town and rural planning; (34) Traditional and customary law)

## **Southern Kordofan State**

- Constitution (translation not yet available)

## **Customary Legal Sources**

- Probably various customary sources of law and none known to be codified in Blue Nile State and Southern Kordofan State.<sup>10</sup>

The relevant provisions of some of the above legislation are set out in the Annexes, in Section 6.2 to this Report. The following section also provides an exposition of some of these legal sources and a commentary.

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<sup>10</sup> According to the research undertaken by Jok, Justice Aleu Akechak, et al *A Study of Customary Law in Contemporary Southern Sudan* (March 2004), there is some customary law applying in Southern Sudan that at least lends itself to being recorded in writing (at 6).



## 2.2 Short Legal History of Formal Approaches to Customary Land Law in Sudan

A short overview of the formal legal approaches to customary land law in Sudan provides some of the foundation for the current legal position. Because of this, the current formal law, in conjunction with the mechanisms provided for under the CPA, Interim National Constitution and State Constitutions, is the basis upon which changes can be considered that support the formal embracing of customary land rights. In this context, it is important to understand that the CPA, Interim National Constitution and State Constitutions do not provide the peoples of the Blue Nile and Southern Kordofan with a clean, formal legal-slate from which to work. There is a complex of legislation at the National level that has its roots in British colonial occupation but leads us to the current confused, contradictory and ambiguous situation that has led to conflict.

A critical point of departure in relation to customary land rights in Sudan came in 1970. In that year, the Government of Sudan enacted the *Unregistered Land Act*. From April 6, 1970

...all land of any kind whatsoever, whether waste, forest, occupied or unoccupied, which is not registered before the commencement of this Act, shall, on such commencement, be the property of the Government and shall be deemed to have been registered as such.<sup>11</sup>

An amendment in 1974 provided that any occupant of Government land could be evicted.<sup>12</sup>

Although this Act was repealed by the *Civil Transactions Act (1984)* the principles in relation to the vesting of unregistered land in the Government and that interests in land were enforceable only if they were registered, survived. Land registered on or after the commencement of the *Unregistered Land Act* as a freehold in the name of a private owner became a usufruct right.<sup>13</sup> This right was defined as a right to use property that was owned by a third party.<sup>14</sup> Amendments to this legislation in 1990 had significantly adverse effects on many peoples, especially those in the Nuba Mountains (Southern Kordofan). The legislation took away the authority of Courts to inquire about the processes concerned with Government land. The result was privatization of some lands for wealthy elites and the displacement many people. For 'unlawful' occupiers of land the chances of receiving adequate compensation were diminished.

In summary then, the current legal situation for many persons/communities in Blue Nile and Southern Kordofan States is that, at best, they could hold usufruct rights to the land that they occupy. It may be the case, however, that most have no rights at all under Sudanese legislation unless further acknowledgments are made in the law. Nevertheless, it is also probably the case that many persons/communities live their lives in spite of Sudanese legislation effectively under a customary regime. The

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<sup>11</sup> Section 4. According to Gordon, There were exceptions for cases where a private person could provide land usage 'for a long time' and where the government agreed that the person had made 'any beneficial use' of the property in question. Refer to Gordon CN *op cit* at 148, footnote 29.

<sup>12</sup> Section 8 of the criminal trespass provisions.

<sup>13</sup> *Civil Transactions Act 1984*, s559(3) as cited by Gordon CN *op cit* at 148 footnote 30.

<sup>14</sup> Gordon CN *op cit* at 148. *Civil Transactions Act 1984*, s693.

notable exceptions to this being the many who have been displaced under mechanized farming schemes, through conflict or through other causes.

## **2.3 Legal Foundations for Customary Land Tenure Rights Protections**

### **2.3.1 The CPA and the Interim National Constitution**

Since land rights issues were a driving factor in the protracted civil war in southern Sudan, their importance to the peace process was acknowledged by the parties to the Comprehensive Peace Agreement (including the Naivasha Protocol<sup>15</sup>) and the Interim National Constitution, State Jurisdiction and Concurrent Jurisdiction.

Chapter V of the CPA (the Naivasha Protocol) deals specifically with the situation in Blue Nile and Southern Kordofan States. The Protocol especially notes the importance of the two states as a model for problem solving in other parts of Sudan:

RECOGNIZING that the conclusion of the comprehensive peace settlement that the Sudanese people are longing for requires solving the problems in Southern Kordofan/Nuba Mountains and Blue Nile States as a model for solving problems throughout the country<sup>16</sup>

The parties to the CPA noted the importance of land rights as a critical part of the peace process by agreeing for the establishment of National and State Land Commissions to deal this contentious and divisive area.

The requirement for the establishment of a National Land Commission appears in Article 2 of the CPA “Wealth Sharing Protocol” under the heading “Ownership of Land and Natural Resources.”<sup>17</sup> Importantly, this Protocol is not intended to address the ownership of subterranean natural resources (Art. 2.1).<sup>18</sup>

Although this Article was designed with the division between the Government of Sudan and the Government of Southern Sudan in mind, it is applicable to the transitional areas of Blue Nile and Southern Kordofan States because it talks about the establishment of the National Land Commission (Art 2.6). The NLC is to apply to all areas. The powers of the NLC outlined in the CPA indicate that the institution can make recommendations concerning land reform policies and the recognition of customary land rights and/or law (Art 2.6.6).

Supporting this, the parties to the CPA agreed that a process be instituted to progressively develop and amend the relevant laws to incorporate customary laws and practices, local heritage and international trends and practices (Art 2.5).

The National Land Commission contemplated by the CPA is echoed in Sudan's Interim National Constitution (Art. 187).<sup>19</sup> Subject to the jurisdiction of the Courts, the NLC has the power to arbitrate claims between willing parties on claims over land;<sup>20</sup>

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<sup>15</sup> Refer to Footnote 7 above.

<sup>16</sup> Preamble to the Naivasha Protocol.

<sup>17</sup> Signed in Naivasha, Kenya, 7 January 2004.

<sup>18</sup> This Article is set out in full in Annex section 6.2.

<sup>19</sup> This Article is set out in full in Annex section 6.2.

<sup>20</sup> Article 187(1)(a)

entertain claims in respect of land against the government and others;<sup>21</sup> make recommendations to government concerning land reform policies and the recognition of customary land rights or law;<sup>22</sup> assess compensation (not limited to monetary compensation);<sup>23</sup> advise government on land rights policy coordination;<sup>24</sup> record land use practices in areas where natural resource exploitation occurs;<sup>25</sup> and conduct hearings and formulate its own rules of procedure.<sup>26</sup> The National Land Commission is also stated to be 'representative and independent'<sup>27</sup> and is accountable to the Presidency.<sup>28</sup>

Although the terms of the Interim National Constitution do not include all the provisions within the CPA that reference the National Land Commission, those terms not included are expressly incorporated.<sup>29</sup>

A reference to "customary land rights or law" does make an appearance in this outline for the National Land Commission although the nature of those "rights or law" is not defined.

The Interim National Constitution also talks in more general terms about land regulation and legislative responsibility for it.

### **Land regulation**

186. (1) The regulation of land tenure, usage and exercise of rights in land shall be a concurrent competency exercised at the appropriate level of government;

(2) Rights in land owned by the Government of the Sudan shall be exercised through the appropriate or designated level of Government;<sup>30</sup>

(3) All levels of government shall institute a process to progressively develop and amend the relevant laws to incorporate customary laws and practices, local heritage and international trends and practices;

Critical to this articulation of responsibility are two things. First, Article 186(1) notes that the regulation of land tenure, usage and exercise of rights shall be a "concurrent

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<sup>21</sup> Article 187(1)(b), (c)

<sup>22</sup> Article 187(1)(d)

<sup>23</sup> Article 187(1)(e)

<sup>24</sup> Article 187(1)(f)

<sup>25</sup> Article 187(1)(g)

<sup>26</sup> Article 187(1)(h)

<sup>27</sup> Article 187(2)

<sup>28</sup> Article 187(3)

<sup>29</sup> Article 225 of the Interim National Constitution states:

"225. (1) The Comprehensive Peace Agreement is deemed to have been duly incorporated in its entirety in this Constitution;

(2) The provisions of the Comprehensive Peace Agreement which are not expressly incorporated herein shall be considered as part of this Constitution;

<sup>30</sup> Refer to comments below in relation to Article 94(2) of the Blue Nile Constitution.

competency” of government. In other words, regulatory authority vests in national and state governments. Both can legislate in this regard. Secondly, Article 186(3) notes rather ambiguously that all levels of government should institute a process to develop and amend laws to incorporate customary laws and practices (among other things). While this is an extraordinary step forward in the process of customary law recognition, there are no definitions, timeframes or other ‘certainties’ that convert this statement to a concrete legal position from its current status as a mere ‘concept’. Even the word ‘principle’ is placing it too highly.

Nevertheless, the concept of instituting a process to develop and amend relevant laws can be used as a hook upon which both Central and State Governments can regulate in respect of customary land rights. Whether there is the political motivation actually to institute a process, however, is a different story. And the potential implications of a lack of political will is the subject of further discussion below.

The CPA also deals with the creation of the State Land Commissions for Blue Nile and Southern Kordofan States in Article 9 of the Naivasha Protocol. Among other things, this Article notes that the regulation of the land tenure is a concurrent competency of National and State Governments;<sup>31</sup> establishes the SLCs in Blue Nile and Southern Kordofan;<sup>32</sup> notes that the SLC has the same powers of the NLC at the State level;<sup>33</sup> the jurisdiction includes reviewing existing land leases and contracts and examining the criteria for the present land allocations; and recommending to the State authority legislative changes, including restitution of land rights or compensation.<sup>34</sup> Significantly, the CPA notes that the NLC and SLCs must cooperate and coordinate their activities.<sup>35</sup>

Concepts like “customary land rights” do not appear in this Article although it is understood that the purported interference with customary land rights was one of the leading reasons for this Article’s inclusion in the Naivasha Protocol. As noted above, these references appear in other areas of the CPA and the INC.

There are a number of points that can be made about Article 9 and its differences from the Wealth-Sharing Protocol and the INC.

First, it does not seem to be relevant that Article 9, unlike Article 2 of the Wealth-Sharing Protocol, fails to include a provision obliging parties “to progressively develop and amend the relevant laws to incorporate customary laws and practices...” Despite this omission, as noted above, it does appear as a general principle in the INC and also in Article 94 of the Blue Nile Constitution.

In terms of the relationship between the SLCs and the NLC, Article 9.5, specifically, notes:

The State Land Commission shall exercise all the powers of the National Land Commission at a State Level.

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<sup>31</sup> Article 9.1.

<sup>32</sup> Article 9.3.

<sup>33</sup> Article 9.5.

<sup>34</sup> Article 9.6.

<sup>35</sup> Article 9.7.

At this stage, the establishment of the NLC has stalled. According to a Consultant to the UN FAO who is working with the GNU on the development of appropriate legislation,<sup>36</sup> the process stalled at the end of 2005 and became self-contained with little transparency. This could affect the establishment of SLCs. Article 9.5 seems to imply that, the two Commissions must be constituted either with the National Land Commission, first, or both at the same time despite the fact that both institutions are otherwise independent for all intents and purposes. Whether the NLC's powers must come first is debateable since the INC sets out the powers of the NLC and, from this, it could be argued that there is enough information to establish SLCs separately in any event.<sup>37</sup> But it is a risky strategy to develop the SLCs before the NLC from a political perspective and a practical one. While probably legally possible to create the SLCs before the NLC is established, failure to coordinate their establishment with the establishment of the NLC may create political friction with the GNU and lead to potential conflicts in policy, institutions and legal development. Such conflicts should be avoided if possible because they are likely to have an adverse impact on the effective operation of the SLCs.

### **2.3.2 Blue Nile and Southern Kordofan States Laws**

At a State Level, both Blue Nile and Southern Kordofan States have Constitutions. In the case of Blue Nile, the Constitution is a legal source of regulatory power in respect of land rights.<sup>38</sup> It reflects the terms of the Interim National Constitution in respect of State Powers; for example, Administration, leasing and use of land belonging to the State<sup>39</sup>, State natural resources<sup>40</sup>, agriculture within the State<sup>41</sup>, and traditional customs and laws.<sup>42</sup> In addition to these specified powers, Article 94 of the Constitution outlines specific land-related responsibilities that draw on aspects of the Interim National Constitution.

#### **Organization of Lands**

94 (1) The law shall organize acquisition of lands by the State and their occupation as well as implementation of rights for it.

(2) The State shall take over implementation of the rights which are given to it by the Government of Sudan as established by Article 186(2) of the Interim National Constitution of 2005.

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<sup>36</sup> Refer to a personal email dated 6 November 2006 and included in Annex section 6.7.

<sup>37</sup> Professor Patrick McAuslan has argued that the SLCs from a legal perspective can be established before the NLC. Refer to his legal opinion in the Annex, Section 6.9 (although this author does not agree with all Professor McAuslan's conclusions. This will become apparent from the arguments contained within this report.

<sup>38</sup> This is probably the case with the Southern Kordofan Constitution too although, as noted above, the author had not reviewed a translation at the time that this report was finalized.

<sup>39</sup> BN Constitution Index A 13

<sup>40</sup> BN Constitution Index A 21

<sup>41</sup> BN Constitution Index A 23

<sup>42</sup> BN Constitution Index A 33

*(3) The State shall begin the gradual enforcement and arrangements to develop laws so as to contain a connection from the lands to incorporate customary laws and practices, local heritage and international trends and practices;*<sup>43</sup>

Articles 94(2) and (3) are of particular interest to the issue of protections for customary land law. Article 94(2) seems to be saying that the government of Blue Nile is responsible for administration of land in Blue Nile State that is owned by the Government of Sudan. If this is the correct interpretation of the law, then it may mean that there is greater regional autonomy for the Blue Nile Government to reverse or amend the impact of legislation of the Government of Sudan in respect of customary land tenure. Article 94(3) specifically empowers the Blue Nile Government to make laws in respect of customary laws. This, along with the general power to make laws in respect of customary law issues<sup>44</sup>

In terms of the State Land Commission, Article 95 of the Constitution obliges the promulgation of legislation for its establishment and in accordance with the policies of the National Land Commission.<sup>45</sup>

As yet, it appears that there is no State-promulgated legislation in either Blue Nile State or Southern Kordofan State in relation to customary land tenure. But, as noted above, draft legislation has been prepared and discussed with SPLM representatives in both States. This legislation is basically in the same terms for each State and, for the sake of brevity, can be described as:

- Draft Land Commission Law
- Draft Land Law

The drafts are reproduced in this Report in Section 6.2 below. They were prepared by Professor Patrick McAuslan in consultation with SPLM representatives in each of the two States. It appears, however, that neither of these drafts (through no fault of those behind them) has been discussed in any detail with representatives of the NCP and, therefore, cannot be said to have bipartisan political support. Quite simply, the view of representatives of the NCP is unknown at this time.

On a practical note, it seems that any follow-up work in legislative drafting (whether with these drafts or other legislation) will require bipartisan support given that the SPLM holds only 45% of the voting power in Parliament. The sooner that the Project can work to engage the NCP (who has 55% of the voting power in Parliament) the better the chances that appropriate discussion can be had and appropriate legislation promulgated. Until there is engagement with the NCP, any chances of legislative reform remain very limited.<sup>46</sup>

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<sup>43</sup> The author altered the English translation provided to bring it in to line with the words appearing in the official English translations of the CPA and INC (which, it is believed, was the intention).

<sup>44</sup> Refer to Footnote 42 above.

<sup>45</sup> The translation of this Article provided to the author was poor and has not been included. Basically, the translation appear to indicate that the State Land Commission must be established through legislation and cooperate with the National Land Commission.

<sup>46</sup> In a promising development after the author left Africa, a bipartisan delegation from Blue Nile traveled to Khartoum to discuss the lack of development in Blue Nile State. Furthermore, the *Traditional Authorities Act* was passed by the Blue Nile Parliament.



While this research is concentrated on the specific issue of customary land tenure, the comments on the draft legislation will range slightly wider to include some broader institutional and related issues because both drafts involve the creation of new legal institutions in their respective States. It should be noted that extensive commentaries on both drafts have already been prepared by Professor McAuslan and these are cited in Section 5 below.

### ***Draft Land Commission Law***

This draft law is designed to accord with the agreements made under the CPA and, in particular reference to Blue Nile State, Article 9 of the Naivasha Protocol of the CPA, and the powers noted under Article 187(1) of the Interim National Constitution. The draft establishes the SLC whose primary purpose is to provide either restitution or compensation for the loss of land rights as a result of improper government actions on or after 6 April 1970. Article 9 of the draft sets out the principles:

#### **Objectives of the Commission**

9. The objectives of the Commission shall be to –
  - (a) work towards the restitution of land or compensation in lieu to all those persons who have suffered from being –
    - (i) deprived of their land; or
    - (ii) removed from their land; or
    - (iii) prevented from occupying and using their communal lands;

or

    - (iv) denied any or adequate compensation for any losses suffered as a consequence of any of the events referred to in (i), (ii) or (iii),

as a result of the inequitable and wrongful application of the Unregistered Land Act 1970 and the Civil Transactions Act 1984 and any other laws affecting the customary rights of persons lawfully and as of right owning, occupying and using land in the State on or before the 6<sup>th</sup> day of April 1970;
  - (b) bring about the peaceful, lasting and fair settlement of the conflicts about the ownership and use of land between the indigenous inhabitants of the State and persons from outside the State who have been allocated or granted land owned occupied and used by the indigenous inhabitants of the State by successive Governments any time after 6<sup>th</sup> day of April 1970;
  - (c) prepare in a fully participative process studies, reports and recommendations on appropriate land policies for the state which have as their fundamental bases –
    - (i) the full and equal recognition of customary land tenure and law alongside land tenure recognised under the Shari'a and statute law;
    - (ii) equity;
    - (iii) transparency;
    - (iv) accountable, participative and efficient land management at all levels of government;

- (v) sustainable and planned development of land for agricultural purposes; and
- (vi) fair and open systems of dispute settlement.

But the draft does not propose just one institution, rather two: a State Land Commission *and* a State Land Court. This is a necessary but complicating factor in the restitution and compensation process. The reasons for the creation of these two institutions lie in Articles 2.6 and 2.7 of the Wealth Sharing Protocol (CPA) and Article 187(1) of the INC. Professor McAuslan has described the reasoning as follows.

The basis of the process of restitution is set out in article 187 of the INC. “Without prejudice to the jurisdiction of the courts...” This is taken to mean that decisions about rights to land must be taken by a court of law and not an administrative body like the Commission. So the Commission receives a claim, investigates it and makes a report to the Court which then *decides* what should be done. This article provides the nexus between the Commission and the Court. The Director prepares the report for the Court indicating that either the parties or the Commission have determined that a claim cannot be settled by negotiation and mediation so the Court must be involved. The report sets out the findings of the Commission, the basic information used by the Commission to reach its findings and its recommendations.<sup>47</sup>

In some ways, the need for the creation of two institutions complicates the restitution process in a number of ways. First, the institutional resources required to create the institutions are increased; further capacity building activities are required; and, the restitution/compensation process is prolonged. This need not be the case but it is probably the likely result in the current circumstances. As noted by Professor McAuslan, the approach is based on a reasonable interpretation of the INC (and the CPA) and is probably inescapable. Nevertheless, it is worthwhile investigating whether the provision “without prejudice to...” could mean that a decision of the SLC is appealable and not that the SLC must pass on a recommendation. This could be an alternative approach. Also, rather than create a Land Court, it may be possible to create a Land Division within the existing Court structure that would take appeals from the SLC (in certain circumstances). This may be simpler to achieve legislatively. It may also be a cheaper approach.

One of the primary focuses of this draft is customary land rights restitution and compensation. While there is no specific definition of “customary land tenure” in the draft, customary tenure is considered as a “right in land”. The definition of “community” also includes customary groups. Importantly, the restitution and compensation process is triggered by dispossession arising on or after 6 April 1970, the date of the commencement of the *Unregistered Land Act*, which, as noted above, acted as a basis for dispossession especially of customary rights in land in favour of the government of Sudan.

Critical to acknowledgement of customary land tenure is Article 34 which details the factors to be taken into account by the Commission and a Court in making decisions or recommendations about cases before them (refer to the draft legislation set out in Annex section 6.2). In simple terms, Article 34 attempts to affirm the existence of customary land tenure and underscore that there was no such thing as ‘*res nullis*’ (a concept that land had no ownership and used as a basis for taking it by the government or by a user better entitled by making use of “waste land” or *Muwat* under *Shari’a* Law). Although arguments may be made that customary land tenure

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<sup>47</sup> McAuslan *A Commentary on the Land Commission Act for South Kordofan and Blue Nile States* at 17.

conflicts with Shari'a law (in which case Shari'a dominates under the Article 560 of the *Civil Transactions Act*), the two need not be inconsistent if modern concepts of customary land tenure are observed.<sup>48</sup> This effectively means that every appropriation by government is theoretically subject to a claim for compensation or restitution. Furthermore, usufruct grants by the government did not have the effect of extinguishing customary land tenure.

Clearly, the objectives of this draft support the principles of embracing and protecting customary rights and providing redress for those individuals and communities who lost rights as a result of government actions.

In terms of the issue of restitution of rights, the drafter found a useful model in the *South African Restitution of Land Rights Act 1994*<sup>49</sup> but there are three points to be made about this process in the current situation in the transitional areas. First, the fluid post-conflict circumstances significantly complicate the institutional building process (this is especially so with rule of law institutions) and there will be big hurdles in the process because of limited resources and limited institutional capacity.

Secondly, from a general developmental perspective, the creation of new rule of law institutions themselves take significant resources and it seems that there has not been significant research into the costs of creating and sustaining such institutions at this time. This is particularly the case with the SLC which will require a completely new institutional structure unlike a Land Court which might be able to be 'carved-out' of an existing institutional structure. While there is nothing wrong with creating the legal framework for the proposed institutions, it should be acknowledged that their useful operations may be delayed for some time after a law is passed establishing them. It is reasonable to imagine that at least another year may pass before national legislation creating an NLC is passed. The SLCs will probably come after this<sup>50</sup> although, with good coordination, planning and bipartisan support, the lag between national legislation and State legislation may be reduced. It is difficult to predict timeframes, first, in a post-conflict environment and, furthermore (and despite obligations under the CPA and INC) where there appears to be little political will or incentive for one political party (the NCP) to comply.

Finally, the draft provides a high level of detail in relation to procedural issues, for example. Yet all the principles set out are proper. However, this level of detail could limit the necessary flexibility required in the special circumstances of the transitional areas.<sup>51</sup> While the contents of the provisions seems appropriate, experience has shown that it can be useful to provide some of the detail in the form of secondary legislation (e.g. regulations) that do not need the approval of Parliament to change (which a law does). This permits relatively timely changes when circumstances change or, for whatever reason, it appears that a particular process does not seem to be working as planned. This was particularly useful in, for example, the East Timor

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<sup>48</sup> This case is neatly argued by McAuslan *A Commentary on the Land Commission Act for South Kordofan and Blue Nile States* at 6-8.

<sup>49</sup> McAuslan *A Commentary on the Land Commission Act for South Kordofan and Blue Nile States* at 2.

<sup>50</sup> This is debatable but refer to the comments above and the contrary opinion noted in footnote 37.

<sup>51</sup> An issue has also been raised as to whether the level of detail provided is consistent with the Sudanese 'style' of legislative development; that style being to use Laws as framework documents with much of the detail being included in subordinate legislation. While this may be the case with a lot of legislation, it is not really an argument for writing only short laws. Indeed, a notable exception to this 'style' is the *Civil Transactions Act* which comprises more than 600 Articles.

context, where there was no detailed land legislation (a problem) but policy changes were able respond to changing and unexpected circumstances reasonably quickly. Having said this, the draft does provide a reasonable degree of flexibility/discretion in the Director of the SLC that the Sudanese may find acceptable.

In summary, the following points can be made in relation to the *Draft Land Commission Law*.

1. The draft rightly seeks compensation or restitution for those individuals and communities to lost rights on account of government actions on or after the commencement of the Unregistered Land Act 1970. This clearly supports the objectives of the CLTP and the recognition of customary land tenure rights.
2. The creation of two new institutions (SLC and Land Court) complicates the restitution/compensation process but is probably implied by the terms of the Wealth Sharing Protocol and the INC. It may be the case that the jurisdiction of the Courts in these matters can only be invoked in certain circumstances; thereby, giving the SLC an administrative decision-making function. This avenue requires further investigation. If possible under Sudanese law, it could potentially stream-line the process and ease the strain on a weak Court system.
3. Because there is no National Land Commission Law in place, the draft has no detailed legislation from which to draw (although it does have its roots in the CPA and INC and Blue Nile Constitutional).<sup>52</sup> Therefore, it may be difficult for the draft to move forward without coordination with the drafters of the NLC Law (noting also that the first draft of legislation for the NLC was rejected by the GNU Council of Ministers<sup>53</sup>).
4. There has been little or no engagement with the NCP in the development of the draft and, therefore, there seems to be limited hope that progress can be made towards promulgation of legislation until that happens.
5. The creation of the SLCs will probably require substantial investment (from government and donors) at least initially in terms of establishment, procurement and capacity building. There are likely to be fundamental issues of sustainability facing these institutions and some idea of potential costs should be considered in institutional and legislative design.
6. The level of procedural detail within the draft may limit the ability of the Commission to respond quickly to changing or unexpected circumstances. As such, it may be useful to consider moving some elements of procedure to a regulation. It may be more politically palatable for a 'streamlined' draft/Bill to pass through the State Parliaments in due course.

### ***Draft Land Law***

The Draft Land Law is another comprehensive piece of legislation. It proposes important measures which are relevant to the issue of the protection of customary

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<sup>52</sup> Also refer to the contrary argument set out in footnote 37.

<sup>53</sup> The author attempted to obtain a copy of the rejected NLC draft but was unable to do so before the publication of this Report.

land tenure. It creates an Office of Customary Land Recordation<sup>54</sup> (a government institution) for the administration of customary land tenure, provides for the creation of Community Land Councils (comprising representatives of a tribal community and established in every community area to hold customary usufruct as trustee for all common land in the community area)<sup>55</sup>, local Land Mediation Panels for dealing with local customary usufruct disputes<sup>56</sup>, a Land Board (composed of members of the proposed Land Commission and with the general objective to manage and regulate the process of registrable usufructs and leases of land and their disposition in the state)<sup>57</sup> and 'such number of local land courts...as the Chief Justice of the state...shall determine'.<sup>58</sup> The draft also outlines the form of customary land tenure in the State<sup>59</sup> and provides a comprehensive mechanism relating to the formal creation and disposition of usufruct rights<sup>60</sup>, as well as formal (courts) and administrative (Mediation Panels) mechanisms for dispute resolution.<sup>61</sup> In addition to these fundamental components of the draft Act there are a number of Miscellaneous provisions which deal with fees (impliedly requiring the establishment of a land valuation mechanism)<sup>62</sup>, mortgages<sup>63</sup> and offences<sup>64</sup> among other things.<sup>65</sup>

As with the proposed *draft State Land Commission Law*, the *draft Land Law* is comprehensive in its approach to land law in the proposed States and, in particular, in the issue of customary tenure. The Chapter 4 provisions establish clearly the necessary protections for customary tenure in the context of the *Civil Transactions Act*. In other words, the State of Sudan still holds the allodial title to 'the land' but all registrable and customary usufructs flow from this. Article 11 is as comprehensive an acknowledgement of customary tenure rights as can probably be achieved in the circumstances.

The provisions of the *draft Land Law* raise a number of issues; many of which mirror those raised with the *draft State Land Commission Law*. First, a number of institutions and activities within the draft rely on the prior establishment of a State Land Commission. Until that happens, aspects of the draft will not operate at all or as intended.

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<sup>54</sup> Chapter 6, sub-chapter 4 of the draft.

<sup>55</sup> Chapter 5 of the draft. It is understood that, since the time of this draft and after consultation with SPLM representatives of the Blue Nile Parliament, that the "Community Land Council" is now referred to "Boma Land Council".

<sup>56</sup> Chapter 8, sub-chapter 2.

<sup>57</sup> Chapter 7, sub-chapter 1 of the draft.

<sup>58</sup> Article 72(1) of the draft.

<sup>59</sup> Chapter 4 of the draft.

<sup>60</sup> Chapters 6 and 7 of the draft.

<sup>61</sup> Chapter 8 of the draft.

<sup>62</sup> Article 88 of the draft.

<sup>63</sup> Article 89 of the draft.

<sup>64</sup> Articles 90 and 91 of the draft.

<sup>65</sup> Including transitional provisions in Chapter 9 generally.

Secondly, while the comprehensiveness of the draft legislation is a virtue in theoretical terms, there are likely to be political and practical issues with its passage to law and its implementation. It is difficult to assess the political situation but it would hardly be surprising if the technical comprehensiveness of the draft actually created doubts in the minds of legislators simply because of a lack of detailed legal understanding of the concepts or what is practically required to make a land administration system 'work'. This is not uncommon especially if there has not been broad political discussion concerning the product.

Thirdly, from a practical perspective, there are likely to be significant issues associated with the creation of the required institutions, the capacity within them to operate effectively and sustainably, and the funding of government and perhaps other local institutions.

As noted above in relation to the *draft State Land Commission Law*, there is a trade-off between institutional and procedural flexibility on one hand and legal certainty and transparency on the other. In the context of the post-conflict environment in Blue Nile and Southern Kordofan States, this author tends towards providing the necessary flexibility.

In summary, the following points can be made in relation to the *Draft Land Commission Law*.

1. The draft rightly provides the necessary acknowledgement of customary land tenure in the context of the *Civil Transactions Act*. These early provisions could, if required, form part of a separate, smaller piece of legislation should there be difficulties with the passage of the whole draft.
2. Aside from a lack of comprehensive discussions with both political sides, it may still be difficult to pass such a large piece of legislation. Therefore, a "Plan B" may be necessary.
3. Because there is no National Land Commission Law in place (and hence no State Land Commissions), linkages between the Draft Land Law and the State Land Commission will not operate at all or as intended. If, of course, both pieces of legislation can be passed together, the problem disappears. But it is impossible to determine the likelihood of this now.
4. The institutional requirements under the draft Land Law are substantial. Furthermore, so are the public education requirements. It may take several years for the institutions and systems contained within the draft to become fully operational. There are likely to be fundamental issues of sustainability facing these institutions and some idea of potential costs should be considered in institutional and legislative design.
5. A "Plan B" approach could focus on the acknowledgement of customary land tenure rights (Chapter 4 provisions) as a stand-alone legislative draft, if it is considered practically and politically expedient. This means that the draft could be considered outside the context of the State Land Commissions (and other institutions established by the draft), potentially, permitting the customary tenure acknowledgment to move forward more quickly. This approach would provide the minimal legal protections for customary land tenure.



## **2.4 Summary of Strengths and Weaknesses in the Current Legal Regimes**

The strengths and weaknesses of the current and proposed legal regimes in the context of acknowledging and embracing customary land tenure can be summarized in the following Table.

| <p style="text-align: center;"><b>USAID Sudan Customary Land Tenure Project</b></p> <p style="text-align: center;"><b>Customary Land Rights: Strengths and Weaknesses in Legislative Regime (Blue Nile and Southern Kordofan)</b></p> |   |  |
|---|---|--|
| <b>Legal Instrument</b>   | <b>Potential Strengths</b>  | <b>Potential Weaknesses</b>  |
| CPA   | CPA provides obligations on Parties to establish National Land Commission and State Land Commissions  | SLCs seem to be subject to Land Policy Development at the national level by the NLC (effectively meaning that the operation of SLCs is subject to direction of the NLC)  |
|   | CPA articulates that States have exclusive powers to legislate in respect of customary law (ratified in Interim National Constitution)  | Capacity to develop good legislation in both Southern Kordofan ( <b>SK</b> ) and Blue Nile ( <b>BN</b> ) (at least from an SPLM perspective) appears to be weak  |
| <i>Draft State Land Commission Law</i>  | Comprehensive draft that articulates a complete range of institutions   | Progress in the establishment of an NLC seems to have stalled, thereby delaying establishment of the necessary institutions  |
|   | Draft Legislation defines “right in land” and “usufruct” broadly to include customary rights; SLC objectives include restitution/compensation to former customary land tenure holders | <p>The Draft Legislation for SLCs in BN and SK seems to have been developed without reference to the NLC development (such as it is)</p> <p>Draft Legislation in BN has been developed only with input from SPLM (ie no input from NCP)</p> <p>Existing legislation may have extinguished in law customary land rights (although in practice, those rights may still be exercised at a regional level)</p> <p>Complex fabric of legislation over the last century has made the legal situation in respect of customary land rights ambiguous</p> |
|   | CPA and Interim National Constitution provide for funding of NLC and SLCs   | There does not seem to have been a thorough assessment of the funding requirement/sustainability of the proposed SLCs in BN and SK   |
|   |   |  |
| <i>Draft Land Law</i>   | Comprehensive draft that articulates a complete range of  | Draft Legislation in BN has been developed only with input from SPLM (ie   |

| <b>USAID Sudan Customary Land Tenure Project</b><br><b>Customary Land Rights: Strengths and Weaknesses in Legislative Regime (Blue Nile and Southern Kordofan)</b> |   |   |
|--|---|---|
| <b>Legal Instrument</b>  | <b>Potential Strengths</b>  | <b>Potential Weaknesses</b>   |
|  | <p>institutions</p> <p>Draft Legislation defines “customary land rights” broadly (Chapter 4, in particular) could be a stand-alone provision embracing customary land rights)</p> | <p>no input from NCP)</p> <p>Existing legislation may have extinguished in law customary land rights (although in practice, those rights may still be exercised at a regional level)</p> <p>Comprehensive nature of the legislation may make it difficult to pass through the fledgling legislature</p> <p>Number of institutions contemplated by the draft may be difficult to establish quickly because of limited capacity within government (i.e. government institutions)</p> <p>The costs of establishing and maintaining the institutions has not been thoroughly investigated</p> |

## 2.5 Policy Options

The situation can be simply put as follows:

1. Sudanese legislation has largely reduced customary land tenure to usufruct rights at best and criminal trespass at worst. The result has been the displacement of many peoples as 'government' land has been used for mechanized farming and other activities in many areas as well as to connected elites.
2. Despite the legislative position under point 1, it is probable the case that customary land rights still apply at a local level in many areas and that these land rights are 'protected' in a local sense with the support of local customary leaders.
3. The CPA, Interim National Constitution and Blue Nile State Constitution obliges governments and former combatant parties to the CPA progressively to formalize customary land rights.

The issue now becomes: what can be done at a national, state and regional level to facilitate the formalization of customary land rights? Additionally, what are these customary land rights?

The difficulty with the legislative process is that it requires political will and administrative and institutional capacity at a policy and legislative level to ensure compliance. In the states, it seems that capacity needs improvement and, indeed, the relevant institutions still need to be established (e.g. the National and State Land Commissions). But this does not prevent us from suggesting a course of action that can help facilitate a move in the direction of customary land rights formalization.

In terms of legislative reform, the situation is clouded primarily because of conflict of laws issues in the context of national and state responsibilities. For example, could customary land rights be 'revived' by either by a 'rolling back' of provisions of the *Civil Transactions Act*? (certainly, but this is perhaps a politically remote possibility). Alternatively, could State legislation relying on the "Traditional customs and laws" reserved powers either (a) override the provisions of *Civil Transactions Act* or (b) supplement that *Act* by deeming usufruct rights to be registered and then effectively legislating for the embracing of those rights as part of the law of the State (with the necessary research and review).

| Customary Land Rights Embracement: Options for Reform (Blue Nile and Southern Kordofan States)                    |   |   |
|---|---|---|
| Reform Options  | Option Strengths  | Option Weaknesses   |
| Repeal provisions of <i>Civil Transactions Act (1984)</i> as amended such that customary land rights are restored | Clears the way for the restoration of customary land rights | <p>Beyond the scope of influence for the CLTP</p> <p>May have little political support at the national government level</p> <p>May require additional (separate) legislation embracing customary land tenure at a national and/or State level</p> |
| Enact separate National Legislation that embraces customary land tenure (e.g. deeming them to exist and even      | Recognises and protects customary land tenure rights        | <p>Beyond the scope of influence for the CLTP</p> <p>May have little political support at the national government level</p>   |

| Customary Land Rights Embracement: Options for Reform (Blue Nile and Southern Kordofan States) |  |   |
|--|--|---|
| Reform Options   | Option Strengths   | Option Weaknesses   |
| perhaps registered)  |  |   |
| Continue with the development of State Land Commissions/Land Court Legislation                 | <p>Provides a comprehensive legal framework in respect of land</p> <p>Addresses customary land tenure and defines it broadly thereby potentially protecting those rights</p> | <p>No political engagement from NCP in the development of the legislation making its passage to law very difficult</p> <p>Legally detailed but with limited flexibility to change the legislation once enacted to accord with the current for future conditions</p> <p>May raise conflict of laws issues as against National legislation</p> <p>Limited coordination with this draft and the drafters of the NLC legislation (it may be the case that NLC will need to establish those powers before the SLCs are established – this likely to be a practical issue if not a legal one<sup>66</sup>)</p> <p>Limited capacity within SPLM (and perhaps in NCP) to advocate effectively on the draft's behalf</p> <p>Appears to have been no detailed assessment of funding costs of the institution envisaged and the institutional capacity to operate it sustainably</p> |
| Continue with the development of the draft Land Law  | Provides a comprehensive legal framework   | <p>No political engagement from NCP in the development of the legislation making its passage to law very difficult</p> <p>Limited capacity within SPLM (and perhaps in NCP) to advocate effectively on the draft's behalf</p> <p>May raise conflict of laws issues as against National legislation</p> <p>Legally detailed but with limited flexibility to change the legislation once enacted to accord with the</p>   |

<sup>66</sup> Refer to the earlier comments on this point including the contrary argument noted in footnote 37.

| Customary Land Rights Embracement: Options for Reform (Blue Nile and Southern Kordofan States)                                    |   |   |
|---|---|---|
| Reform Options  | Option Strengths  | Option Weaknesses   |
|   |   | current for future conditions   |
| Legislate at a state level for the acknowledgement of customary land rights (a cut-down version of the proposed <i>Land Act</i> ) | <p>Relatively simple legislation that could be a first step on the road to more comprehensive reform</p> <p>Could have bipartisan political support (and, therefore, more likely to become law expeditiously)</p> | Not a comprehensive legal reform – more of a starting point for longer-term reform. |

Any preferred option for legislative development should be offered in the context of the need for engagement of all political parties to the process. Unless both NCP and SPLM are engaged in the process the chances of progress are greatly reduced.

1. If it is likely that the proposed draft legislation (both the *draft Land Commission Law* and the *draft Land Law*) will fail to be passed, it is suggested that a step-by-step approach be followed to develop appropriate policies laws and institutions.
2. Working in conjunction with the other findings in relation to institutional capacity and sustainability, new legislation could borrow from the existing drafts (especially the *draft Land Law*) to embrace customary rights (i.e. extracting the rights embracement provisions of the *draft Land Law* now and working on the establishment of new institutions later). This approach may have great bipartisan support and, therefore, be easier to pass.
3. It may be prudent focus efforts on legislative reform on the *draft Land Law* and leave the *draft State Land Commission Law* on the 'backburner' for now. While it may be legally possible to create a new institution before the creation of a National Land Commission, such an approach is likely to be politically, legally and practically fraught. Pursuing the SLCs before the establishment of the NLC may lead to expensive back-tracking in the future.
4. An assessment of the capacity, funding and costs to operate the various institutions (especially those proposed under the *draft Land Law*) should be undertaken. This may provide guidance on the form of the institutional structures and provide policy options for government.
5. In the context of the establishment of the NLC and SLCs, it is suggested that the project work closely with project of other donors on land legislation projects such as the UN FAO in its work with the development of an NLC. This will enable the projects to coordinate their approaches and legislative and policy development strategies (something that is required in terms of NLC and SLC operations by the CPA and INC).

## **2.6 Next Steps**

Bearing in mind the above analysis of the legal/political situation, the next steps to be undertaken by the CLTP should follow the programming activities set out in section 4.2 below. In particular, this will involve the development of a longer-term legal interventions strategy by the Long-term Senior Legal Adviser for the Project. Depending on the changes in the political/legal landscape in Blue Nile and Southern Kordofan, it is suggested that those interventions should follow the recommended options set out in this section.





### **3 ASSESSMENT OF CAPACITY OF PARLIAMENTARIANS TO RECOGNIZE, DEBATE, AMEND AND DEFEND LEGISLATIVE PROPOSALS TO PROTECT CUSTOMARY LAND RIGHTS**

#### **3.1 Introduction**

The author was required under the SOW to “assess the capacity of parliamentarians in the two states to recognize, debate, amend and defend legislative proposals to protect customary rights to land ownership and use rights.” Regrettably, a direct assessment of the capacity of Parliamentarians was impossible. As a result, the assessment is incomplete.

#### **3.2 Assessment Methodology**

As set out earlier, because of the fact that the author could not meet with any Parliamentarians, either in Sudan or in Nairobi. It was proposed by the author that a survey of parliamentarian opinions be gathered from interviews in-country. A questionnaire was prepared (although not yet used) for the purposes of comparing opinions. For the sake of potential future assessments, that questionnaire is included in Annex section 6.8.

The brief assessment contained in this Report is based on interviews with persons who have had the opportunity to meet with SPLM Parliamentarians in the context of discussions on the draft legislation mentioned above. Those discussions all occurred in Nairobi, Kenya, during the author's visit in November 2006.

#### **3.3 Assessment Results**

The general assessment of Sudanese capacity to advocate in relation to the protection of customary land rights was considered to be limited at best. This is hardly surprising and is a common problem in post-conflict environments. In addition to this, much of the current work on the draft laws discussed above have focussed on SPLM Parliamentarians. As a result, it is difficult to assess the capacity of NCP counterparts. Having been in government for some time, however, we may say that we expect the capacity to be higher (but this is by no means clear). It follows that there will likely have to be significant support provided to Parliamentarians from both NCP and SPLM. Indeed, this only makes good sense in the context of developing legislation since, without broad support of some bipartisan nature, it is difficult to see appropriate legislation passing through Parliament.

#### **3.4 Recommendations**

Given the limitations on the ability to make a direct assessment of Parliamentarians' capacity, it is suggested that the following actions should follow.

1. Now that travel limitations have been lifted in the transitional states, a more complete assessment of parliamentary capacity can be undertaken. The questionnaire provided in section 6.8 can be used (or amended as required) for this purpose.

2. On the basis of the assessment and discussions with National and State politicians and stakeholders, appropriate support for the Parliamentarians can be designed.



## **4 PROGRAM OF LEGAL ACTIVITIES TO PROMOTE PROTECTION OF CUSTOMARY LAND RIGHTS**

### **4.1 Introduction**

The purpose of this activity in the SOW was to propose a program of legal and legislative activities for CLTP that promotes equitable legal and institutional mechanisms for registration and administration of customary land claims and documentation.

Because of travel limitations and the highly fluid nature of project activities at the time of the author's visit, however, the timeframe envisaged for activities to be proposed was 3 months until the end of January 2007. But in a broader sense, the author worked with the Project Team to produce an overall Work Plan for Project activities for that time period. A table of activities is produced below in the Table *Work Plan Timeline from November 2006 to January 2007*.

For the purposes of the SOW activities, the 3 month plan for legal-related activities is set out in this section. These activities include a narrative of proposed activities while activity specific scopes of work appear in the Annexes in section 6.6.

### **4.2 The Program**

In relation to the legal side of activities (Task 8 of the draft Work Plan), however, the tasks for the next 3 months are outlined here. The narrative that follows here is supported by a Table entitled *Work Plan Timeline from November 2006 to January 2007* at the end of this section. In general terms, the activities proposed follow the following general activities designed to strengthen land law and policy in Blue Nile and Southern Kordofan.

- Task 8.1 Create and provide for support for State Land Commissions
- Task 8.2 Develop a Legal Strategy Plan
- Task 8.4 Strengthen State Land Commissions, CLTP Technical Advisory Group (**TAG**) and civil authority
- Task 8.5 Strengthen customary tenure
- Task 8.6 Provide miscellaneous legal drafting

The particulars of the proposed activities include the following.

#### ***Task 8.1 Create and provide for support for SLCs***

As noted above, the SLC's have not been established by the States (although a framework for their powers exists under the INC). Despite this, it is still possible to set out the basis for a Public Information and Education (PIE) program in anticipation of the establishment of the SLCs. It is anticipated that this could take place in either January or February of 2007 by a public information and education specialist in accordance with the Scope of Work contained for that role in Annex section 6.6. The objectives of the activities to be undertaken by the PIE specialist would be to design

a strategy for promoting the broad public discussion of land law and policy in the context of draft legislation for consideration in Blue Nile and Southern Kordofan States concerning customary land tenure. In particular, the activities will look to the objectives and proposed powers of the State Land Commissions set out in the CPA, the Interim National Constitution and the respective State Constitutions.

The proposed tasks include:

- Discussions with relevant stakeholders concerning appropriate mechanisms for encouraging public discussion of customary land tenure
- Collaboration with ARD's Senior Land Lawyer from RDI who is providing support on technical legal inputs in the development of protection of customary land tenure in SK and BN
- Close collaboration with CLTP staff for the purposes of developing a budget for the implementation of the Strategy for Public Discussion
- Coordination, as appropriate, with CLTP staff, USAID personnel, staff of other projects, Sudanese stakeholders in the formulation of a strategy that encourages broad public discussion about customary land rights in the context of legislative development of the State Land Commissions (or other relevant legislation) in Blue Nile and Southern Kordofan States
- Designing an appropriate strategy that encourages broad public discussion about customary land rights in the context of legislative development

It is anticipated that the result of these activities will be a Public Information and Education (**PIE**) Strategy for encouraging public dialogue in relation to the protection of customary land tenure in BN and SK including:

- A Schedule of inputs for the implementation of the Strategy (including a budget that is coordinated with the Project budget and deliverables); and
- Scopes of Work in relation to major inputs, as appropriate.

### ***Task 8.2 Develop a Legal Strategy Plan***

There are two main elements to the development of the Legal Strategy Plan. The first is based on a request from Parliamentarians from the Blue Nile State for further advice and support from Professor Patrick McAuslan on the development of legislation for a draft Land Code and draft State Land Commission Law. This activity is scheduled for late November/December 2006.<sup>67</sup> ARD has proposed that Professor McAuslan will be supported by a more junior African land law specialist who will be able to carry on briefing activities when Professor McAuslan has completed this activity. The objectives of this activity are:

- To ascertain through dialogue with the BN Parliamentarians if the proposed legislation is the appropriate vehicle in the circumstances for the protection of customary land rights

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<sup>67</sup> At the time that this report was finalized, this Activity had been completed.

- To provide the BN Parliamentarians with an understanding of the importance of the protection of customary land rights in the State
- To ascertain the capacity of BN Parliamentarians to advocate for the passage of the draft legislation through Parliament
- To arrive at a program of potential interventions designed to assist each state government in developing legislation conducive to protection of customary land rights through to June 2007.
- It is anticipated that the deliverable from this activity will be a final report on the Parliamentary Briefing by 10 December.

Secondly, in January 2007, it is planned that ARD's Senior legal specialist, David Bledsoe, will undertake a thorough review of the status of legal/policy planning based on the work of Professor Patrick McAuslan (Senior Land Law Adviser for Briefing of Parliamentarians in Blue Nile State), the Land Law Adviser for Briefing of Parliamentarians in Blue Nile State, and Nigel Thomson for the purposes of designing legal/policy inputs for the Long Term Legal Strategy. Because of the fluid circumstances and uncertain security and political situation in Blue Nile and Southern Kordofan, it is anticipated that this longer-term legal strategy be for a period of six (6) months ending in July 2007 (see Annex, Section 6.6 for the Scope of Work for the Legal Specialist).

The objective of this longer-term legal strategy will be to provide general guidance to the Project and the governments of SK and BN on appropriate legal strategy for the protection of customary land rights.

#### ***Task 8.4 Strengthen SLC, TAG and civil authority***

Whether or not legislation is passed in relation to the SLCs, an assessment of institutional capacity and resources to undertake the role of land administration is needed. While the draft legislation in relation to the Land Commissions is important, there is an issue as to a Commission's ability to undertake a role set out under legislation. Therefore, it is recommended that this assessment take place, where the legislation has been passed, to get an understanding of capacity and the resources needed to assist the body to comply with its statutory obligations. Where legislation has not been passed, an assessment could be used to help define the optimum size and structure of a Commission in ordinary circumstances. It is anticipated that such an assessment be held in the last 2 weeks of January 2007 (see Annex, section 6.6 for the Scope of Work for the Institutional Design Specialist).

The objective of this Activity is to assess the capacity of the State Governments of SK and BN to administer respective State Land Commissions and provide options for appropriate institutions, staffing and funding.

The deliverable is expected to be a Report that:

- assesses the capacity of the State Government of SK and BN to establish and effectively administer currently proposed SLCs; and
- proposes options that speak to the establishment of effective and sustainable institutions given proposed legislation, likely funding and likely staffing capacity.

### ***Task 8.5 Strengthen customary tenure***

A number of activities are suggested for the period ending 31 January 2007 that will peak to the issue of strengthening customary land tenure. These are covered also in separate comments noted above and under Scopes of Work appearing in Annex section 6.6.

It was anticipated at the time that the author was in Nairobi that an assessment would need to be undertaken in respect of the current situation with the Southern Kordofan State Constitution. It is understood, however, that the Constitution has now been passed although an English translation is not yet available.

### ***Task 8.6 Provide miscellaneous legal drafting***

A program of necessary support of legislative drafting related to customary land tenure (including State Land Committees) will derive from the reports of the legal advisers as outlined in respect of Task 8.5 above.

### ***Timeline***

A timeline of activities proposed in this report, to January 31, 2007, is set out in the Table below entitled *Work Plan Timeline from November 2006 to January 2007*. This document was developed in consultation with the Project staff and includes activities beyond the scope of Legal activities envisaged under Task 8 of the Project Proposal. Narratives for other Activities (i.e. other than Task 8 Activities) were prepared by Project staff.

| USAID Sudan Customary Land Tenure Project             |        |  |  |   |        |   |   |   |        |   |   |   |        |   |   |   |                                       |  |   |
|---|--------|--|--|---|--------|---|---|---|--------|---|---|---|--------|---|---|---|---------------------------------------|--|---|
| Work Plan Timeline from November 2006 to January 2007 |        |  |  |   |        |   |   |   |        |   |   |   |        |   |   |   |                                       |  |   |
| (Sourced from Table B-1, ARD Project Proposal)        |        |  |  |   |        |   |   |   |        |   |   |   |        |   |   |   |                                       |  |   |
| Activity  | Period |  |  |   |        |   |   |   |        |   |   |   |        |   |   |   | Comment                               |  |   |
|   | Oct 06 |  |  |   | Nov 06 |   |   |   | Dec 06 |   |   |   | Jan 07 |   |   |   | (refer to Narrative for more details) |  |   |
| COMPONENT 1   |        |  |  |   |        |   |   |   |        |   |   |   |        |   |   |   |                                       |  |   |
| Task 1. Laying CLTP's Foundations                     |        |  |  |   |        |   |   |   |        |   |   |   |        |   |   |   |                                       |  |   |
| 1.1 Hold Consultative Meetings                        |        |  |  |   | X      | X | X | X |        |   |   |   |        |   |   |   |                                       |  | <ul style="list-style-type: none"><li>Organization of initial visits to Sudan (BN Demazin, and SK - Kadugli); Senior Staff visit to Khartoum</li></ul>  |
| 1.2 Establish CLTP Offices                            |        |  |  | X |        |   |   |   |        | X | X | X |        |   |   |   |                                       |  | <ul style="list-style-type: none"><li>Office Construction in SK (Jilud, and movement of office in Kauda); Establishment of Nairobi Office</li></ul>   |
| 1.3 Form Technical Advisory Groups                    |        |  |  |   |        | X |   |   |        |   |   |   |        |   |   |   |                                       |  | <ul style="list-style-type: none"><li>Exploratory visit to Khartoum</li></ul>   |
| 1.4 Produce training/PIE materials                    |        |  |  |   |        |   |   |   |        |   |   |   |        | X | X | X | X                                     |  | <ul style="list-style-type: none"><li>Subject to the passage of SLC Legislation (refer to Task 8.1), work with the BN to design a public education campaign that addresses the role of the SLC and how persons may use it</li><li>Produce materials for use in the field that explain the Project and concepts of customary land tenure</li></ul> |
| 1.5 Assess hiring and needs                           |        |  |  |   | X      | X |   |   |        |   |   |   |        |   |   |   |                                       |  | <ul style="list-style-type: none"><li>Hiring of Kenyan lawyers to support activities under Task 8.</li></ul>  |

| <b>USAID Sudan Customary Land Tenure Project</b><br><b>Work Plan Timeline from November 2006 to January 2007</b><br><b>(Sourced from Table B-1, ARD Project Proposal)</b> |        |   |   |   |        |   |  |  |        |   |   |   |        |  |   |   |  |  |
|---|--------|---|---|---|--------|---|--|--|--------|---|---|---|--------|--|---|---|--|--|
| Activity  | Period |   |   |   |        |   |  |  |        |   |   |   |        |  |   |   | Comment<br>(refer to Narrative for more details)   |  |
|   | Oct 06 |   |   |   | Nov 06 |   |  |  | Dec 06 |   |   |   | Jan 07 |  |   |   |  |  |
| 1.6 Hold CLTP short courses for Trainers/GOS  |        |   |   |   |        |   |  |  |        |   |   |   |        |  |   |   | No activity planned for this Work Plan period  |  |
| 1.7 Draft Technical Implementation Plan   |        |   |   |   |        |   |  |  |        |   |   |   |        |  |   |   | No activity planned for this Work Plan period  |  |
|   |        |   |   |   |        |   |  |  |        |   |   |   |        |  |   |   | No activity planned for this Work Plan period  |  |
| <b>Task 2 Mobilizing Beneficiary Communities</b>  |        |   |   |   |        |   |  |  |        |   |   |   |        |  |   |   | No activity planned for this Work Plan period  |  |
| 2.1 Mobilize County Stakeholder Groups  |        |   | X | X | X      | X |  |  | X      | X | X | X |        |  | X | X | <ul style="list-style-type: none"> <li>Awareness meetings starting in SK (Dilling, Lagawa, Kadugli)</li> </ul>         |  |
| 2.2 Identify Right Holder/Conflict Flashpoints  |        |   |   |   | X      | X |  |  |        |   |   |   |        |  |   |   | <ul style="list-style-type: none"> <li>Initiate inter-agency dialogue on farmer-pastoralist conflict issues</li> </ul> |  |
| 2.3 Hold CLTP Workshop for local leaders  |        |   |   |   |        |   |  |  |        |   |   |   |        |  | X |   | <ul style="list-style-type: none"> <li>Traditional Leaders Workshop in BN</li> </ul>                                   |  |
| 2.4 Mobilize community Institutions   |        |   |   |   |        |   |  |  |        |   |   |   |        |  |   |   | No activity planned for this Work Plan period  |  |
| 2.5 Train Boundary Teams  |        | X | X |   |        |   |  |  |        |   |   |   | X      |  |   | X | BN Training of Field Officers including GPS Training (completed) and follow-up training                                |  |



| <b>USAID Sudan Customary Land Tenure Project</b><br><b>Work Plan Timeline from November 2006 to January 2007</b><br><b>(Sourced from Table B-1, ARD Project Proposal)</b> |        |   |   |   |        |   |   |   |        |   |   |   |        |   |   |   |   |  |
|---|--------|---|---|---|--------|---|---|---|--------|---|---|---|--------|---|---|---|---|--|
| Activity  | Period |   |   |   |        |   |   |   |        |   |   |   |        |   |   |   | Comment<br>(refer to Narrative for more details)  |  |
|   | Oct 06 |   |   |   | Nov 06 |   |   |   | Dec 06 |   |   |   | Jan 07 |   |   |   |   |  |
| <b>Task 3 Adjudication of Rights, Defining Boundaries</b>   |        |   |   |   |        |   |   |   |        |   |   |   |        |   |   |   |   |  |
| 3.1 Hold first BC meeting   |        |   |   |   |        |   |   |   |        |   |   |   |        |   |   |   | No activity planned for this Work Plan period   |  |
| 3.2 Gather information and walk boundaries  |        |   |   |   |        |   |   |   |        |   |   |   |        |   |   |   | No activity planned for this Work Plan period   |  |
| 3.3 Develop provisional record  |        |   |   |   |        |   |   |   |        |   |   |   |        |   |   |   | No activity planned for this Work Plan period   |  |
| 3.4 Facilitate inter-CLA Agreements   |        |   |   |   |        |   |   |   |        |   |   |   |        |   |   |   | No activity planned for this Work Plan period   |  |
| 3.5 Hold Community Meetings   | X      | X | X | X | X      | X | X | X | X      | X | X | X |        |   |   |   | Boundary Agreement Meetings for SK (Rashad County)  |  |
| <b>Task 4 Validating Rights, Mapping Boundaries</b>   |        |   |   |   |        |   |   |   |        |   |   |   |        |   |   |   | No activity planned for this Work Plan period   |  |
| 4.1 Validate land boundaries  |        | X | X | X | X      | X | X | X |        |   |   |   |        |   |   |   | Demarcation activities for BN (Jabus, Kurmuk, Akeli, Kern Kern and Payam) and SK (Rashad)   |  |
| 4.2 Map the boundary with GPS descriptions  |        |   |   |   | X      | X | X | X | X      | X | X | X | X      | X | X | X | Implementation of Recommendations of GIS Report (including coordination with mapping agencies and establishment of new mapping relationships) |  |

| USAID Sudan Customary Land Tenure Project             |        |  |  |  |        |   |  |  |        |  |  |  |        |  |  |  |
|---|--------|--|--|--|--------|---|--|--|--------|--|--|--|--------|--|--|--|
| Work Plan Timeline from November 2006 to January 2007 |        |  |  |  |        |   |  |  |        |  |  |  |        |  |  |  |
| (Sourced from Table B-1, ARD Project Proposal)        |        |  |  |  |        |   |  |  |        |  |  |  |        |  |  |  |
| Activity  | Period |  |  |  |        |   |  |  |        |  |  |  |        |  | Comment<br>(refer to Narrative for more details) |  |
|   | Oct 06 |  |  |  | Nov 06 |   |  |  | Dec 06 |  |  |  | Jan 07 |  |  |  |
| 4.3 Create boundary and cadastre maps                 |        |  |  |  | X      | X |  |  |        |  |  |  |        |  |  | To any extent possible, large size maps of those Bomas in Blue Nile with complete demarcated boundaries will perhaps be produced, laminated and available for public inspection locally. |
| 4.4 Undertake provisional registration of CLAs        |        |  |  |  |        |   |  |  |        |  |  |  |        |  |  | No activity planned for this Work Plan period  |
| Task 5 Establishing Local Authority/Institutions      |        |  |  |  |        |   |  |  |        |  |  |  |        |  |  |  |
| 5.1 Elect Community Land Council                      |        |  |  |  |        |   |  |  |        |  |  |  |        |  |  | No activity planned for this Work Plan period  |
| 5.2 Hold Meeting on CLC responsibilities              |        |  |  |  |        |   |  |  |        |  |  |  |        |  |  | No activity planned for this Work Plan period  |
| 5.3 Hold CLTP Workshops on land use planning          |        |  |  |  |        |   |  |  |        |  |  |  |        |  |  | No activity planned for this Work Plan period  |
| 5.4 Garner community endorsement                      |        |  |  |  |        |   |  |  |        |  |  |  |        |  |  | No activity planned for this Work Plan period  |
| 5.5 Completion of CLAs under CLSP Pilots              |        |  |  |  |        |   |  |  |        |  |  |  |        |  |  | No activity planned for this Work Plan period  |

| <b>USAID Sudan Customary Land Tenure Project</b><br><b>Work Plan Timeline from November 2006 to January 2007</b><br><b>(Sourced from Table B-1, ARD Project Proposal)</b> |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  |  |  |
|---|--------|--|--|--|--------|--|--|--|--------|--|--|--|--------|--|--|--|--|--|
| Activity  | Period |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | Comment<br>(refer to Narrative for more details)   |  |
|   | Oct 06 |  |  |  | Nov 06 |  |  |  | Dec 06 |  |  |  | Jan 07 |  |  |  |  |  |
| <b>Task 6 Registering Community Land Areas</b>  |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | No activity planned for this Work Plan period  |  |
| 6.1 Reproduce the Community Land Action Plan  |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | No activity planned for this Work Plan period  |  |
| 6.2 Record the Community Land Action Plan   |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | No activity planned for this Work Plan period  |  |
| <b>Task 7 Establishing County Land Administration</b>   |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  |  |  |
| 7.1 Establish CLO   |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | No activity planned for this Work Plan period  |  |
| 7.2 Interface between the SLC and CLC   |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | No activity planned for this Work Plan period  |  |
| 7.3 Coordinate and mediate  |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | No activity planned for this Work Plan period  |  |
| <b>COMPONENT 2</b>  |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  |  |  |
| <b>Task 8 Strengthening Land Policy/Law</b>   |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  |  |  |
| 8.1 Create and provide for  |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | <ul style="list-style-type: none"> <li>Subject to passage of SLC Legislation, develop PIE</li> </ul> |  |

| <b>USAID Sudan Customary Land Tenure Project</b><br><b>Work Plan Timeline from November 2006 to January 2007</b><br><b>(Sourced from Table B-1, ARD Project Proposal)</b> |        |  |  |   |        |   |  |   |        |  |  |  |        |   |   |   |   |  |
|---|--------|--|--|---|--------|---|--|---|--------|--|--|--|--------|---|---|---|---|--|
| Activity  | Period |  |  |   |        |   |  |   |        |  |  |  |        |   |   |   | Comment<br>(refer to Narrative for more details)  |  |
|   | Oct 06 |  |  |   | Nov 06 |   |  |   | Dec 06 |  |  |  | Jan 07 |   |   |   |   |  |
| support for SLCs  |        |  |  |   |        |   |  |   |        |  |  |  |        |   |   |   | to support SLC process (see Task 1.4)   |  |
| 8.2 Develop a Legal Strategy Plan   |        |  |  | X | X      | X |  |   |        |  |  |  |        |   | X | X | <ul style="list-style-type: none"> <li>3 month plan to January 2007 (ARD) (Oct week 4 – Nov week 1)</li> <li>Further legal review and planning session for 6 months ending July 2007 (RDI) (Jan week 3 – Jan week 4)</li> </ul>   |  |
| 8.3 Support acceptance of rule of law   |        |  |  |   |        |   |  |   |        |  |  |  |        |   |   |   |   |  |
| 8.4 Strengthen SLC, TAG and civil authority   |        |  |  |   |        |   |  |   |        |  |  |  |        |   |   |   | <ul style="list-style-type: none"> <li>Assessment of Institutional capacity to operate SLC and TAG (including an assessment of the likely operating costs of the SLC) (Jan week 3 to Jan week 4)</li> </ul>   |  |
| 8.5 Strengthen customary tenure   |        |  |  | X | X      | X |  | X | X      |  |  |  | X      | X | X | X | <ul style="list-style-type: none"> <li>Review draft legislation and provide recommendations for facilitating legislative development (October week 4 to November week 2)</li> <li>Design a strategy that supports public comment on draft legislation in terms of customary land tenure (BN and SK) (Jan week 3 to Jan week 4)</li> <li>Assess the current situation with the SK Constitutional draft and provide support on the development of protections for customary land</li> </ul> |  |

| <b>USAID Sudan Customary Land Tenure Project</b><br><b>Work Plan Timeline from November 2006 to January 2007</b><br><b>(Sourced from Table B-1, ARD Project Proposal)</b> |        |  |  |  |        |   |   |  |        |  |  |  |        |  |  |  |   |  |
|---|--------|--|--|--|--------|---|---|--|--------|--|--|--|--------|--|--|--|---|--|
| Activity  | Period |  |  |  |        |   |   |  |        |  |  |  |        |  |  |  | Comment<br>(refer to Narrative for more details)  |  |
|   | Oct 06 |  |  |  | Nov 06 |   |   |  | Dec 06 |  |  |  | Jan 07 |  |  |  |   |  |
|   |        |  |  |  |        |   |   |  |        |  |  |  |        |  |  |  | tenure with the Constitution (Jan week 1 to Jan week 4)<br><ul style="list-style-type: none"> <li>BN MP Briefing on Customary Land Tenure issues in the context of draft legislation (P McAuslan) (Nov week 4 – Dec week 1)</li> <li>Assessment of alternative or additional legislation that will be required in the area of land administration supporting customary land tenure (RDI) (Jan week 3 – Jan week 4)</li> </ul> |  |
| 8.6 Provide miscellaneous legal drafting  |        |  |  |  |        |   |   |  |        |  |  |  |        |  |  |  | <ul style="list-style-type: none"> <li>Plan for legislative development and support deriving from McAuslan and RDI inputs in Task 8.5 (Jan week 3 – Jan week 4)</li> </ul>  |  |
| 8.7 Undertake land policy studies   |        |  |  |  |        |   |   |  |        |  |  |  |        |  |  |  | <ul style="list-style-type: none"> <li>Gum Arabic issue as a source of conflict for targeted research (NOTE: NOT BEFORE JAN 07)</li> <li>Assessment of farmer/pastoralist conflict issues for the development of policy responses (NOTE: NOT BEFORE JAN 07)</li> </ul>  |  |
| <b>Task 9 Developing Mechanisms for Conflict Mediation</b>  |        |  |  |  |        |   |   |  |        |  |  |  |        |  |  |  |   |  |
| 9.1 Undertake tenure/conflict   |        |  |  |  | X      | X | X |  |        |  |  |  |        |  |  |  | <ul style="list-style-type: none"> <li>Assessment of conflict mitigation strategies being</li> </ul>  |  |

| <b>USAID Sudan Customary Land Tenure Project</b><br><b>Work Plan Timeline from November 2006 to January 2007</b><br><b>(Sourced from Table B-1, ARD Project Proposal)</b> |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  |   |  |
|---|--------|--|--|--|--------|--|--|--|--------|--|--|--|--------|--|--|--|---|--|
| Activity  | Period |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | Comment<br>(refer to Narrative for more details)                                    |  |
|   | Oct 06 |  |  |  | Nov 06 |  |  |  | Dec 06 |  |  |  | Jan 07 |  |  |  |   |  |
| assessments   |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | employed by other donor assisted projects   |  |
| 9.2 Create ancillary policy reforms   |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | No activity planned for this Work Plan period                                       |  |
| 9.3 Design conflict resolution procedures   |        |  |  |  |        |  |  |  | X      |  |  |  |        |  |  |  | Conflict mitigation training (SEE NOTES AT THE END OF THIS TABLE FOR CLARIFICATION) |  |
| 9.4 Devolve dispute resolution to CLCs  |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | No activity planned for this Work Plan period                                       |  |
| <b>Task 10 Facilitating Registration of CLAs</b>  |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  |   |  |
| 10.1 Compile and assess comparative law   |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | No activity planned for this Work Plan period                                       |  |
| 10.2 Optimize CLTP Formalization Practice   |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | No activity planned for this Work Plan period                                       |  |
| <b>MONITORING AND EVALUATION</b>  |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  |   |  |
| Baseline study/assessment   |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | NOTE: BASELINE STUDIES NEED TO BE DESIGNED AND UNDERTAKEN                           |  |

| <b>USAID Sudan Customary Land Tenure Project</b><br><b>Work Plan Timeline from November 2006 to January 2007</b><br><b>(Sourced from Table B-1, ARD Project Proposal)</b> |  |               |  |  |   |               |   |   |  |               |  |  |  |               |   |  |  |   |
|---|--|---------------|--|--|---|---------------|---|---|--|---------------|--|--|--|---------------|---|--|--|---|
| <b>Activity</b>   |  | <b>Period</b> |  |  |   |               |   |   |  |               |  |  |  |               |   | <b>Comment</b><br><b>(refer to Narrative for more details)</b> |  |   |
|   |  | <b>Oct 06</b> |  |  |   | <b>Nov 06</b> |   |   |  | <b>Dec 06</b> |  |  |  | <b>Jan 07</b> |   |  |  |   |
| Annual Assessment   |  |               |  |  |   |               |   |   |  |               |  |  |  |               |   |  |  | No activity planned for this Work Plan period   |
| Assessment Panel Established  |  |               |  |  |   |               |   |   |  |               |  |  |  |               |   |  |  | No activity planned for this Work Plan period   |
| GENERAL PROJECT ADMINISTRATION  |  |               |  |  |   |               |   |   |  |               |  |  |  |               |   |  |  |   |
| Office Staff Training   |  |               |  |  | X | X             | X |   |  |               |  |  |  |               |   |  |  | <ul style="list-style-type: none"> <li>Computer and office administration training (BN and SK)</li> </ul>   |
| Formal Administration Tasks   |  |               |  |  |   | X             | X |   |  |               |  |  |  |               |   |  |  | <ul style="list-style-type: none"> <li>Obtain Nairobi Office Registration/accreditation</li> </ul>  |
| Planning  |  |               |  |  |   | X             | X | X |  |               |  |  |  |               | X | X  |  | <ul style="list-style-type: none"> <li>Development of Field Transport Plan including process for travel to BN and SK for expatriate staff</li> <li>Develop 6-month Project Work Plan</li> </ul> |



## 5 SELECTED REFERENCES

Alden Wily, E *Suggestions for Land Articles in the Interim Constitution* (unpublished paper For USAID/USDA funded Sudan Task Force, dated August 19 2004)

Gordon, CN *Recent Development in the Land Law of the Sudan: A legislative Analysis* Journal of African Law 30 [1986] 2 JAL 143

De Wit P, *Study On Arbitration, Mediation and Conciliation of Land and Property Disputes* Undated Draft

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Jok, Justice Aleu Akechak, et al *A Study of Customary Law in Contemporary Southern Sudan* (March 2004)

McAuslan, P *A Commentary on the Land Commission Act for South Kordofan and Blue Nile States* (undated)

McAuslan, P *Commentary on Blue Nile/Southern Kordofan Land Bill 2006* (undated)

McAuslan, P *Land Commission Act for South Kordofan and Blue Nile States* (undated draft)

McAuslan, P *High Theory, Low Practice: Where's the Social Justice* (unpublished paper presented at the Human Rights and Social Justice Conference 29 – 31 March 2006)

UNDG *Sudan Joint Assessment Mission Report, Volume I Synthesis*, 18 March 2005





## 6 ANNEXURES

|   |                                     |
|---|-------------------------------------|
| <b>6 ANNEXURES.....</b>   | <b>ERROR! BOOKMARK NOT DEFINED.</b> |
| 6.1 Scope of Work.....  | <b>Error! Bookmark not defined.</b> |
| 6.2 Relevant Land Rights-Related Legislation in Sudan (including Blue Nile State and Southern Kordofan State) ..... | <b>Error! Bookmark not defined.</b> |
| 6.3 Draft State Land Commission Law .....   | <b>Error! Bookmark not defined.</b> |
| 6.4 Draft Land Law (Blue Nile) .....  | <b>Error! Bookmark not defined.</b> |
| 6.5 Draft Program of Activities to Promote Equitable Legal and Institutional Mechanisms .....                       | <b>Error! Bookmark not defined.</b> |
| 6.6 Scopes of Work for Proposed Activities .....  | <b>Error! Bookmark not defined.</b> |
| 6.7 Email from Consultant to the UN FAO Concerning NLC Status.....  | <b>Error! Bookmark not defined.</b> |
| 6.8 Proposed Parliamentary Questionnaire .....  | <b>Error! Bookmark not defined.</b> |
| 6.9 Legal Opinion on the Status of SLCs by Professor Patrick McAuslan .....   | <b>Error! Bookmark not defined.</b> |

## **6.1 Scope of Work**

### **Legal Advisor (Short-term TA)**

Approved legislation that reflects “good practice” in customary land tenure is crucial for meeting the objectives of CLTP. A constitution has been passed in Blue Nile and land legislation is before parliament. Although CLSP provided legal advice, current draft legislation is poor in establishing customary rights and institutional mechanisms, as is the ability of sympathetic parliamentarians to argue a technical case for improvements. In Southern Kordofan, constitutional progress is slow. While this represents an opportunity for proactive input from CLTP, lengthy delays mean less time to establish the civil mechanisms to recognize and register the community boundaries facilitated by CLSP and CLTP.

### **Objectives**

- a) Assess the effectiveness of existing/proposed state constitutions and land legislation for protection and administration of customary land law, in the context of the Comprehensive Peace Agreements (CPA) and its protocol for Southern Kordofan and Blue Nile.
- b) Propose a CLTP program to assist each state government in developing legislation conducive to protection of customary land rights.

### **Tasks**

- a) Review and analyze available constitutions (drafts or approved versions) for land provisions, and draft land legislation (where it is available) under discussion in the two states. Reference to the CPA, and to the national constitution of Sudan, and of South Sudan, and a model constitution for states in South Sudan will inform this analysis.
- b) Assess the capacity of parliamentarians in the two states to recognize, debate, amend and defend legislative proposals to protect customary rights to land ownership and use rights.
- c) On the basis of a) and b), propose a program of legal and legislative activities for CLSP that will promote equitable legal and institutional mechanisms for registration and administration of customary land claims and documentation. This program will include TA needs (CLTP staff and short-term), public information and education and targeted education and training for key interest groups.
- d) Provide guidelines for minimal legal provisions that protect customary land rights in the context of Southern Kordofan and Blue Nile States, such that these guidelines can be used as part of an advocacy program for customary rights promoted by CLTP.
- e) If available and agreeable to him, consultations with the CLSP legal advisor may be arranged at a suitable location.

### **Deliverable**

A comprehensive report addressing all tasks listed above, linked to analytical findings and recommendations for CLTP implementation to facilitate appropriate legal mechanisms for customary land rights.

**Level of Effort**      25 days during August – September

## **6.2 Relevant Land Rights-Related Legislation in Sudan (including Blue Nile State and Southern Kordofan State)**

### **Comprehensive Peace Agreement**

(Naivasha Protocol)

#### **Article 9. State Land Commission:**

9.1. The regulation of the land tenure, usage and exercise of rights in land shall be a concurrent competency exercised by the National and State Governments.

9.2. Rights in land owned by the National Government within the State shall be exercised through the appropriate or designated level of government.

9.3. There shall be established a State Land Commission in the State of Southern Kordofan/Nuba Mountains and Blue Nile, respectively.

9.4. The State Land Commission shall be composed of persons from the State concerned.

9.5. The State Land Commission shall exercise all the powers of the National Land Commission at the State level.

9.6. The State Land Commission shall be competent to review existing land leases and contracts and examine the criteria for the present land allocations and recommend to the State authority the introduction of such necessary changes, including restitution of land rights or compensation.

9.7. The National Land Commission and the State Land Commission shall cooperate and coordinate their activities so as to use their resources efficiently. Without limiting the matters of coordination, the National Land Commission and the State Land Commission may agree as follows:-

9.7.1. To exchange information and decisions of each Commission;

9.7.2. That certain functions of the National Land Commission, including collection of data and research, may be carried out through the State Land Commission; and

9.7.3. On the way in which any conflict between the findings or recommendations of each Commission may be resolved.

9.8. In case of conflict between the findings and recommendations of the National Land Commission and the State Land Commission which cannot be resolved by agreement, the two Commissions shall reconcile their positions. Failure to reconcile, the matter shall be referred to the Constitutional Court for adjudication.

### **Wealth-Sharing Protocol**

#### **Article 2.0 OWNERSHIP OF LAND AND NATURAL RESOURCES**

2.1 Without prejudice to the position of the Parties with respect to ownership of land and subterranean natural resources, including in Southern Sudan, this Agreement is not intended to address the ownership of those resources. The Parties agree to establish a process to resolve this issue.

- 2.2. The Parties agree that the regulation, management, and the process for the sharing of wealth from subterranean natural resources are addressed below.
- 2.3. The Parties record that the regulation of land tenure, usage and exercise of rights in land is to be a concurrent competency exercised at the appropriate levels of government.
- 2.4. Rights in land owned by the Government of Sudan shall be exercised through the appropriate or designated levels of Government.
- 2.5. The Parties agree that a process be instituted to progressively develop and amend the relevant laws to incorporate customary laws and practices, local heritage and international trends and practices.
- 2.6 Without prejudice to the jurisdiction of courts, there shall be established a National Land Commission that shall have the following functions:
- 2.6.1 Arbitrate between willing contending Parties on claims over land, and sort out such claims.
  - 2.6.2 The party or group making claims in respect of land may make a claim against the relevant government and/or other Parties interested in the land.
  - 2.6.3 The National Land Commission may at its discretion entertain such claims.
  - 2.6.4 The Parties to the arbitration shall be bound by the decision of the National Land Commission on mutual consent and upon registration of the award in a court of law.
  - 2.6.5 The National Land Commission shall apply the law applicable in the locality where the land is situated or such other law as the Parties to the arbitration agree, including principles of equity.
  - 2.6.6 Accept references on request from the relevant government, or in the process of resolving claims, and make recommendations to the appropriate levels of government concerning:
    - 2.6.6.1 Land reform policies;
    - 2.6.6.2 Recognition of customary land rights and/or law.
  - 2.6.7 Assess appropriate land compensation, which need not be limited to monetary compensation, for applicants in the course of arbitration or in the course of a reference from a court.
  - 2.6.8 Advise different levels of government on how to co-ordinate policies on national projects.
  - 2.6.9 Study and record land use practices in areas where natural resource exploitation occurs.
  - 2.6.10 The National Land Commission shall be representative and independent. The composition of the membership and terms of appointment of the National Land Commission shall be set by the legislation constituting it. The Chairperson of the National Land Commission shall be appointed by the Presidency.

2.6.11 The National Land Commission may conduct hearings and formulate its own rules of procedure.

2.6.12 The National Land Commission will have its budget approved by the Presidency and will be accountable to the Presidency for the due performance of its functions.

2.7 In accordance with this Agreement and without prejudice to the jurisdiction of courts, there shall be established a Southern Sudan Land Commission which shall have the following functions:

2.7.1 Arbitrate between willing contending Parties on claims over land, and sort out such claims.

2.7.2 The party or group making claims in respect of land may make a claim against the relevant government and/or other Parties interested in the land.

2.7.3 The Southern Sudan Land Commission may entertain such claims at its discretion.

2.7.4 The Parties to the arbitration shall be bound by the Southern Sudan Land Commission's decision on mutual consent and upon registration of the award in a court of law.

2.7.5 The Southern Sudan Land Commission shall apply the law applicable in the locality where the land is situated or such other law as the Parties to the arbitration agree, including principles of equity.

2.7.6 Accept references on request from the relevant government, or in the process of resolving claims, and make recommendations to the appropriate levels of government concerning:

2.7.6.1 Land reform policies;

2.7.6.2 Recognition of customary land rights and/or law.

2.7.7 Assess appropriate land compensation, which need not be limited to monetary compensation, for applicants in the course of arbitration or in the course of a reference from a court.

2.7.8 Advise different levels of government on how to co-ordinate policies on GOSS projects.

2.7.9 Study and record land use practices in areas where natural resource exploitation occurs.

2.7.10 The Southern Sudan Land Commission shall be representative and independent. The composition of the membership and terms of appointment of the Southern Sudan Land Commission shall be set by the legislation constituting it. The Chairperson of the Southern Sudan Land Commission shall be appointed by the President of the Government of Southern Sudan.

2.7.11 The Southern Sudan Land Commission may conduct hearings and formulate its own rules of procedure.

2.7.12 The Southern Sudan Land Commission shall have its budget approved by the Government of Southern Sudan and shall be accountable to

the President of the Government of Southern Sudan for the due performance of its functions.

2.8 The National Land Commission and the Southern Sudan Land Commission shall co-operate and co-ordinate their activities so as to use their resources efficiently. Without limiting the matters of coordination, the National Land Commission and the Southern Sudan Land Commission may agree:

- a) to exchange information and decisions of each Commission;
- b) that certain functions of the National Land Commission, including collection of data and research, may be carried out through the Southern Sudan Land Commission;
- c) on the way in which any conflict between the findings or recommendations of each Commission may be resolved.

2.9 In the case of conflict between the findings or recommendations of the National Land Commission and the Southern Sudan Land Commission, which cannot be resolved by agreement, the two Commissions shall reconcile their positions. Failure to reconcile, the matter shall be referred to the Constitutional Court.

### **Interim National Constitution (Sudan)**

#### **Supremacy of the Interim National Constitution**

3. This Interim National Constitution shall be the supreme law of the land. The Interim Constitution of Southern Sudan, state constitutions and all laws shall comply with it;

#### **National Land Commission**

187. (1) Without prejudice to the jurisdiction of the courts, there shall be established a National Land Commission that shall have the following functions:

- (a) Arbitrate between willing contending parties on claims over land, and sort out such claims;
- (b) Entertain claims, at its discretion, in respect of land be they against the relevant government and/or other parties interested in the land. The Parties to the arbitration shall be bound by the decision of the Commission on the basis of mutual consent and upon registration of the award in a court of law;
- (c) Enforce the law applicable to the locality where the land is situated or such other law as the parties to the arbitration agree, including principles of equity;
- (d) Accept references on request from the relevant government, or in the process of resolving claims, and make recommendations to the appropriate level of government concerning:
  - (i) land reform policies,
  - (ii) recognition of customary land rights or law,

(e) Assess appropriate land compensation, which need not be limited to monetary compensation, for applicants in the course of arbitration or in the course of a reference from a court;

(f) Advise different levels of government on how to co-ordinate policies on national projects affecting land or land rights;

(g) Study and record land use practices in areas where natural resource exploitation occurs;

(h) Conduct hearings and formulate its own rules of procedure;

(2) The National Land Commission shall be representative and independent. The composition of the membership and terms of appointment of the National Land Commission shall be set by the legislation constituting it. The Chairperson of the National Land Commission shall be appointed by the President of the Republic after consultation within the Institution of the Presidency;

(3) The National Land Commission shall be accountable to the Institution of the Presidency for the due performance of its functions which shall approve the budget of the Commission;

#### **SCHEDULE F: Resolution of Conflicts in Respect of Concurrent Powers:**

If there is a contradiction between the provisions of Southern Sudan law and/or a State law and/or a National law, on the matters referred in Schedule D, the law of the level of government which shall prevail shall be that which most effectively deals with the subject matter of the law, having regard to:-

1. The need to recognize the sovereignty of the Nation while accommodating the autonomy of Southern Sudan or of the States;
2. Whether there is a need for National or Southern Sudan norms and standards;
3. The principle of subsidiarity;
4. The need to promote the welfare of the people and to protect each person's human rights and fundamental freedoms.

#### **Blue Nile State**

##### **Constitution**

Article 94(1) The law shall organize acquisition of lands by the State and their occupation as well as implementation of rights for it.

(2) The State shall take over implementation of the rights which are given to it by the Government of Sudan as established by Article 186(2) of the Interim National Constitution of 2005.

(3) The State shall begin the gradual enforcement and arrangements to develop laws so as to contain a connection from the lands to incorporate customary laws and practices, local heritage and international trends and practices;



### **6.3 Draft State Land Commission Law**

#### **Draft State Land Commission Law (with annotations)**

Draft 0: 12 Feb 2006

NB: it will be necessary to produce two separate translations of this revised Act; one with the words 'Southern Kordofan' in the draft and one with the words 'Blue Nile' in the draft. This will only involve about 10 to 12 changes in the wording.

#### **Southern Kordofan State Land Commission Act 2006**

##### **Article            Title**

##### **CHAPTER I**

##### **PRELIMINARY PROVISIONS**

- 1.            Name of the Act**
- 2.            Commencement**
- 3.            Interpretation**

##### **CHAPTER II**

##### **THE SOUTHERN KORDOFAN STATE LAND COMMISSION**

- 4.            Establishment of the Commission**
- 5.            Independence and impartiality of Commission**
- 6.            Nomination Committee (*this is new*)**
- 7.            Functions of Nomination Committee (*this is new*)**
- 8.            Composition of the Commission**
- 9.            Objectives of the Commission**
- 10.          Functions of the Commission**
- 11.          Code of conduct for Commission members and employees**
- 12.          Conflicts of interest**
- 13.          Appointment of the Director and other employees**
- 14.          Appointment of persons and organisations to assist the work of the Commission**

### **CHAPTER III**

#### **POWERS AND PROCEEDINGS OF COMMISSION**

- 15. General powers**
- 16. Power to obtain information, documents and evidence**
- 17. Delegation of powers and performance of functions**
- 18. Establishment of divisions**
- 19. Consultation**
- 20. Public Register**
- 21. Confidentiality**
- 22. Funds of the Commission**
- 23. Annual estimates and expenditure**
- 24. Accounts and Audit**
- 25. Annual report of the Commission**

### **CHAPTER IV**

#### **CLAIMS FOR RESTITUTION**

- 26. Entitlement to restitution**
- 27 Submitting a claim and representation of community**
- 28 Procedure after submission of claim**
- 29. Restriction on activities after submission of claim**
- 30 Withdrawal or amendment of notice of claim**
- 31 Commission's powers of investigation**
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- 34 Factors to be taken into account by Commission and Court**
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### **CHAPTER V**

#### **SOUTHERN KORDOFAN STATE LAND CLAIMS COURT**

- 36. Southern Kordofan State Land Claims Court**
- 37. Judges of the Court**
- 38. Qualifications of judges of Court**
- 39 Holding of office**

- 40            **Remuneration and conditions of employment of judges**
- 41            **Assessors**
- 42            **Appointment of officers of Court**
- 43            **Hearings of Court**
- 44            **Admissibility of evidence**
- 45            **Intervention to proceedings before Court, right to appear and legal representation**
- 46            **Court orders**
- 47            **Mediation**
- 48.           **Review of decisions of Commission**
- 49.           **Scope and execution of process of Court**
- 50.           **Decisions of Court a matter of public record**
- 51.           **Appeals from the Court**
- 52.           **Rules governing procedures**
- 53.           **Finances and accountability**

## **CHAPTER VI**

### **MISCELLANEOUS PROVISIONS**

- 54.           **Offences**
- 55.           **Financial aid**
- 56.           **Registers of land open to public inspection**
- 57.           **Regulations**
- 58.           **Proceedings of Commission not to be invalidated by reason of irregularity**
- 59.           **Limitation of liability**
- 60.           **Registration of land in name of claimant**
- 61.           **This Act to override other laws**

## **FIRST SCHEDULE**

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### **THE COMMISSION**

## **SECOND SCHEDULE**

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### **THE NOMINATION COMMITTEE**

## STATE LAND COMMISSION ACT 20..

An Act to make provision, in pursuance of article 9 of the Protocol and of ...of the Southern Kordofan State Constitution, for the establishment, functions, powers and privileges and other matters of the Southern Kordofan State Land Commission and related matters

### CHAPTER I PRELIMINARY PROVISIONS

#### **Name of the Act**

1. This Act is called and may be cited as the Land Commission Act 2005

#### **Commencement**

2. (1) This Act shall come into operation on such date as the Governor may by notice published in the Gazette appoint.  
(2) The Governor may appoint different dates for the commencement of different Parts or provisions of the Act.

#### **Interpretation**

3. (1) In this Act unless the context requires otherwise –

“Agreement” means the Comprehensive Peace Agreement of January 2005;

“annual report” means the annual report of the Commission referred to in article...;

*“Chairman” means the Chairman of the Commission and includes the Deputy Chairman and any other person performing the functions of the Chairman;*

*“Chief Judge” means the Chief Judge of the State Land Claims Court;*

*“claim” means claim over land;*

*“claim over land” means any claim for restitution of land or a right in or over land or any other claim connected with land or a claim for compensation with respect to land or any right in land arising out of or connected with any action taken by government or by any person allocated or granted land deemed to have been registered as the property of the government within the state or the State on or after the 6<sup>th</sup> day of April 1970 lodged with the Commission in terms of this Act;*

“claimant” means any person who has lodged a claim;

“Commission” means the Southern Kordofan State Land Commission;

“Committee” means the Nomination Committee;

“community” means any group of persons whose rights in land are derived from shared rules whether customary or otherwise determining access to land held in common by such group, and includes part of any such group;

“Constitution” means the Interim National Constitution of the Republic of Sudan 2005;

“Court” means the Southern Kordofan State Land Claims Court;

“Deputy Chairman” means the Deputy Chairman of the Commission;

“Deputy Chief Judge” means the Deputy Chief Judge of the Court appointed under article 37;

“Deputy Director of Land Claims” means a Deputy Director of Land Claims appointed under article 10; (*this is new*)

“Deputy Governor” means the Deputy Governor of the state;

“direct descendant” of a person includes the spouse or spouses or partner or partners in a customary union of such person whether or not such customary union has been registered;

“Director” means the Director of Land Claims appointed under article 10 and includes any Deputy Director to whom the Director has delegated any of the functions allocated to the Director by this Act; (*this is new and please note that the word “Director” is substituted for the word “Commissioner” throughout the Act*)

“equitable redress” means any equitable redress, other than the restoration of a right in land, arising from the dispossession of a right in land after 6 April 1970 including –

- (a) the granting of an appropriate right in state land;
- (b) the payment of compensation;

“*Gazette*” means the *Gazette* of the state of Southern Kordofan;

“Government” means the Government of Sudan;

“government” means the government of the state;

“Governor” means the Governor of the state of Southern Kordofan;

“investigation” means an investigation instituted by the Commission pursuant to article 31;

“interest in land” means an interest in a usufruct, or a lease and includes the rights and obligations that arise under an agreement to grant a usufruct or a lease and a lease includes a sub-lease and a usufruct include a sub-usufruct;

“land” means the surface of the earth and the earth below the surface and all substances forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water and includes benefits to arise out of land, an undivided share in land, any interest in land, whether individual or communal capable of being registered, and a right to cultivate a determinate or determinable area of land although its situation may vary from year to year;

“Land Act” means the Land Act 20.. and any amendments made to that Act;

“land management” includes estate agency, land administration, land surveying, land valuation, land use planning and town and country planning;

- “local authority” means the customary or elected authority at the level of a Boma, a Payam and a County;
- “member” in connection with the Commission, means any member of the Commission and includes the Chairman and the Deputy Chairman; *(partly new)*
- “member of the Committee” means the Chairman and the members of the Nomination Committee;
- “Minister” means the person within the state Council of Ministers for the time being responsible or answerable to the state legislature for the administration of justice within the state; for the Commission;
- “Minister of Justice” means the person within the state Council of Ministers for the time being responsible or answerable to the state legislature for the administration of justice within the state;
- “NCP” means the National Congress Party; *(this is new)*
- “Nomination Committee” means the Nomination Committee established under article 5; *(this is new)*
- “officer” means any member or employee of the Commission;
- “person” includes a natural person, a legal person, a community or part of a community; *(this is new)*
- “political organisation” means the NCP, the SPLM and any other organisation lawfully carrying out functions of a political nature similar to those carried out by the NCP and the SPLM;
- “prescribed” means prescribed by or under this Act;
- “Protocol” means the Protocol between the Government of Sudan and the Sudan Peoples’ Liberation Movement on the Resolution of Conflict in Southern Kordofan/Nuba Mountains and Southern Kordofan States dated the 26<sup>th</sup> day of May 2004;
- “Public Register” means the Public Register kept by the Commission under article 17;
- “restitution of a right in land” means –
- (a) the restoration of a right in land; or
  - (b) equitable redress
- “restoration of a right in land” means the return of a right in land or a portion of land of which a claimant was dispossessed after 6 April 1970;
- “right in land” means any right or interest in land whether registered or unregistered, and includes the interest of a sharecropper, a right or interest in land held under customary tenure, a right or interest in communally owned land held under any form of tenure and beneficial occupation for a continuous period of not less than 10 years prior to the dispossession in question;
- “Southern Kordofan State Land Commission” means the Southern Kordofan State Land Commission established under 4; *(this is new)*

“SPLM” means the Sudan Peoples’ Liberation Movement; (*this is new*)

“state” means the state of Southern Kordofan;

“state constitution” means the constitution of the state of Southern Kordofan;

“state Government” means the Government of the State of Southern Kordofan;

“state high court” means the highest court in the state with state-wide civil jurisdiction immediately below the state court of appeal and from which appeals lies direct to that state court of appeal;

“Southern Kordofan State Land Claims Court” means the Southern Kordofan State Land Claims Court established under article 36;

“State” means the Republic of Sudan;

“State land” means land of which the State is the trustee responsible for the control of land; (*this is new*)

“usufruct” means a real right of using and enjoying land the bare ownership of which belongs to another person and includes a usufruct created under and in accordance with customary law, the Shari’a or a statute.

(2) Any reference in this Act to the masculine denotes also reference to the feminine.

## CHAPTER II THE SOUTHERN KORDOFAN STATE LAND COMMISSION

### **Establishment of the Commission**

4. (1) There is hereby established a body to be known as the Southern Kordofan State Land Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of –

- (a) suing and being sued;
- (b) acquiring, holding and disposing of real and personal property;
- (c) exercising the powers and performing the functions conferred upon it by or under this Act;
- (d) entering into any contract or other transaction, and doing all such other acts and things which a body corporate may lawfully perform.

(3) The provisions of the First Schedule to this Act shall have effect as to procedures and functioning of the Commission.

### **Independence and impartiality of the Commission**

5. The Commission shall –
- (a) have and enjoy the same independence of the legislature and executive of the state and the State as do all judges and justices under the Constitution;
  - (b) have and enjoy complete independence from any pressure from any political organisation with respect to its investigation of, mediation on or recommendations on any claim;
  - (c) apply this Act diligently, impartially and without any interference from any political organisation or any official or member of any political organisation, or any official from the state government, or from the State;
  - (d) apply this Act with strict regard to the provisions of the Act and, with respect to the investigation, mediation or recommendation on any claim under the Act, to the evidence and information placed before it by the parties to the claim or by its officers in investigating the claim.

#### **Nomination Committee**

6. (1) There is hereby established a Nomination Committee which shall consist of five members, namely –
- (a) four persons appointed by the Minister, two nominated by the NCP or any successor body to the NCP and two nominated by the SPLM or any successor body to the SPLM;
  - (b) a chairman of the Committee who shall be a person without any affiliation to a political organisation chosen by agreement of the four persons referred to in (a) above but if those four persons cannot agree on a chairman, then the Governor acting after consulting with the Deputy Governor shall appoint the chairman.

(2) In proposing names of persons for appointment to the Nomination Committee, the NCP and SPLM shall strive to select persons with relevant knowledge, sound integrity and probity who do not have conflicts of interest.

#### **Functions of Nomination Committee**

7. (1) The function of the Committee shall be to nominate persons for appointment as the Chairman, the Deputy Chairman and members of the Commission.
- (2) Nominations by the Committee shall be in writing signed by at least two of the members of the Committee.



- (3) The Committee shall submit to the Governor for his consideration –
  - (a) three names of persons for appointment as Chairman, all of whom must be members of one of the two political organisations referred to in 5(1)(b) ;
  - (b) three names of persons for appointment as Deputy Chairman all of whom must be members of the other of the two political organisations referred to in 5 (1) (b); and
  - (c) eight names of persons for appointment as members of the Commission of whom at least two persons must be members of each of the two political organisations referred to in article 5(1) (b) and three persons must be persons with no membership of, or affiliations to or support for either of the two political organisations referred to in article 5 (1) (b).
- (4) The Committee may take such actions as are reasonably necessary to identify and attract the best candidates such as by advertising in the news media widely, circulating within and outside the Sudan.
- (5) The Committee shall have regard to the importance of ensuring that there is an appropriate gender balance in its nominations.
- (6) The provisions of the Second Schedule to this Act shall have effect as to procedures and functioning of the Committee.

#### **Composition of the Commission**

- 8. (1) The Governor shall appoint as –
  - (a) the Chairman of the Commission, one of the persons nominated by the Committee under article 7 (3) (a);
  - (b) the Deputy Chairman of the Commission, one of the persons nominated by the Committee under 7 (3) (b);
  - (c) the members of the Commission, five of the persons nominated by the Committee under 7 (3) (c) of which equal numbers of members must be selected from the NCP and the SPLM.
- (2) in proposing names of persons for appointment as Chairman, Deputy Chairman and members of the Commission, the Committee, and in selecting persons for appointment to those offices, the Governor shall each have regard to the

desirability of appointing persons who are knowledgeable about land matters in the state or have expertise in –

- (a) surveying and valuation;
- (b) Shari'a;
- (c) customary land tenure and law;
- (d) sociology or anthropology;
- (e) administration; and

are, in the opinion of the Committee and the Governor otherwise suitable to perform the functions and duties of a member competently and honestly.

(3) The Governor shall ensure that there is an appropriate gender balance in the composition of the Commission.

### **Objectives of the Commission**

9. The objectives of the Commission shall be to –

- (a) work towards the restitution of land or compensation in lieu to all those persons who have suffered from being –
  - (i) deprived of their land; or
  - (ii) removed from their land; or
  - (iii) prevented from occupying and using their communal lands; or
  - (iv) denied any or adequate compensation for any losses suffered as a consequence of any of the events referred to in (i), (ii) or (iii),as a result of the inequitable and wrongful application of the Unregistered Land Act 1970 and the Civil Transactions Act 1984 and any other laws affecting the customary rights of persons lawfully and as of right owning, occupying and using land in the State on or before the 6<sup>th</sup> day of April 1970;
- (b) bring about the peaceful, lasting and fair settlement of the conflicts about the ownership and use of land between the indigenous inhabitants of the State and persons from outside the State who have been allocated or granted land owned occupied and used by the indigenous inhabitants of the State by successive Governments any time after 6<sup>th</sup> day of April 1970;

*((c) has been removed NB*

- (c) prepare in a fully participative process studies, reports and recommendations on appropriate land policies for the state which have as their fundamental bases –

- (i) the full and equal recognition of customary land tenure and law alongside land tenure recognised under the Shari'a and statute law;
- (ii) equity;
- (iii) transparency;
- (iv) accountable, participative and efficient land management at all levels of government;
- (v) sustainable and planned development of land for agricultural purposes; and
- (vi) fair and open systems of dispute settlement.

### **Functions of the Commission**

**10.** (1) In order to be able to achieve the objectives specified in article 9, the functions of the Commission shall be to –

- (a) use its best endeavours to persuade persons in conflict over competing rights to land to refer their disputes to the Commission and accept the good offices of the Commission to assist them to resolve their disputes;
- (b) receive and acknowledge the receipt of all claims for restitution of rights in land;
- (c) take reasonable steps to ensure that claimants are assisted in the preparation and submission of claims over land;
- (d) ensure that priority is given to claims over land which affect a substantial number of persons or persons who have suffered substantial losses as a result of dispossession of land;
- (e) arbitrate, mediate and settle disputes between willing contending parties on claims over land;
- (f) entertain at its discretion claims over land be they against the relevant government and or other parties interested in the land;
- (g) apply the customary or other law applicable to the locality where the land, the subject of a claim over land is situated or such other law as the parties to the arbitration agree, including principles of equity;
- (h) accept references on request from the Government or the government, either separately from or in the process of resolving claims over land;
- (i) assess appropriate compensation, which need not be limited to monetary compensation, for claimants in the course of arbitration or in the course of a reference from a court;
- (j) review existing leases and usufructs of land and the criteria used for making allocations of land and advise the Minister on any changes that

should be made to the terms and conditions of any existing or future leases, usufructs and allocation of land;

- (k) make recommendations or give advice to the Minister regarding the most appropriate form of alternative relief, if any, for those claimants who do not qualify for restitution of rights in land under this Act;
  - (l) advise different levels of government exercising powers over land on how to co-ordinate policies on national and state projects affecting land or land rights within the state;
  - (m) study and record land use practices in areas where natural resource exploitation occurs;
  - (n) conduct hearings and inquiries into the merits of claims for restitution over land in such places in the state and at such times as will facilitate and enable claimants to appear in person to substantiate their claims
  - (o) at regular intervals, take appropriate steps to make inform all residents in the state of the work of the Commission, the rights of residents to submit claims for restitution of land and the manner in which claims over land may be submitted to the Commission;
  - (p) prepare or arrange for the preparation of codes of conduct, guidance and information connected to the activities of persons engaged in land management with a view to promoting and maintaining the conduct, ethics and integrity of such persons;
  - (q) liaise with the National Land Commission and other Land Commissions within Sudan for the purposes of co-operation and without prejudice to the generality of this provision such liaison shall concentrate on –
    - (i) exchanging information and decisions with other Land Commissions;
    - (ii) assisting certain functions of the National Land Commission, including collection of data and research, may be carried out in the State;
    - (iii) determining the way in which any conflict between the findings or recommendations of each Commission may be resolved;
  - (r) carry out any other functions which are in the public interest and are calculated to advance the realisation of the objectives of the Commission.
- (2) The Commission shall perform its functions in a manner that –
- (a) is open and objective;

- (b) is fair and reasonable; and
- (c) has due regard to economy and efficiency in all its activities.

### **Code of conduct for Commission members and employees**

**11.** (1) Within twelve months from the commencement of this Act, the Commission shall adopt a code of conduct prescribing standards of behaviour to be observed by the members and employees of the Commission in the performance of their duties.

- (2) Before finally adopting a code of conduct, the Commission shall –
  - (a) publish a draft code of conduct in such manner and form as will bring it to the attention of the residents of the state;
  - (b) provide facilities for persons to comment and make representations on the draft code of conduct;
  - (c) consider any such comments and representations that may be made on the draft code of conduct and if necessary and desirable revise the draft code of conduct in the light to those representations and comments.

(3) The Commission shall place a copy of its code of conduct in the Public Register and shall include with it an annual report on compliance with the code of conduct.

(4) The code of conduct adopted under this article shall be binding on the Commission, its members and employees.

(5) The code of conduct adopted under this article may be amended from time to time by the Commission and any such process amendment shall comply with the provisions of sub-article (2).

### **Conflicts of interest.**

**12.** (1) A member or employee of the Commission shall be considered to have a conflict of interest for the purposes of this Act if he or a member of his immediate family has or acquires any pecuniary or other interest that could conflict with the proper performance by that person of his duties or functions as a member or employee of the Commission.

(2) Where at any time a member of the Commission has a conflict of interest in relation to –

- (a) any matter before the Commission for investigation or determination;  
or
- (b) any matter the Commission could reasonably expect might come before it for investigation or determination,

the member shall immediately disclose the conflict of interest to the other members of the Commission and refrain from taking part, or any further part in the investigation or determination of that matter.

(3) Where the Chairperson becomes aware that a member has a conflict of interest in relation to any matter which is before the Commission, he shall direct the member to refrain from taking part or taking any further part, in the investigation or determination of the matter.

(4) Upon the Commission becoming aware of any conflict of interest, it must make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective of the functions and duties of the member or the Commission and the member with the conflict of interest shall not vote on this determination.

(5) When the Commission determines that the conflict is likely to interfere significantly with the member's proper and effective performance as provided in sub-article (4), the member shall resign, except if within the next thirty days the member eliminates the conflict to the satisfaction of the Commission.

(6) The Commission shall report to the Minister any determination by the Commission made under sub-article (5).

(7) The annual report by the Commission shall disclose details of all conflicts of interest and the determinations arising therefrom.

(8) A member or employee of the Commission who is subject to this Act shall be considered to have committed a material breach of the code of conduct if –

- (a) he fails without reasonable cause to make a declaration of his interests as required; or
- (b) he knowingly makes a declaration which is false or misleading in material particulars.

#### **Appointment of the Director and other employees (much of this is new)**

**13.** (1) The Commission shall appoint a Director of Land Claims and a Deputy Director of Land Claims, both of whom –

- (a) shall be Sudanese citizens ordinarily resident or with family or community connections in the state; ;
- (b) have the skills and knowledge relevant to the work of the Commission or such legal or other knowledge or qualifications as the Commission may deem necessary;
- (c) have satisfied the Commission that they is unlikely to have a conflict of interest under article 11;
- (d) are, in the opinion of the Commission otherwise well suited by reason of their probity and standing in the community to perform the functions and duties of Director and Deputy Director competently and honestly.

(2) The Director and Deputy Director shall be appointed to serve on such terms and conditions as shall be set out in their letters of appointment.

(3) The Director and Deputy Director shall be responsible and answerable to the Commission and shall not engage in any other paid employment during their tenure of office without the permission of the Commission.

(4) The Commission shall appoint a finance officer and such other officers and staff as the Commission after considering any advice on the matter from the Director may determine to be necessary for the efficient and economical discharge of the functions of the Commission on such terms and conditions as may be determined by the Commission.

(5) The Commission shall establish and use a competitive selection procedure for the appointment of the Director, the Deputy Director and all other employees.

(6) The Commission shall ensure that the Director and Deputy Director are not members of the same political organisation and that the staff of the Commission are broadly representative of the population of the state. (*new*)

(7) The Director shall have administrative control over all the employees of the Commission and in connection with such function, may, after consulting with the Deputy Director allocate such duties to such officers and employees as he shall consider appropriate and necessary to ensure the efficient and effective discharge of the functions of the Commission and in making any such allocation of duties, the

Director and Deputy Director shall be guided by and only by the skills, knowledge, qualifications and competence of the officers concerned

(8) In this article “family or community connections” may be taken to include being a person who was born in the state, or who has lived and worked in the state for not less than six years, or whose immediate family reside in the state or who is a member of a community, the majority of the members of which ordinarily reside in the state.

#### **Appointment of persons and organisations to assist the work of the Commission**

**14.** (1) The Director may, in consultation with the Deputy Director, (*this is new*) from time to time –

- (a) appoint one or more persons or organisations with particular knowledge or specific expertise relevant to the achievement of the Commission’s objectives to advise and assist the Commission regarding any matter connected with the performance of its functions;
- (b) appoint one or more persons or organisations with specific expertise in relation to dispute resolution to facilitate meetings of interested parties, mediate and settle disputes, and report to the Commission in writing on the outcome of such negotiations;
- (c) request any department of the state government, any local authority or person in the service of the state or a local authority who has particular knowledge or specific expertise to advise the Commission regarding any matter connected with the performance of its functions.

(2) The Director shall report to the Commission on any appointments made under sub-article (1) (a) and (b).

### **CHAPTER III**

#### **POWERS AND PROCEEDINGS OF THE COMMISSION**

##### **General powers**

**15.** Subject to the provisions of this Act, the Commission shall have power to do all things which are necessary for or in connection with the performance of its functions or to enable it to achieve its objectives.

##### **Power to obtain information, documents and evidence**



**16.** (1) Where the Commission has reason to believe that a person is capable of supplying information, producing a document or giving evidence that may assist it in the performance of any of its functions, the Director or Deputy Director (*new*), may by a summons signed by the Chairman or Deputy Chairman (*new*) served on that person, require that person –

- (a) to furnish the information in writing signed by him and in the case of a body corporate, signed by a competent officer of the body corporate;
- (b) to produce the document to the Commission;
- (c) to appear before the Commission to give evidence orally.

(2) A summons under this article shall specify the required time and manner of compliance.

(3) The Commission may require that any evidence referred to under this article be given on oath or affirmation, and in that case, the Chairman or any member of the Commission may administer the oath or affirmation.

(4) A person shall not be excused from complying with a summons under this article on the grounds that compliance may tend to incriminate the person or make the person liable to a penalty.

(5) Where the Commission has reason to believe that a person, is in possession or control of any documents that may assist it in the performance of any of its functions, the Chairman or Deputy Chairman (*new*) may apply to the Court for the grant of a warrant permitting the Director or Deputy Director (*new*) on behalf of the Commission to enter into any premises at reasonable times to search or inspect the premises for documents in the possession or under the control of the person and make copies of, or take extracts from those documents.

(6) Any person who without lawful excuse refuses or fails to comply with a summons under this article or who knowingly gives false or misleading information, or evidence in purported compliance with a summons under this article shall be liable to be served with an enforcement order by the Commission and if he does not comply with such an order shall be liable on application to the Court by the Commission to be held in contempt of court.

(7) Where the Director or Deputy Director has been authorised to enter premises on behalf of the Commission, and is refused or prevented from gaining entry to the premises, a judge shall on application be empowered to issue a warrant to any police officer forcibly to enter the premises to conduct the search and make copies or take extracts of documents therein.*(new)*

### **Delegation of powers and performance of functions**

**17.** (1) The Commission may delegate any power conferred upon it by or under this Act to a subcommittee of the Commission or to a member of the Commission or to a person referred to in article 13 subject to such directions or conditions as the Commission may give or determine from time to time: Provided that the powers referred to in article 16 may not be delegated.

(2) The Director may delegate any power conferred upon him or her by or under this Act except the power of delegation to the Deputy Director either generally or with regard to a specific claim. *(Director is new)*

(3) A delegated power shall be exercised in accordance with the instrument of delegation.

(4) A delegation may be revoked or varied at will and shall not prevent the exercise of a power by the Commission.

(5) If the office of the Director is vacant or if the Director is absent or unable to perform any or all of his functions, the Deputy Director shall act in his stead and whilst the Deputy Director so acts, he shall perform all the functions of the Director. *(Director and Deputy Director are new)*

### **Establishment of divisions**

**18.** (1) The Commission may establish one or more divisions to perform such functions as the Commission may from time to time determine.

(2) The Commission shall appoint an employee or employees of the Commission as chiefs of the divisions.

### **Consultation**

**19.** (1) The Commission shall, before the start of each year, establish an annual programme for consultation with such persons and organisations as the

Commission may consider necessary or desirable to consult for the purpose of effectively carrying out its functions.

(2) Subject to provisions of sub-article (1), the Commission shall supply a copy of its consultation programme to the Minister and place a copy on the Public Register.

(3) The Commission shall include in its annual report a report on the implementation of its consultation programme during the year covered by the Report.

(4) For the purposes of this article, it shall be the duty of the Commission to establish and identify the persons, organizations and institution to be consulted.

### **Public Register**

**20.** (1) There shall be a Public Register kept by the Commission at its offices which shall be available for public inspection at all times during business hours.

(2) The Public Register may be kept electronically and any such electronic register shall be made available to the public on the website of the Commission.

(3) The Commission shall publish in the Public Register as soon as may be practicable –

- (a) the code of conduct of the Commission;
- (b) any regulations which apply to the Commission;
- (c) a list of all claims accepted for investigation by the Commission;
- (c) any decision taken or recommendation made by the Commission in the exercise of its powers under Chapter IV;
- (d) any other decision or information the Commission may decide to publish in the Public Register.

(4) The Commission shall exclude from the Public Register any document or part of a document which is confidential within the provisions of article 21.

### **Confidentiality**

**21.** (1) For the purposes of this Act, any person who gives or discloses any material to the Commission, whether under compulsion of law or otherwise, may claim confidentiality in respect of the whole or any part of the material.

(2) The Commission shall set out procedures and publish them in the Public Register on how it will disclose its confidential materials or information.

(3) Any person who discloses confidential information without authority under this article shall be guilty of an offence of disclosing confidential information and liable on conviction to a fine of not more than ten thousand dinars..

### **Funds of the Commission**

**22.** (1) The funds and resources of the Commission shall consist of –

- (a) any sums which may be provided for the purposes of the Commission by the state Government;
- (b) any sums which the Commission may receive by way of grant or loan from any person or organisation;
- (c) any sums which the Commission may, from time to time, borrow for the purposes of the Commission;
- (d) any sums which may, in any manner, become payable to or vested in the Commission either under the provisions of this Act or any other written law, or incidental to the carrying out of its functions.

(2) The Commission shall open and maintain one or more bank accounts in a bank authorized in that behalf by the Minister for the time being responsible for the finances of the State and shall place all monies received under sub-article (1) in one of those bank accounts.

### **Annual estimates and expenditure (*This whole article is new*)**

**23.** (1) The Commission shall, in accordance with its standing orders, direct its finance officer to prepare and, on a date which shall be not later than two months before the commencement of the financial year, it shall approve detailed estimates to be known as the annual estimates of all the likely revenues and proposed expenditures of the Commission for the ensuing financial year.

(2) The annual estimates approved by the Commission shall forthwith be submitted to the Minister who, after consulting with the Minister for the time being responsible for finance shall, before the commencement of the ensuing financial year for which the annual estimates have been prepared –

- (a) approve the annual estimates without amendment;

- (b) approve the annual estimates with minor amendments which do not affect the substance of the estimates;
- (c) disallow or amend any item in the annual estimates or any part thereof which in his opinion is unlawful or grossly extravagant,

and in every case where the Minister proposes to exercise his powers under paragraph (c), he shall give the Commission an opportunity to make representations on the matter before he exercises his power.

(3) No expenditure shall be incurred by the Commission unless it can be properly charged to an item in the approved annual estimates.

(4) The Commission shall in standing orders made under article...prescribe the circumstances under which, with the prior approval of the Minister, funds allocated to one particular purpose in the annual estimates may be reallocated to another purpose and the Commission may in accordance with such standing orders so reallocate its funds.

#### **Accounts and audit**

**24.** (1) The Commission shall cause to be kept proper books of accounts and shall, as soon as practicable after the end of each financial year, cause the accounts relating to that financial year together with –

- (a) a statement of income and expenditure during that financial year; and
- (b) a statement of the assets and liabilities of the last day of that financial year,

to be submitted to and audited by duly registered and authorised auditors.

(2) Copies of the statements referred to in sub-article (1) and a copy of the auditors' report shall be forwarded to the Minister.

#### **Annual report of the Commission**

**25.** (1) The Commission shall, at the end of each financial year, prepare a report on its activities during that financial year and submit that report together with a copy of the audited accounts to the Minister.

(2) The Minister shall cause to be laid before the State Legislature, as soon as may be practicable after he has received them the annual report and the audited accounts of the Commission.

## **CHAPTER IV CLAIMS FOR RESTITUTION**

### **Entitlement to restitution**

- 26.** (1) A person shall be entitled to restitution of a right in land if –
- (a) he is a person dispossessed of land or any right in land after 6 April 1970 as a result of any order served on such person under article 8 (1) or (2) of the Unregistered Land Act or any action taken or purported to be taken under the Unregistered Land Act; or
  - (b) he is a person dispossessed of land or any right in land as a result of being compelled by order or pressure, direct or indirect, from the Government or the government (which indirect pressure shall include the effect of the war ended by the CPA) after 6 April 1970 to sell his land or any right in his land;
  - (c) he is a person dispossessed of a right in communally owned land after 6 April 1970 as a result of the acquisition and retention of that land by the State or the state or any allocation of that communally owned land or any part thereof to any person for a usufruct or a lease for that person's use for agricultural, commercial, industrial or residential use; or
  - (d) he is the direct descendant of a person referred to in paragraph (a) or (b) who has died without lodging a claim and has no ascendant who –
    - (i) is a direct descendant of a person referred to in paragraph (a) (b) or (c); and
    - (ii) has lodged a claim for the restitution of a right in land; or
  - (e) it is a community or part of a community dispossessed of a right in land after 6 April 1970 as a result of any actions taken or orders served under the Unregistered Land Act or any allocation of that land or any part thereof to any person for a usufruct or a lease for that person's use for agricultural, commercial, industrial or residential use;

- (f) the claim for such restitution is lodged not later than 31 December 2009 or four years after the coming into effect of this Act whichever is the later date.
- (2) No person shall be entitled to restitution of a right in land if –
  - (a) prompt and fair compensation as contemplated in article 43 (2) of the Constitution; or
  - (b) any other consideration which is just and equitable,

calculated at the time of any dispossession of such right, was received by that person in respect of such dispossession.

(3) If a natural person dies after lodging a claim but before the claim is finalised and –

- (a) leaves a will by which the right or equitable redress claimed has been disposed of, the executor of the deceased's estate, in his capacity as the representative of the estate, alone or, failing the executor, the heirs of the deceased alone; or
- (b) does not leave a will contemplated in paragraph (a), the direct descendants alone,

may be substituted as claimant or claimants.

(4) If there is more than one direct descendant who have lodged claims for and are entitled to restitution, the right or equitable redress in question shall be divided not according to the number of individuals but by lines of succession, determined in accordance with customary law.

(5) A person shall be entitled to claim restitution if such claimant or his antecedent proves that the current owner of the land holds title as a result of one or more transactions between such current owner and any other prior owner of the land and the person who was the original grantee from the government or any agency or officer of the government of the land.

- (6) For the avoidance of doubt it is hereby declared that the fact that –
  - (a) the land the subject of a claim for restitution under this article has been registered in the name of the person against whom the claim is being made; or

(b) the owner of the land is not a willing contending party to the claim, is no bar to the submission of a claim or to the jurisdiction of the Commission or the Court to deal with the claim.

### **Submitting a claim and representation of community**

**27.** (1) Any person who or the representative of any community which intends to claim restitution of a right in land, may lodge such claim which shall include a description of the land in question, the nature of the right in land of which he or such community was dispossessed and the nature of the right or equitable redress being claimed, on the form prescribed for this purpose by the Director.

(2) The Commission shall make claim forms available at its offices and offices of all local authorities.

(3) If a claim is lodged on behalf of a community the basis on which it is contended that the person submitting the form represents such community, shall be declared in full and any appropriate resolution or document supporting such contention shall accompany the form at the time of lodgement: Provided that the Director may permit such resolution or document to be lodged at a later stage.

(4) If there is any dispute as to who legitimately represents a community for the purposes of any claim under this Act, the Director may in the manner prescribed by rules made by the Commission in order to have a person or persons elected to represent the community –

- (a) take steps for drawing up a list of the names of the members of the community;
- (b) direct that a meeting of such community be convened and an election be held at that meeting;
- (c) take such other steps as may be reasonably necessary for the election.

(5) In any election in terms of sub-article (4) all members of the community of 18 years or older shall be entitled to vote.

(6) In making the rules contemplated in sub-article (4), the Commission shall have regard to the cultural values of the community.

### **Procedure after submission of claim**

**28.** (1) If the Director is satisfied that –



- (a) the claim has been lodged in the prescribed manner;
- (b) the claim is not precluded by the provisions of article 26 (2); and
- (c) the claim is not frivolous or vexatious,

he or she shall take steps to make it known in the Boma in which the land in question is situated.

(2) The Director may, on such conditions as he or she may determine, condone the fact that a claim has not been lodged in the prescribed manner.

(3) A frivolous or vexatious claim may be dismissed by the Director.

(4) If the Director decides that the criteria set out in paragraphs (a), (b) and (c) of sub-article (1) have not been met, he or she shall advise the claimant accordingly, and of the reasons for such decision.

(5) If after an order has been made by the Court under article 44 or an agreement has been entered into under article 32, it is shown that another claim was lodged in terms of this Act in respect of the land to which the order or agreement relates, any interested party may apply to the Court for the rescission or variation of such order or the setting aside or variation of such agreement.

(6) The Court may grant such an application, subject to such terms and conditions as it may determine, or make any other order it deems fit.

(7) Immediately after publishing the notice referred to in sub-article (1), the Director shall by notice in writing –

- (a) advise the owner of the land in question and any other party which, in his opinion, might have an interest in the claim of the publication of the notice; and
- (b) refer the owner and such other party to the provisions of article 29..

## **29. Restriction on activities after submission of claim**

(1) Once the notice referred to in article 28 has been published in respect of any land –

- (a) no person may in an improper manner obstruct the passage of the claim;
- (b) no person may sell, exchange, donate, lease, subdivide, rezone or develop the land in question without having given the Director one month's written notice of his or her intention to do so, and, where such notice was not given in respect of –
  - (i) any sale, exchange, donation, usufruct, lease, subdivision or rezoning of land and the Court is satisfied that such sale, exchange, donation, usufruct, lease, subdivision or rezoning was not done in good faith, the Court may set aside such sale, exchange, donation, usufruct, lease, subdivision or rezoning or grant any other order it deems fit;
  - (ii) any development of land and the Court is satisfied that such development was not done in good faith, the court may grant any order it deems fit;
- (c) no claimant who occupied the land in question at the date of commencement of this Act may be evicted from the said land without the written authority of the Director;
- (d) no person shall in any manner whatsoever remove or cause to be removed, destroy or cause to be destroyed or damage or cause to be damaged, any improvements upon the land without the written authority of the Chief Land Claims Director;
- (e) no claimant or other person may enter upon and occupy the land without the permission of the owner or lawful occupier

(2) The Director may, at any time after the publication of a notice contemplated in article 28(1), if he has reason to believe that any improvement on the land is likely to be removed, damaged or destroyed or that any person resident on such land may be adversely affected as a result of the publication of such notice, authorise any officer of the Commission to enter upon such land for the purpose of drawing up an inventory of any assets on the land, a list of persons employed or resident on the land, or a report on the agricultural condition of the land and of any excavations, mining or prospecting thereon.

### **Withdrawal or amendment of notice of claim**

**30.** (1) Any person affected by the publication of the notice of a claim may make representations to the Director for the withdrawal or amendment of that notice.

(2) Where during the investigation of a claim by the Commission the Director has reason to believe that any of the criteria set out in paragraphs (a), (b) and (c) of article 28 (1) have not been met, he shall send a notice to or otherwise inform –

- (a) the claimant;
- (b) the owner; and
- (b) where applicable, a person who has made representations in terms of sub-article (1) and any other party, who to his knowledge, may have an interest in the claim,

that at the expiry of the period mentioned in the notice, the notice of the claim published in terms of that article will be withdrawn unless cause to the contrary has been shown to his satisfaction.

(3) At the expiry of the period specified in sub-article (2), the Director shall, unless cause to the contrary has been shown to his satisfaction, withdraw the notice of claim and –

- (a) advise the persons mentioned in that sub-article by notice; and
- (b) take other steps to make his decision known in the area in which the land in question is located.

(4) The Director may, during the investigation of a claim by the Commission and after following the procedure set out in sub-article (2), unless cause to the contrary has been shown to his satisfaction, amend the notice published in terms of article 28 (1), after which the provisions of paragraphs (a), (b) and (c) of sub-article (3) shall apply: Provided that the Director may, without following the procedure set out in sub-article (2), amend the notice to correct any obvious error in it, and cause notice of his decision to be made known in the Boma in which the land in question is located.

(5) After the Director is satisfied of the authenticity and validity of a claim in terms of article 28(1), he shall inform the Commission of that fact and the Commission shall thereupon conduct an inquiry into the claim.

### **Commission's power of investigation**

**31.** (1) The Commission may, through one or more members of the Commission or any person authorised to do so in writing, in order to carry out its functions –

- (a) conduct an investigation into any claim;
- (b) demand from any person including any government or State government department such particulars, documents and information as may be necessary in connection with any investigation;
- (c) by notice in writing, addressed and delivered by a member of the staff of the Commission to any person, direct such person, in relation to an investigation, to appear before a member of the Commission at a time and place mentioned in such notice and to produce to such member all documents or objects in the possession or custody or under the control of such person and which are relevant to that investigation.

(2) Any person directed to produce documents or objects in terms of sub-article (1) (c) shall not be compelled to produce any document or object which could be used in evidence against him in a criminal trial.

(3) If a claimant is not able to provide all the information necessary for the adequate submission or investigation of a claim, the Director shall direct an officer of the Commission to take all reasonable steps to have this information made available.

(4) If at any stage during the course of an investigation by the Commission, the Director is of the opinion that the resources of the Commission or the Court would be more effectively utilised if all claims for restitution of the land which is the subject of a submitted claim but in respect of which it is probable that other claims are likely to be submitted were to be investigated at the same time, he shall cause to be published and in such other manner as he deems appropriate, a notice advising potential claimants of his decision and inviting them, subject to the provisions of article 26, to lodge claims within a period specified in such notice.

(5) No claim referred to in sub-article (4) shall be lodged after the expiry of the period specified in the notice referred to in sub-article (4) : Provided that the Commission may allow a claimant on good cause shown, to lodge a claim after the expiry of such period, but not later than 31 December 2009 or four years after the coming into effect of this Act whichever is the later.

(6) The Commission shall not be prohibited or prevented from conducting an investigation into any claim made to it under this Chapter by reason of the fact that the owner or occupier of the land which is the subject of the claim declines to co-operate with the Commission or any officer of the Commission or the claimant with respect to the claim or declines to participate in the investigation or give any evidence written or oral to the Commission but in any case where the situation specified in this article occurs, the Commission shall be under a duty –

- (a) to use its best endeavours to persuade the owner or occupier of the land the subject of the claim to co-operate with the Commission and to participate in the investigation;
- (b) to ensure to the best of its ability that all matters and information relevant to the situation of a non-co-operating or non-participating owner or occupier of the land are brought before it and are taken into account by it in making any decision or recommendation.

### **Mediation**

**32.** (1) If at any stage during the course of the Commission's investigation it becomes evident that –

- (a) there are two or more competing claims in respect of the same land;
- (b) in the case of a community claim, there are competing groups within the claimant community making resolution of the claim difficult;
- (c) where the land which is subject to the claim is not state-owned land, the owner or holder of rights in such land is opposed to the claim; or
- (d) there is any other issue which might usefully be resolved through mediation and negotiation,

the Director may advise the parties concerned to attempt to settle their dispute through a process of mediation and negotiation.

(2) Where the parties to a claim referred to in sub-article (1) inform the Director that they are prepared to attempt to settle their dispute through a process of mediation and negotiation, the Director shall send the parties a written notice specifying the time when and the place where such process shall start.

(3) The Director shall appoint a mediator to chair the first meeting between the parties: Provided that the parties may at any time during the course of mediation or negotiation by agreement appoint another person to mediate the dispute.

(4) A person appointed by the Director in terms of sub-article (3) shall either be an officer of the Commission who is a fit and proper person to conduct such a process of mediation and negotiation or an independent person contemplated in article 14 (1) (b).

(5) All discussions taking place and all disclosures and submissions made during the mediation process shall be privileged, unless the parties agree to the contrary.

### **Referral of claims to Court**

**33.** (1) If upon completion of an investigation by the Commission in respect of a specific claim –

- (a) the parties to any dispute arising from the claim agree in writing that it is not possible to settle the claim by mediation and negotiation; or
- (b) the Director certifies that it is not feasible to resolve any dispute arising from such claim by mediation and negotiation; or
- (c) the Director is of the opinion that the claim is ready for hearing by the Court,

the Director shall so certify accordingly and refer the matter to the Court.

(2) Any claim referred to the Court as a result of a situation contemplated in sub-article (1) (a), (b) or (c) shall be accompanied by a document –

- (a) setting out the results of the Commission's investigation into the merits of the claim;
- (b) reporting on the failure of any party to accede to mediation;
- (c) containing a list of the parties who have an interest in the claim;
- (d) setting out the Commission's recommendation as to the most appropriate manner in which the claim can be resolved.

(3) If in the course of an investigation by the Commission the interested parties enter into a written agreement as to how the claim should be finalised and the Director certifies in writing that he or she is satisfied with the agreement, then the agreement shall be referred to the Court only for the purpose of being registered in the

Court and the Court may not reopen or otherwise pass any form of opinion or judgment on the agreement.

- (4) If the Director is of the opinion that –
  - (a) a question of law arising out of the agreement needs to be resolved;
  - (b) there is doubt as to whether or not all parties who have an interest in the claim are parties to the agreement;
  - (c) there is doubt as to the validity of the agreement or any part of it;
  - (d) there is doubt as to the feasibility of the implementation of the agreement;
  - (e) the agreement is not just and equitable in respect of any party;
  - (f) the agreement is contrary to any provision of the Act;
  - (g) the authority of any signatory is in doubt;
  - (h) the agreement is vague or contradictory;
  - (i) the parties to the agreement agree that it is desirable that the agreement be made an order of Court;
  - (j) the agreement ought to be referred to the Court for any other good reason,

he may refer the matter to the Court.

(5) A referral under sub-article (4) shall be accompanied by a copy of the relevant agreement and a report containing –

- (a) concise information about the background to the claim and the settlement which led to the agreement;
- (b) information necessary for the Court to establish whether or not it has jurisdiction;
- (c) the reasons for the referral of the matter to the Court; and
- (d) the Director's recommendations, if any, as to how the matter should be dealt with.

(6) Any interested party shall be entitled, upon payment of the prescribed fee, to copies of the documents referred in this article, including the submissions of other interested parties in relation to any matter contemplated in this article.

(7) Subject to the provisions of Chapter V, the Court shall not make any order in terms of article 45 unless the Commission has, in respect of the claim in question, acted in accordance with the provisions of this article: Provided that the Court may, on good cause shown, condone any noncompliance with the provisions of this article.

### **Factors to be taken into account by Commission and Court**

**34.** In considering its decision or recommendation on any particular claim or other matter coming before it under this Act, the Commission and the Court shall have regard to and balance the following factors:

- (a) the rights to land under customary law held by any claimant in any land the subject of a claim immediately before 6 April 1970;
- (b) the principles and norms of customary tenure applicable to any land the subject of a claim;
- (c) the internationally accepted principles that –
  - (i) there is no such concept as *res nullius* applicable to land;
  - (ii) land may be owned, occupied and used under customary tenure notwithstanding that those claiming to own the land do not occupy and use it continuously or in individual plots but may own it communally and occupy and use it intermittently and for specific domestic and subsistence purposes ;
  - (iii) such land is not nor ever has been ownerless or unclaimed;
  - (iv) such intermittent user of communally owned land is and always has been lawful user under the Civil Transactions Act;
- (d) the Unregistered Land Act did not abolish or extinguish customary tenure applicable to the land which by the Act was made the property of the Government acting as trustee for the land;
- (e) the grant of a usufruct or lease of land taken over by the Government under the Unregistered Land Act to a person did not have the effect of abolishing or extinguishing the existing customary tenure applicable to that land;
- (f) the duty of the state government, under the Civil Transaction Act and after following the principles of due process and determining that the owner has no lawful excuse, to confiscate land without any refund of fees, repayment of expenses or compensation from the owner of a usufruct or lease of land granted to him or his predecessors in title by the Government who has not within the preceding three years next



before the signing of the Comprehensive Peace Agreement and the Protocol used that land: Provided that a period of five years shall be substituted for the period of three years in the case of a grant of a usufruct or lease made exclusively for residential purposes;

- (g) The desirability, in accordance with the Protocol, of providing for restitution of rights in land to any person or community dispossessed as a result of any grant of a usufruct made by the Government out of land taken over by the Government under the Unregistered Land Act;
- (h) the importance of remedying past violations of human rights;
- (i) the constitutional duty to ensure the equitable distribution of wealth and to pursue social justice;
- (j) if restoration of a right in land is claimed, the feasibility of such restoration;
- (k) the desirability of avoiding major social or economic disruption;
- (l) any provision which already exists, in respect of the land in question in any matter, for that land to be dealt with in a manner which is designed to protect and advance persons, or categories of persons, disadvantaged by past actions by the Government;
- (m) the amount of compensation or any other consideration received in respect of any dispossession of land or loss of rights in land, and the circumstances prevailing at the time of the dispossession or loss of rights;
- (n) the history of the dispossession or loss of rights, the hardship caused, the current use of the land and the history of the acquisition and use of the land;
- (o) in the case of a decision or recommendation for equitable redress in the form of financial compensation, changes over time in the value of money from the time when the dispossession or loss of rights in land took place and the date when the claim was submitted;
- (p) any benefits conferred on the area or a significant number of the indigenous inhabitants of the area by or through the development of the land which is the subject of the claim by the owner or his or her predecessors in title: Provided that employing persons dispossessed of the land or rights in the land the subject of the claim shall not be taken to be the conferring of a benefit on the area or those persons;
- (q) the terms and conditions of the usufruct or lease under which the land the subject of the claim is held and whether those terms and conditions have been complied with by the usufructuary or lessee and in particular

whether the usufruct or lease was granted or renewed after the date of the Agreement and whether the principles of the Agreement were reflected in the terms and conditions of the usufruct or lease;

- (r) whether any alteration or amendment of any terms and conditions of the usufruct or lease under which the land the subject of the claim is held could meet in whole or in part the claim and do justice to the case put forward by the claimant;
- (s) whether, if there are ten years or less left in the term of the usufruct or lease under which the land the subject of the claim is held, the best solution to the claim would be to postpone any restitution or restoration of land until the term of the usufruct or lease had expired;
- (t) any other factor which the Commission or Court may consider relevant and consistent with the spirit and objects of the Constitution, the Agreement and the Protocol.

#### **Rules regarding procedures of Commission**

**35.** (1) The Director shall prepare and submit to the Commission rules regarding –

- (a) any matter which, in terms of this Chapter, is required or permitted to be prescribed;
- (b) the filing of claims;
- (c) any steps which may be taken to give public notice of claims and notice to persons who have an interest in any matter under investigation by the Commission;
- (d) the giving of notice to parties to attend a meeting for the purpose of mediating or negotiating the settlement of disputes;
- (e) the giving of notice to parties and public notices giving notice that the Commission will consider any related claims in respect of specific land within a specified period;
- (f) the order of preference to be given to claims or categories of claims; and
- (g) generally, with regard to any other matter which he considers it necessary or expedient to prescribe in order to achieve or promote the objectives of this Act.

(2) The Commission shall consider any rules submitted to it by the Director and shall within one month of the receipt of the rules.

- (a) approve the rules with or without amendments; or
- (b) refer the rules or any of them back to the Director for further work.

(3) Where any rules have been referred back to the Director for further work he shall undertake that further work in the terms required by the Commission and resubmit those rules to the Commission which shall, if satisfied that the further work has been carried out in the terms required, approve those rules.

(4) Rules made under the provisions of sub-article (1) shall be published in the *Gazette* and in such other ways using such other forms of media as are calculated to bring them to the attention of the inhabitants of the state.

## **CHAPTER V**

### **SOUTHERN KORDOFAN STATE LAND CLAIMS COURT**

#### **Southern Kordofan State Land Claims Court**

**36.** (1) There shall be a court of law to be known as the Southern Kordofan State Land Claims Court which shall have the power, to the exclusion of any other court in the state –

- (a) to determine a right to restitution of any right in land in accordance with this Act;
- (b) to determine or approve compensation payable in respect of land owned by or in the possession of a private person upon expropriation or acquisition of such land in terms of this Act;
- (c) to determine or approve compensation to be awarded to a claimant by way of equitable relief;
- (d) at the instance of any interested person and in its discretion, to grant a declaratory order on a question of law relating to this Act or to any other law or matter in respect of which the Court has jurisdiction, notwithstanding that such person might not be able to claim any relief consequential upon the granting of such order;
- (e) to determine whether compensation or any other consideration received by any person at the time of any dispossession of a right in land since 6 April 1970 was just and equitable;

- (f) to determine any matter involving the validity, enforceability, interpretation or implementation of an agreement referred to in article 33 (3), unless the agreement provides otherwise;
  - (g) to determine all other matters which require to be determined in terms of this Act.
- (2) The Court shall have jurisdiction throughout the state and shall have –
- (a) all such powers in relation to matters falling within its jurisdiction as are possessed by the state high court having jurisdiction in civil proceedings at the place where the land in question is situated, including the powers of the state high court in relation to any contempt of the Court;
  - (b) all the ancillary powers necessary or reasonably incidental to the performance of its functions, including the power to grant interlocutory orders and injunctions;
  - (c) the power to decide any issue either in terms of this Act or in terms of any other law, which is not ordinarily within its jurisdiction but is incidental to an issue within its jurisdiction, if the Court considers it to be in the interests of justice to do so.

### **Judges of the Court**

**37** 1 There shall be a Chief Judge of the Court, who shall be appointed by the Governor acting on the advice of the National Judicial Service Commission.

(2) There shall be a Deputy Chief Judge of the Court, who shall be appointed by the Governor acting on the advice of the National Judicial Service Commission.

(3) The National Judicial Service Commission shall in giving advice to the Governor under this article have regard to the importance of ensuring that the Court has the confidence of all communities in the state and that the Chief Judge and Deputy Chief Judge represent a fair balance between the communities and their political affiliations but that political considerations and affiliations do not play a part in the selection of the Judges.

(4) The Governor may, on the agreed advice of the Chief Judge and Deputy Chief Judge and taking into account the advice of the National Judicial Service Commission, appoint additional judges of the Court.

(5) The Chief Judge, the Deputy Chief Judge and any additional judges of the Court may be appointed for a fixed term.

(6) A judge of the state high court may be seconded to serve as a judge of the Court.

(7) If there is sufficient reason the Governor may, with the agreement of the Chief Judge and Deputy Chief Judge, appoint an acting judge of the Court for such term, being not shorter than three months, as the Governor shall determine.

(8) Proceedings in which a judge of the Court has participated and which have not been disposed of at the termination of his term of service shall be disposed of by that judge.

(9) For the purposes of sub-article (8) any appointment made under this article shall be deemed also to have been made for the time in which the proceedings referred to in sub-article (8) are being disposed of.

### **Qualifications of judges of Court**

**38.** (1) No person shall be qualified to be appointed as Chief Judge, a Deputy Chief Judge, a judge or an acting judge of the Court unless he –

- (a) is a Sudanese citizen ordinarily resident or with family or community connections in the state;
- (b) is a fit and proper person to be a judge of the Court; and
- (c) is a judge of a state high court or has been qualified as a lawyer for at least six years; or
- (d) by reason of his training and experience, has notwithstanding that he has not been qualified as a lawyer for at least six years expertise in the fields of law and land matters relevant to the application of this Act.

(2) In this article “family or community connections” may be taken to include being a person who was born in the state, or who has lived and worked in the state for not less than six years, or whose immediate family reside in the state or who is a member of a community, the majority of the members of which ordinarily reside in the state.

### **Holding of office**

**39.** (1) The provisions of the state constitution with regard to making of an oath or a solemn affirmation and the removal or suspension of judges shall apply in like manner to judges of the Court.

(2) An assessor shall take an oath or make a solemn affirmation that he or she will, on the evidence placed before him or her, give a true verdict or considered opinion upon the issues to be tried.

(3) An assessor's oath or affirmation shall be administered by the presiding judge at the commencement of the hearing of every matter, before any evidence is heard.

### **Remuneration and conditions of employment of judges**

**40.** (1) The Chief Judge, the Deputy Chief Judge and any judge of the Court not being a judge of a High Court, shall receive such remuneration and shall, subject to article 37 (5), be appointed subject to such conditions of employment as may be determined by the Governor on the advice of the National Judicial Service Commission, and the remuneration of any such judge as is referred to in this article shall not be reduced during his term of service.

(2) The Chief Judge, the Deputy Chief Judge and a judge of the Court may be paid such non-taxable allowances for travelling and subsistence expenses and such other expenses incurred by him in the performance of his functions in terms of this Act as the Minister may determine with the concurrence of the Minister for the time being responsible for finance.

(3) The provisions of this article shall apply also to a person appointed under article 37 (8) and (9).

### **Assessors**

**41.** (1) A list of assessors shall be compiled from time to time by the Chief Judge and Deputy Chief Judge.

(2) An assessor of the Court shall be a person who, in the opinion of the Chief Judge and Deputy Chief Judge, has probity, skills and knowledge about customary tenure relevant to the work of the Court but it shall not be a requirement that an assessor shall have any legal qualifications.

(3) Two assessors, selected from the list referred to in sub-article (1) by the presiding judge at a hearing shall assist the Court at a contested hearing of any claim which has been referred to the Court in terms of article 33: Provided that this requirement shall not apply in respect of –

- (a) any hearing where the only matters in dispute are questions of law;
- (b) any interlocutory or preliminary hearing or pre-trial proceedings, unless the Court decides otherwise
- (c) any proceedings dealing with contempt of the Court.

(4) An assessor, other than an assessor referred to in sub-article (5), shall be a member of the Court and the decision or finding of the majority of the members of the Court shall be the decision or finding of the Court: Provided that an assessor shall not decide upon a question of law or upon a question whether or not any matter constitutes a question of law.

(5) An assessor shall receive such remuneration and be entitled to such benefits as may be determined by the Minister of Justice in consultation with the Minister of Finance and the Chief Judge and Deputy Chief Judge.

#### **Appointment of officers of the Court**

**42.** (1) The Minister of Justice may, subject to the laws governing the public service within the state and after consulting with the Chief Judge and Deputy Chief Judge, cause to be appointed registrars, assistant registrars and other officers for the Court whenever they may be required for the execution of the functions of the Court.

#### **Hearings of the Court**

**43.** (1) The Court shall sit and hold hearings at such places in the state as the Chief Judge, after consulting with the Deputy Chief Judge, shall determine with a view to making the Court accessible to claimants.

(2) Hearings of the Court shall be presided over by a single judge unless the Chief Judge, after consulting with the Deputy Chief Judge decides to the contrary.

(3) All hearings in the Court shall, except in so far as the Court may in special cases direct otherwise, be conducted in open court.

(4) Where the Court determines that a hearing shall be in private, it shall give its determination in open court giving reasons for that determination.

**Admissibility of evidence** (*This article has been moved to article and revised. The revised parts are underlined*)

#### **Intervention in proceedings before Court, right to appear and legal representation**

**44.** (1) Any interested person, may apply to the Court for leave to intervene as a party to any proceedings before the Court.

(2) The state shall have the right to intervene as a party to all proceedings before the Court.

(3) Any party appearing before the Court may do so in person or may be represented by an advocate.

(4) Where a party wishing to intervene in any hearing under this article can not afford to pay for legal representation himself, the Director may take steps to arrange legal representation for such party, either through the state legal aid system, if any or, at the expense of the Commission

#### **Court orders**

**45** (1) The Court may order-



- (a) the restoration of land, a portion of land or any right in land in respect of which the claim or any other claim is made to the claimant or award any land, a portion of or a right in land to the claimant in full or in partial settlement of the claim and, where necessary, the prior acquisition or expropriation of the land, portion of land or right in land: Provided that the claimant shall not be awarded land, a portion of land or a right in land dispossessed from another claimant or the latter's ascendant, unless –
    - (i) such other claimant is or has been granted restitution of a right in land or has waived his or her right to restoration of the right in land concerned; or
    - (ii) the Court is satisfied that satisfactory arrangements have been or will be made to grant such other claimant restitution of a right in land;
  - (b) the state to grant the claimant an appropriate right in alternative state-owned land and, where necessary, order the state to designate it;
  - (c) the state to pay the claimant compensation of such amount as the Court shall determine, and in determining any such amount under this paragraph, the Court shall have regard to any losses the claimant has incurred through being deprived of the uses of the land and any loss of value to the claimant due to the condition of the land caused by its wrongful allocation and unsustainable use;
  - (d) the state to pay the person from whom any land is being ordered to be taken away and restored or restituted to a claimant, compensation of such amount as the Court shall determine;
  - (e) the grant to the claimant of any alternative relief.
- (2) The Court may in addition to the orders referred to in sub-article (1) –
- (a) determine conditions which must be fulfilled before land or a right in land can be restored or granted to a claimant;
  - (b) if a claimant is required to make any payment before the right in question is restored or granted, determine the amount to be paid and the manner of payment, including the time for payment;
  - (c) if the claimant is a community, determine the manner in which the rights are to be held or the compensation is to be paid or held;
  - (d) give any other directive as to how its orders are to be carried out, including the setting of time limits for the implementation of its orders;

- (e) make an order in respect of compensatory land granted at the time of the dispossession of the land in question;
- (f) make appropriate orders to give effect to any agreement between the parties regarding the finalisation of the claim;
- (g) make such order for costs as it deems just, including an order for costs against the state or the Commission.

(3) An order referred in sub-article (2) (c) shall be subject to such conditions as the Court considers necessary to ensure that all the members of the dispossessed community shall have access to the land or the compensation in question, on a basis which is fair and non-discriminatory towards any person, including a tenant, and which ensures the accountability of the person who holds the land or compensation on behalf of the community to the members of such community.

(4) The Court's power to order the restitution of a right in land or to grant a right in alternative state-owned land shall include the power to adjust the nature of the right previously held by the claimant, and to determine the form of title under which the right may be held in future.

(5) If the Court orders the State to expropriate land, a portion of land or a right in land in order to restore or award it to a claimant, the Minister forthwith shall expropriate such land, portion of land or right in land in accordance with sub-article (6).

(6) The Minister is hereby authorised by an order of the Court under sub-article (5) to expropriate land, a portion of land or a right in land in order to restore or award it to a claimant, in accordance with the Land Acquisition Act, 1930.

(7) Any state-owned land which is held under a usufruct or a lease or similar arrangement shall be deemed to be in the possession of the state for the purposes of sub-article (1) (a): Provided that, if the Court orders the restoration of a right in such land, the lawful occupier of the land who is to be dispossessed shall be entitled to just and equitable compensation determined either by agreement or by the Court.

(8) An interested party which is of the opinion that an order of the Court has not been fully or timeously complied with may make application to the Court for further directives or orders in that regard.

(9) The Court may, upon application by any person affected thereby and subject to the rules of court made under article 51, rescind or vary any order or judgment granted by it –

- (a) in the absence of the person against whom that order or judgment was granted;
- (b) which was void from its inception or was obtained by fraud or mistake common to the parties;
- (c) in respect of which no appeal lies; or
- (d) in the circumstances contemplated in article 28 (5): Provided that where an appeal is pending in respect of such order, or where such order was made on appeal, the application shall be made to the Constitutional Court.

(10) The Court may, upon application by any person affected thereby, or of its own accord correct patent errors in any order or judgment.

### **Mediation**

**46.** (1) If at any stage during proceedings under this Act or any other Act conferring jurisdiction upon the Court it becomes evident that there is any issue which might be resolved through mediation and negotiation, the Court may make an order –

- (a) directing the parties concerned to attempt to settle the issue through a process of mediation and negotiation;
- (b) that such proceedings be stayed pending such process.

(2) An order contemplated in sub-article (1) shall specify the time when and the place where such process is to start.

(3) The Court shall appoint a fit and proper person as mediator to chair the first meeting between the parties: Provided that the parties may at any time during the course of mediation or negotiation by agreement appoint another person to mediate the dispute.

(4) A mediator appointed in terms of sub-article (3) who is not in the full-time service of the State may be paid such remuneration and allowances in respect of

the services performed by him or her as may be determined by the Minister in consultation with the Minister of Finance and the Chief Judge.

(5) All discussion taking place and all disclosures and submissions made during the mediation process shall be privileged, unless the parties agree to the contrary.

#### **Review of decisions of Commission**

**47** (1) Any party aggrieved by any act or decision of the Minister, the Commission, any member of the Commission or any officer of the Commission or public servant acting or purportedly acting in terms of this Act may apply to have such act or decision reviewed by the Court.

(2) The Court shall exercise all of the state high court's powers of review with regard to such matters.

#### **Scope and execution of process of Court**

**48.** (1) The process of the Court shall run throughout the State and its sentences, rulings, judgments, writs, summonses, orders, warrants, commands and other processes shall be executed in any area in like manner as if they were processes of the state high court having jurisdiction in such area.

(2) An officer of the Court to be known as the execution officer appointed for the area in which any process is to be served, shall execute all sentences, rulings, judgments, writs, summonses, orders, warrants, commands and other processes of the Court directed to him and any reference in this Act to an execution officer shall be deemed to be a reference to an execution officer of the Court acting in terms of this article.

(3) An execution officer performing his duties in terms of this Act shall have all the powers and rights and be subject to all the obligations and duties applicable to the execution by an execution officer of the state high court.

(4) The return of an execution officer of what has been done in connection with any process of the Court, shall be *prima facie* evidence of the matters therein stated.

(5) A refusal by an execution officer to do any act which he is, in terms of this Act, empowered or obliged to do, shall be subject to review by the Court on application *ex parte* or on notice as the circumstances may require.

(6) Any warrant or other process for the execution of a judgment given or order issued against any association of persons, corporate or unincorporated, partnership or firm may be executed by attachment of the property or assets of such association, partnership or firm.

### **Decisions of Court a matter of public record**

**49.** The decisions of the Court shall be a matter of public record on the same basis as decisions of the state high court.

### **Appeals from Court**

**50.** (1) An appeal from a judgment or order of the Court shall lie to and be heard by the State Court of Appeal.

(2) Leave to appeal may be granted subject to such conditions as the State Court of Appeal considers appropriate, including a condition that the applicant shall find security for the costs of the appeal.

(3) The State Court of Appeal shall, on the hearing of any appeal from the Court have the power –

- (a) to receive further evidence;
- (b) to remit the case to the Court for further hearing, with such instructions as regards the taking of further evidence or otherwise as the State Court of Appeal considers necessary; or
- (c) to confirm, amend or set aside the judgment or order which is the subject of the appeal and to give any judgment or make any order which the circumstances may require.

(4) Nothing in this article contained shall be construed as preventing an appeal from a judgment or order of the Court being made directly to the Constitutional Court, if such an appeal is allowed by national legislation and by the rules of the Constitutional Court.

### **Rules governing procedure**

**51.** (1) The Chief Judge, acting with the agreement of the Deputy Chief Judge may make rules to govern the procedure of the Court, including rules providing for –

- (a) the circumstances under which opinion and oral evidence may be submitted to the Court;
- (b) the suspension or execution of judgments, orders or sentences of the Court pending –
  - (i) applications or petitions for leave to appeal; and
  - (ii) the prosecution of appeals;
- (c) reference of particular matters for investigation by an expert;
- (d) the manner of securing the attendance of witnesses before the Court;
- (e) the manner of obtaining evidence from witnesses who cannot for good and valid reasons appear before the Court;
- (f) the manner of dealing with witnesses who refuse to appear before or give evidence to the Court;
- (g) the circumstance under which judgment by default may be given by the Court;
- (h) generally, any matter which may be necessary or useful to be prescribed for the proper despatch and conduct of the functions of the Court.

(2) In making any rules under sub-article (1) the Chief Judge and Deputy Chief Judge shall at all times be guided by the principles that the proceedings of the Court shall be kept simple, inexpensive, easy to understand and expeditious.

(3) The rules referred in sub-article (1) shall be published in the *Gazette* and made available at the offices of the Commission and the Court.

(4) Notwithstanding anything to the contrary in this Act or in the rules contemplated in sub-article (1)-

- (a) the Court may, at any stage after a claim has been referred to it, refer the claim back to the Commission with directives as to matters which are to be investigated and reported on by the Commission; and
- (b) the Court may conduct any part of any proceedings on an informal or inquisitorial basis.

## **Finances and accountability**

**52.** (1) Expenditure in connection with the administration and functioning of the Court shall be defrayed from monies appropriated by the state legislature for such purpose.

(2) Requests for the funds needed for the administration and functioning of the Court, as determined by the Chief Judge and the Deputy Chief Justice after consultation with the Minister of Justice, shall be addressed to the state legislature by the Minister of Justice in the manner prescribed for the budgetary process of Ministries.

(3) An officer of the Ministry of Justice designated by the chief officer of the Ministry for such purpose shall –

- (a) be charged with the responsibility of accounting for money received or paid out for or on account of the administration and functioning of the Court; and
- (b) cause the necessary accounting and other related records to be kept, which records shall be audited by the Chief Auditor

## **CHAPTER VI**

### **MISCELLANEOUS PROVISIONS**

#### **Offences and penalties**

**53.** (1) Any person who-

- (a) contravenes the provisions of article 29;
- (b) hinders or obstructs the Commission in the performance of its functions;
- (c) prevents or attempts to prevent a duly authorised officer referred in article 13, or a person or organisation appointed in terms of article 14, from performing a function in terms of this Act;
- (d) obstructs an execution officer from performing a function in terms of this Act,

shall be guilty of an offence and liable on conviction to a fine of not more than ten thousand dinars or to imprisonment for a period not exceeding three months.

(2) Where an offence under this Act is committed by a body corporate with the consent or connivance of or is attributable to any neglect on the part of any director, secretary or other similar officer of the body corporate, the director or that other person shall be guilty of the like offence and be punishable accordingly.

#### **Admissibility of evidence**

**54.** (1) The Commission when conducting any hearing in the course of an investigation or otherwise and the Court may admit any evidence, including oral evidence, which it considers relevant and cogent to the matter being heard by it, whether or not such evidence would be admissible in any court of law.

(2) Without derogating from the generality of sub-article (1), it shall be competent for any party before the Commission or the Court to adduce –

- (a) hearsay oral evidence regarding the circumstances surrounding the dispossession of the land right or rights in question and the rules governing the allocation and occupation of land within the claimant community concerned at the time of such dispossession; and
- (b) expert evidence regarding the historical and anthropological facts relevant to any particular claim.

(3) The Commission and the Court shall give such weight to any evidence adduced in terms of sub-articles (1) and (2) as it deems appropriate.

(4) Whenever an order, judgement or other record of the Commission or the Court is required to be proved or inspected or referred to in any manner, a copy of such order, judgment or other record duly certified as such by the Director in the case of the Commission and by the registrar of the Court under its seal shall be *prima facie* evidence thereof without proof of the authenticity of such Director or registrar's signature.

#### **Financial aid**

**55.** (1) The Minister may from money appropriated by the state legislature for this purpose and on such conditions as he may determine, grant an advance or a subsidy for the development or management of, or to facilitate the settlement of persons on, land which is the subject of an order of the Court in terms of this Act or an agreement in terms of article 33 (3) to –



- (a) any claimant to whom restoration or the award of a right in land has been ordered;
- (b) any claimant who has entered into an agreement referred to in article 33 (3);
- (c) any person resettled as a result of an order of the Court.

### **Registers of land open to public inspection**

**56.** Any register of land in the state kept under the Registration Act or any other register of land in the state shall be open to inspection by claimants and prospective claimants and all officials of any register of land shall use their best endeavours to assist all claimants and prospective claimants to access the relevant parts of any register of land and explain to such persons the purport of the relevant entries in the register.

### **Regulations**

**57.** (1) The Minister may, after consultation with the Commission, make regulations on any matter required or permitted to be prescribed in terms of the Act and generally on all matters which are necessary or expedient in order to achieve the objectives of this Act.

(2) Any such regulations shall be placed before the state legislature and shall not come into effect if the state legislature within forty days of the regulations being placed before it pass a motion disallowing all or any such regulations.

### **Proceedings of Commission not to be invalidated by reason of minor irregularity**

**58.** No act or proceeding of the Commission shall be invalid by reasons only of the number of the members not being complete at the time of any act or proceeding or of any defect in the appointment of any members or of the fact that any member was at the time in question disqualified or disentitled to act as such.

### **Limitation of liability**

**59.** The Commission, members of the Commission, any person or organisation appointed under article 14 or any officer contemplated in article 13, shall not be personally liable in respect of any act or omission in good faith while performing a function in terms of any provision of this Act.

### **Registration of land in name of claimant**

**60.** (1) Where, in terms of this Act, the Court orders the state to acquire or expropriate land in order to restore or award the land to a claimant, the claimant shall

become owner thereof on the date of such acquisition or expropriation and shall be entitled to be registered as the owner.

(2) No duty, fee or other charge is payable by the registered owner in respect of any registration in terms of sub-article (1).

#### **This Act to override other laws**

**61.** Subject to the provisions of the Constitution, if the provisions of any other law applicable to or applied in the state are inconsistent with the provisions of this Act, the provisions of this Act shall prevail.

### **FIRST SCHEDULE** Under article 4

#### **Tenure of office of members of Commission**

1. (1) A member of the Commission shall, unless he dies, resigns or otherwise vacates his office, hold office for a minimum period of three years or until the time his appointment is revoked by the Minister in the public interest.

(2) Members, including the Chairman and Deputy Chairman shall each be eligible for reappointment for one further successive term but shall not otherwise be eligible for reappointment.

(3) The Minister may fill any casual vacancy occurring in the membership, and may revoke the appointment of any member in the public interest and appoint a replacement.

(4) Where the Minister intends to revoke the appointment of a member in the public interest, he shall inform the member of the grounds on which his appointment may be revoked and afford the member an opportunity to make representations to the Minister on that matter and the Minister shall take any such representations into account in reaching his decision.

(5) A member, may at any time resign by giving notice in writing to the Minister of his intention to do so.

#### **Meetings of the Commission**

2. (1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Commission shall meet at such times as may be necessary or expedient for the transaction of its business and all meetings of the Commission shall be convened by the Chairman or in his absence from the state or incapacity through illness, the Deputy Chairman, who shall appoint a suitable time, place and date for the holding of such meeting.

(2) The Chairman, or the Deputy Chairman, shall convene a special meeting of the Commission on a request in writing signed by not less than three members of the Commission for such a meeting and shall cause the meeting to be held within twenty-one days of the receipt by him of such request.

(3) The Chairman, or in his absence the Deputy Chairman shall preside at the meetings of the Commission and in the absence of both the Chairman and the Deputy Chairman the members present at the meeting shall elect one of their number to be Chairman for that meeting.

(4) The Chairman, the Deputy Chairman or other person presiding at any meeting of the Commission may invite any person who is not a member to participate in the deliberations of the Commission, but any person so invited shall have no vote at the meeting.

(5) The Commission may act notwithstanding any vacancy in its membership.

#### Quorum and voting at meetings

3. (1) The Chairman or the Deputy Chairman and a majority of the members of the Commission shall constitute a quorum at any meeting of the Commission.

(2) All acts, matters and things authorized to be done by the Commission shall be decided by resolution at a meeting of the Commission at which a quorum is present.

(3) A decision of the majority of members present and voting at a meeting of the Commission shall be deemed to be a decision of the Commission.

(4) Every member of the Commission shall have one vote and in the event of an equality of votes the chairman of the meeting shall have a second or casting vote in addition to his deliberative vote.

(5) Notwithstanding the provisions of sub-paragraph (2) where the Chairman, with the agreement of with the Deputy Chairman so directs a decision may be made by the Commission without a meeting by circulating of the relevant papers among all the members and the expression in writing of their views. but any member shall be entitled to require that any such decision shall be deferred until the subject matter shall be considered at a meeting of the Commission

#### Minutes of meetings

4. (1) Minutes in proper form of each meeting of the Commission shall be kept and shall be confirmed by the Commission at the next meeting and signed by the chairman of the meeting.

(2) The Commission may appoint a suitable person to be secretary to the Commission for the purposes of attending meetings of the Commission, keeping the minutes of the meetings and performing such other secretarial duties as the Commission may require.

#### Procedure

5. Subject to this Schedule and to any regulations made under article 57, the Commission shall have power to make standing orders and regulate its own procedure.

#### Seal of the Commission

8. The seal of the Commission shall not be affixed to any instrument except in the presence of the Chairman or the Deputy Chairman and of one other member of the Commission.

## SECOND SCHEDULE

### Under article 7

#### Tenure of office of members of Committee

1 (1) A member of the Committee shall, unless he dies, resigns or otherwise vacates his office, hold office for a minimum period of three years.

(2) Members, including the Chairman shall each be eligible for reappointment for one further successive term but shall not otherwise be eligible for reappointment.

(3) A member, may at any time resign by giving notice in writing to the Minister of his intention to do so.

#### Meetings of the Committee

2. (1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Committee shall meet at such times as may be necessary or expedient for the transaction of its business and all meetings of the Committee shall be convened by the Chairman or in his absence from the state or incapacity through illness, one of the members who shall appoint a suitable time, place and date for the holding of such meeting.

(2) The Chairman shall convene a special meeting of the Committee on a request in writing signed by two of the members of the Committee for such a meeting and shall cause the meeting to be held within twenty-one days of the receipt by him of such request.

(3) The Chairman, shall preside at the meetings of the Committee and if the Chairman is absent, the members present at the meeting shall elect one of their number to be Chairman for that meeting.

(5) The Committee may act notwithstanding that there is no more than one vacancy in its membership.

#### Quorum and voting at meetings

3. (1) The Chairman and at least one member nominated by the NCP and one member nominated by the SPLM shall constitute a quorum at any meeting of the Committee.

(2) All acts, matters and things authorized to be done by the Committee shall be decided by resolution at a meeting of the Committee at which a quorum is present.

(3) A decision of the majority of members present and voting at a meeting of the Committee shall be deemed to be a decision of the Committee.

(4) Every member of the Committee shall have one vote and in the event of an equality of votes the chairman of the meeting shall have a second or casting vote in addition to his deliberative vote.

(5) Notwithstanding the provisions of sub-paragraph (2) where the Chairman so directs, a decision may be made by the Committee without a meeting by circulating of the relevant papers among all the members and the expression in writing of their views. but any member shall be entitled to require that any such decision shall be deferred until the subject matter shall be considered at a meeting of the Committee.

#### Minutes of meetings

4. (1) Minutes in proper form of each meeting of the Committee shall be kept and shall be confirmed by the Committee at the next meeting and signed by the chairman of the meeting.

(2) The Committee may appoint a suitable person to be secretary to the Committee for the purposes of attending meetings of the Committee, keeping the minutes of the meetings and performing such other secretarial duties as the Commission may require.

#### Procedure

5. Subject to this Schedule and to any regulations made under article 57, the Committee shall have power to make standing orders and regulate its own procedure.

#### Seal of the Committee

6. The seal of the Committee shall not be affixed to any instrument except in the presence of at least one members of the Committee nominated by the NCP and one member of the Committee nominated by the SPLM.

## **6.4 Draft Land Law (Blue Nile)**

### **Draft Land Law (Blue Nile)**

**Draft 000: 20 Jan 2006  
Blue Nile State  
Land Act 2006**

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- Article 2: Application**
- Article 3: Interpretation**

#### **CHAPTER 2 PRINCIPLES**

- Article 4: Principles of land policy**

#### **CHAPTER 3 CENTRAL LAND ADMINISTRATION**

- Article 5: The Minister**
- Article 6: Chief Land Adviser**
- Article 7: Appointment of officers**
- Article 8: Information to members of the public**

#### **CHAPTER 4 FORMS OF LAND RIGHTS**

- Article 9: Title of State to land**
- Article 10: Land holding by public entities**
- Article 11: Basic land tenure**
- Article 12: Citizens' right to land**

#### **CHAPTER 5 COMMUNITY LAND COUNCILS**

- Article 13: Establishment of Community Land Councils**
- Article 14: Secretary of Council**

- Article 15: Councils to be body corporate**  
**Article 16: Functions of Council in relation to customary tenure**  
**Article 17: Appeals to Court**

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### **ADMINISTRATION AND MANAGEMENT OF CUSTOMARY TENURE**

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**Article 19: Agreed boundaries**  
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- Article 38:**    **Functions of Council on application for certificate of customary usufruct**
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- Article 40:**    **Functions of Commission on application for certificate of customary ownership**
- Article 41:**    **Incidents of certificate of customary usufruct**
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### **REGISTRABLE USUFRUCTS**

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**Land Act 2006**

**CHAPTER 1  
PRELIMINARY**

**Title**

- Article 1:** (1) This Act is entitled the Land Act 2006.
- (2) This Act shall be brought into force by order of the Minister and the Minister may appoint different days for different Chapters of the Act to be brought into force.

**Application**

- Article 2:** This Act is applicable to all land in the state.

**Interpretation**

**Article 3:** In this Act, unless the context otherwise requires, the words and expressions have the meaning set out in this article as follows:

“Act” means the Land Act 2006;

“Adviser” means the Chief Land Adviser;

“alternative dispute resolution” includes arbitration, conciliation, mediation, and negotiation whether done in accordance with the rules and principles of the customary law or in accordance with the rules and principles of Shari’a or in accordance with statutory procedures;

“Blue Nile State Land Board” means the Blue Nile State Land Board established under article 46;

“Board” means the Blue Nile State Land Board;

“Boundary Identification Committee” means the Boundary Identification Committee established under article 20;

“certificate of commonhold” means a certificate issued under article 43;

“Chief Land Adviser” means the Chief Land Adviser appointed under article 6;

“Chief Land Recorder” means the Chief Land Recorder appointed under article 44;

“

“Commission” means the Blue Nile State Land Commission established under the Blue Nile State Land Commission Act;

“Committee” means the Boundary Identification Committee;

“commonhold” means common land which has traditionally been held by customary authorities for the common use of members of a community in respect of which a certificate under the provisions of this Act has been issued as land held in commonhold;

“common land” means land which is or has traditionally been held by customary authorities for the common use of members of a community;

“community” means any group of persons whose rights and obligations amongst themselves are derived from communally recognised and shared rules whether customary or otherwise and which determine access to land held in common by such group, and includes both a part of any such group and any group of persons who consider themselves and are generally considered by others to be members of a tribe;

“community area” means an area recognised as being the area where members of a community customarily live and includes parts of the area where persons who are not members of the community live and have been generally accepted and permitted to do so;

“community area land” means land within a community area and includes land which may be occupied by persons who are not members of a community;

“Community Land Council” means a Community Land Council established by article 13 of this Act;

“Constitution” means the Interim National Constitution of the Republic of Sudan 2005;

“constitution” means the constitution of Blue Nile State;

“corridor” means a specific and well-known route for the moving of livestock over and through land used primarily for purposes other than for grazing for purposes of *nishuq* and *dammer*;

“Council” means Community Land Council;

“Court” means the Blue Nile State Land Claims Court;

“customary authority” means a chief, or an Omda, or any person or group of persons who are recognised by a tribal group as being the authority who or which traditionally exercises functions of management and regulation over land held under customary tenure;

“customary law” means in relation to any particular tribe or tribal community, rules of law which are by custom applicable to any particular tribe or tribal community in The Sudan, and in relation to any land, means the customary law of the place where the land is located, and in either case, not being rules which are inconsistent with the provisions of any enactment or contrary to morality, humanity or natural justice;

“customary tenure” means and includes all the incidents of holding, occupying, using, dealing in and inheriting land whether on an individual, family or communal basis, whether for agricultural, pastoral (including nomadic), residential, subsistence, hunting and gathering the produce from or other lawful uses (which uses do not need to be actual or continuous but may be seasonal or intermittent), and whether for an indefinite or a limited term, which are based on and derived from long-standing, well recognised and authoritative customs and practices existing and operating within a community and includes customs, norms and practices which may in whole or in part be derived from religious beliefs and practices, from sources external to the community, or from rules and regulations issued by the government altering, amending and adding to the customary tenure as here defined: provided that no incident of customary tenure as here defined may contravene the Interim National Constitution;

“customary usufruct” means a usufruct of land held under customary tenure;

“dealing” means any transaction of whatever nature by which the rights of persons in, on under or over land are affected or a charge is created or affected and the verb “deal with” has a corresponding meaning;

“Deputy Director ” means the Deputy Director of Land Claims appointed under the Blue Nile State Land Commission Act;

“deputy land mediator” means a deputy land mediator appointed under article 48;

“Director” means the Director of Land Claims appointed under the Blue Nile State Land Commission Act and includes the Deputy Director;

“functions” includes powers and duties;

“*Gazette*” means the *Gazette* of the State of Blue Nile;

“Government” means the Government of Sudan;

“government” means the government of the State of Blue Nile;

“Governor” means the Governor of the State of Blue Nile;

“grant of land” means the grant or renewal of a lease of land or a registrable usufruct of land or any other interest in land by the Board;

“grazing land” includes natural and planted pastures;

“Guidelines” mean the Technical Guidelines prepared in connection with the Customary Land Security Project of Blue Nile State;

“housing plot” means a plot of land of not more than one hectare or such size as may be specified by order made by the Minister used mainly as a home for a family which consists of one or more residential buildings and land around the residential buildings used for livelihood purposes by the family and includes any other buildings on the plot used in connection with the residential buildings and for the livelihood purposes;

“interest in land” means an interest in a usufruct, or a lease and includes the rights and obligations that arise under an agreement to grant a usufruct or a lease and a lease includes a sub-lease and a usufruct include a sub-usufruct;

“land” means the surface of the earth and the earth below the surface and all substances, other than oil and precious stones forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water and includes benefits to arise out of land, an undivided share in land, any interest in land capable of being registered, and a right to cultivate a determinate or determinable area of land although its location may vary from year to year;

“Land Mediator” means the Land Mediator appointed to be the Land Mediator under article 79;

“land recorder” means a person appointed to be a land recorder under article 44;

“land registry” means the land registry established and operating under the Registration Act;

“letter of offer” has the meaning ascribed to it by article 58;

“livestock” includes buffalo, oxen, horses, donkeys, camels, sheep, goats and their offspring;

“local authority” means a Boma, a Payam, a County and any entity created under the Native Administration Act 1999;

“local land court” means a local land court established under Chapter 8;

“Local Land Mediation Panel” means a Local Land Mediation Panel constituted under article 81;

“Minister” means the Minister for the time being responsible for land;

“member” means a member of a Council;

“Panel” means Local Land Mediation Panel;

“person” means a natural or a corporate person and a community or part thereof but does not include a public entity or a public official;

“prescribed” means prescribed by or under this Act;

“Protocol” means the Protocol between the Government of Sudan and the Sudan People’s Liberation Movement on the Resolution of Conflict in Blue Nile/Nuba Mountains and Blue Nile States dated the 26<sup>th</sup> day of May 2004;

“public entity” means any Ministry or part of a Ministry in both the Government of Sudan and the government of Blue Nile, any Local Authority, any para-statal organisation, any public authority or board and any other body or association funded in whole or at least as to fifty-one percent in part from funds derived from taxation, from grants or loans from the Government or the government or from external public financial sources;

“registrar” means a registrar exercising functions under the Land Registration Act;

“registrable usufruct” means a usufruct held under the Civil Transactions Act 1984;

“right in land” means any right or interest in land whether registered or unregistered, and includes the interest of a sharecropper, a right or interest in land held under customary tenure, a right or interest in communally owned land held under any form of tenure and beneficial occupation for a continuous period of not less than 10

years prior to a dispossession which is the subject of a claim under the Land Commission Act;

“state” means the State of Blue Nile;

“state Constitution” means the Constitution of the State of Blue Nile;

“state government” means the government of the State of Blue Nile;

“State Land Claims Court” means the State Land Claims Court established under the Land Commission Act;

“State” means the Republic of Sudan;

“state land” means land of which the state is the trustee and includes land held by a public entity;

“tribe” means a community of persons recognised by themselves and others as belonging to a collectivity separate and distinct from other collectivities and acknowledging a specific customary authority having jurisdiction over them and includes a section of a tribe;

“usufruct” means a real right of using and enjoying land the bare ownership of which belongs to another person and includes a usufruct created under and in accordance with customary tenure, the Shari’a or a statute

“working day” means any day other than a Friday or a public holiday.

## **CHAPTER 2**

### **PRINCIPLES**

#### **Principles of land policy**

**Article 4:** The fundamental principle of land policy which it is the objective of this Act to promote and to which all persons exercising powers under, applying or interpreting this Act are to comply with is to further the realisation of article 186 of the Interim National Constitution and to this end, the following specific principles shall form the basis of law, administration and practice in the state –

- (a) to establish and maintain a system of land relations in the state of South Kordofan which will contribute to the eradication of poverty in and to the economic development of the state;
- (b) to ensure that existing customary rights in, and long-standing customary occupation or use of land by the citizens of the state are clarified and secured by the law;

*(c) to further the realisation of the constitutional right of every citizen to acquire and own land by facilitating an equitable distribution of, and access to, land by all citizens of the state and by pursuing, through the provisions of the Land Commission Act, the restitution of land and redress for past injustices with respect to their*



*rights to land suffered by citizens of the state at the hands of past Governments and state governments;*

*(d) to regulate the amount of land that a person or corporate body may occupy or use;*

- (e) to ensure that land is used productively, that the use complies with the principles of sustainable utilization of land and that effective measures are taken to regulate and prevent the use of land that does not accord with such principles;
- (f) to pay fair and prompt compensation (including, where appropriate, restitution of land) to a person whose usufructuary right to land or recognised long-standing occupation or customary use of land is or has in the past been revoked or otherwise interfered with to their detriment by the State or the state or is acquired by the State or the state under a law providing for the compulsory acquisition of land or rights in the land;
- (g) to provide for an accountable, efficient and transparent system of land administration by all state bodies;
- (h) to enable all citizens in the state to participate in decision-making on matters connected with their occupation or use of land;
- (i) to facilitate and regulate the operation of an efficient, equitable and transparent market in land;
- (j) to establish independent, expeditious and just systems for the adjudication of all land disputes, including disputes relating to the exercise of powers over land by governmental agencies; and
- (k) to encourage the dissemination of information about land matters and land law through programmes of public and adult education, using all forms of media.

### **CHAPTER 3**

### **CENTRAL LAND ADMINISTRATION**

#### **The Minister**

**Article 5.** The Minister shall be responsible for policy formulation and for ensuring the execution by officials in the Ministry of functions connected with the implementation of policies on or about land and of this Act as are allocated or

delegated to him , and in pursuance of this responsibility the Minister may take all necessary actions and decisions as will enable him to discharge the functions as are allocated or delegated to him in connection with the implementation of policies on or about land and of the administration of land under this Act.

#### **The Chief Land Adviser**

**Article 6:** (1) There shall be a Chief Land Adviser (the Adviser) who shall be the principal professional officer of, and adviser to, the government of the state on matters connected with the administration of land and shall be responsible to the Minister for the administration of this Act by public officials within the Ministry.

The Adviser shall either directly or through officers in the Ministry give advice and assistance to the members and officers of all local authorities and the Community Land Councils having responsibility for land administration on the performance of their duties under this Act or any other law dealing with land as will ensure compliance with the provisions of this Act and those other laws.

#### **Appointment of officers**

**Article 7.** (1) The state shall appoint as many public officers as may be considered necessary to ensure the efficient, effective, economical, impartial and transparent management of land in accordance with the provisions of this Act.

(2) Public officers appointed under this section shall be allocated such functions and shall be located in such offices in such areas as the Adviser considers will contribute to the proper management of land.

(3) Public officers appointed under this section shall be answerable to the Adviser and shall exercise their functions expeditiously, efficiently and with due regard to the public good.

#### **Information to members of the public**

**Article 8.** The Adviser, all public officers appointed under this Act and all officers of a Local Authority or Community Land Council allocated functions in connection with the management of land under this Act shall, where it is practical to do so, provide information and guidance, either orally or in writing, to members of the public in connection with land matters and the implementation of this Act.

### **CHAPTER 4**

## **FORMS OF LAND RIGHTS**

### **Title of State to land**

**Article 9:** (1) The allodial title to land in Sudan is vested in the State which holds that land as trustee for all the citizens of the State.

(2) As trustee of all land for all the citizens, the State is under a profound ethical and constitutional duty to ensure that land and rights in land are equitably distributed amongst the citizenry so as to contribute to the achievement of a decent standard of life for all citizens.

(3) The duty of the State referred to in this Article shall apply to all public entities operating in the state.

### **Land holding by public entities**

**Article 10.** (1) Where a public entity holds land or occupies and uses land for its own purposes, that land shall be known as state land and the incidents of state land shall be, as near as may be, the incidents of a registrable usufruct: provided always that state land may be held by a public entity indefinitely.

(2) A public entity may transfer state land to another public entity.

(3) A public entity may not transfer state land as such to any person.

(4) Where a public entity intends to dispose of any state land to any person, it shall grant to that person a customary or registrable usufruct.

### **Basic land tenure**

**Article 11.** (1) All land in the state is and shall be deemed to be either state land or land held for a registrable usufruct or for a customary usufruct.

(2) Notwithstanding the vesting of the allodial title to land in the State, the basic tenure applicable to land, rights in land, and all incidents of land tenure within the state, other than state land, or land held for a registrable usufruct, is and always has been customary tenure.

(3) Land which was occupied in accordance with customary tenure on or before 6 April 1970 and has not been since that date granted to any person to hold for a registrable usufruct or a lease or is not being used by a public entity for its

own purposes is hereby declared to be land held for a customary usufruct and shall not as from the date of the coming into force of this Act be deemed either to be state land or unoccupied land.

(4) Upon the coming into effect of this Act, every person with a customary law right to hold and occupy land to which sub-article (3) applies shall forthwith by virtue of this Act and without having to take any specific action hold and occupy that land by virtue of an individual customary usufruct.

(5) Any land to which sub-article (3) applies which was on 6 April 1970 held by a traditional authority in accordance with customary tenure as common land on behalf of a community for community uses shall by virtue of this Act and without having to take any specific action be held by a Council having jurisdiction in the tribal area where the land is located for a communal customary usufruct and the community uses may, until such time as the Council determine otherwise continue to be used in and on that land.

(6) No land in the state shall be deemed or taken or assumed or declared to be waste or unoccupied land nor shall any person or public entity or public official enter, occupy or use any land within the state as if it were waste and unoccupied land and the fact that any land or portion of land is or appears not to be in open and continuous use or is uncultivated or lying fallow or used only for purposes of gathering the natural fruits from the land or for intermittent cultivation or depasturing of cattle on the land or for any other intermittent purpose connected with the customs of the community which traditionally uses that land shall not be used as proof or evidence that that land or portion of land is waste and unoccupied land:

provided that this article shall not in any way either permit the doing on land of any thing which is illegal or prevent the State or the state from acquiring any such land from the community which holds a customary usufruct over the land for public interest and in consideration for prompt and fair compensation.

### **Citizens' rights to land**

**Article 12.** (1) Any citizen may own a usufruct in any land in the state.

(2) A usufruct may be owned by a citizen in accordance with either of the following tenure systems:

- (a) customary tenure, and it is to be known as a customary usufruct;
- (b) tenure under the Civil Transactions Act and it is to be known as a registrable usufruct.

(3) A customary usufruct is private property and may be registered in accordance with the provisions of this Act but notwithstanding that a customary usufruct is not registered, it shall not be expropriated save for public interest and in consideration for prompt and fair compensation.

(4) Land which is held for a customary usufruct may be converted into land held for a registrable usufruct either by the existing owner of the customary usufruct or by a transaction whereby the existing owner of the customary usufruct sells or leases the customary usufruct to a person who converts the customary usufruct to a registrable usufruct or by the State or the state expropriating land held for a customary tenure.

(5) Land which is held for a registrable usufruct may be converted into land held for a customary usufruct either by the existing owner of the registrable usufruct or by a transaction whereby the existing owner of the registrable usufruct sells or leases the registrable usufruct to a person who converts the registrable usufruct to a customary usufruct or as a result of any decision or action connected with the restitution of land taken under and in accordance with the provisions of the Land Commission Act, or on the expiry of the registrable usufruct.

## **CHAPTER 5 COMMUNITY LAND COUNCILS**

### **Establishment of Community Land Councils**

**Article 13.** (1) There is hereby established a Community Land Council for every community area to hold as trustee on customary usufruct all common land situated in that community area.

(2) Community Land Councils shall be based on, represent and be responsible to a generally acknowledged tribal community which occupies and uses land in accordance with customary tenure within a community area with boundaries agreed in accordance with procedures provided for by this Act.

(3) The membership of each Community Land Council and the period of office of members elected or appointed to the Council shall be as may be prescribed. .

(4) A member of a Council shall cease to hold office if he/she –

(a) resigns his/her office by written notice to the Minister;

- (b) is declared or becomes insolvent or has made a composition with his/her creditors and has not paid his/her debts in full;
- (c) becomes of unsound mind or is otherwise unable to discharge the duties of his/her office for a period of at least six months;
- (d) has been convicted of an offence involving dishonesty, fraud or moral turpitude and sentenced to imprisonment without the option of a fine;
- (e) is a member of the state legislature or the National Legislature;
- (f) holds a public office or is acting in any public office under a contract for a period exceeding six months;
- (g) is absent from three consecutive meetings of the Council without leave of absence being granted by the Council;
- (h) dies.

(5) A member of a Council who misconducts himself or herself or who abuses his or her position may be censured by the Council or if the gravity of the matter is sufficiently serious, the Council may by a vote of two-thirds of the members present and voting, with the approval of the Minister, remove the member from the Council.

### **Secretary of Council**

**Article 14.** The Minister shall appoint a person of probity and knowledge of customary tenure as secretary for each Council and every such secretary shall be an ex-officio member of the Council, with the power to participate in discussions but not vote on any matter coming before the Council.

### **Councils to be body corporate**

**Article 15.** (1) A Council shall be a body corporate capable of suing and being sued in its own name.

(2) Subject to the provisions of this Act a Council shall have the power to do anything and enter into any transaction which in its opinion is calculated to facilitate the proper discharge of any function conferred or imposed upon it by this Act or any other law or which is incidental or conducive to any such discharge of functions.

### **Functions of Councils in relation to customary tenure**

**Article 16.** (1) A Council shall at all times exercise its functions as trustee of common land held for a customary usufruct for the benefit of all the members of the community which use the land subject to the customary usufruct and shall have due regard to and follow the principles set out in article 3.

(2) All the functions previously vested in a Chief or in any traditional customary authority under customary law in relation to land in a tribal area including but not limited to –

- (a) the determination of the boundaries of the area of land where the community resides;
- (b) the granting of rights to use community area land;
- (c) the cancellation of the grant of any rights to use community area land;
- (d) the imposition of restrictions on the use of community area land;
- (e) authorising any change of user of community area land;
- (f) authorising any transfer of community area land;
- (g) agreeing to any compensation for the expropriation of communally occupied and used community area land or in connection with the restitution of any community area land under the Land Commission Act;

shall vest in and be performed by a Council acting in accordance with powers conferred on it by or under this Act.

(3) In addition to the functions referred to in sub-article (2), a Council shall have the following functions; that is to say, it shall –

- (a) advise the Minister and the Board on any question of customary tenure;
- (b) adjudicate and determine any application for a certificate of an individual customary usufruct of land;
- (c) assist in the maintenance of a register of commonhold and certificates of individual customary usufructs;
- (d) work with representatives of nomads to agree on corridors over and through land in a community area;
- (e) recommend on or object to on the granting of a registrable usufruct of community land;

- (f) prescribe and apply rules for the common use by members of the community and outsiders of common land within the tribal area; and
- (h) such other functions as the Minister may confer upon them.

### **Appeals to Court**

**Article 17.** Any person aggrieved by any decision of a Council may appeal to the Court within six months from the date on which he/she became aware of the decision of the Council.

## **CHAPTER 6 CUSTOMARY TENURE**

### **Sub-Chapter 1 Boundaries**

#### **Community land area boundaries**

**Article 18.** The boundaries of a community land area shall be determined in accordance with the provisions of this Sub-Chapter.

#### **Agreed boundaries**

**Article 19.** Where prior to the coming into force of this Act but after the coming into force of the Protocol, two communities have, through their representatives and after discussions, negotiations and walking the boundaries, agreed on their common boundary, and that agreement of representatives has been ratified by those two communities, that boundary is hereby declared to be the legal boundary between those two community land areas and the Minister shall as soon as maybe, publish the details of that boundary in a form calculated to bring it to the attention of the two communities and all other persons in the state.

#### **Boundary Identification Committee**

**Article 20.** Where a community land area boundary has not been determined and agreed with one or more neighbouring communities, but the communities concerned wish to determine and agree on their common boundary, each community shall elect or appoint a Boundary Identification Committee of not less than eight nor more than twenty persons using such procedures as will ensure a representative committee of knowledgeable and well respected persons from the community.



### **Convenor of Committee**

**Article 21.** Each Committee shall elect or appoint a convenor of the Committee who shall be responsible for ensuring that –

- (a) the Committee meets as and when required;
- (b) conducts its business in a responsible and accountable manner;
- (c) the business of the Committee is properly recorded,

and shall report back to the community on a regular basis on the progress of settling boundaries.

### **Procedure of Committee**

**Article 22.** A Committee shall through an open and participative process and paying particular attention to those members of the community with long-standing knowledge of the community land area and a reputation for probity, discuss with the members of the community and reach agreement amongst themselves on what they consider their boundaries to be.

### **Joint meetings of Committees**

**Article 23.** On an agreed date, the two or more Boundary Identification Committees shall meet at an agreed location at or near to the boundary which is to be demarcated and together walk the boundary noting those parts of the boundary with which the Committees are agreed upon and those parts of the boundary on which they have different opinions.

### **Appointment of Mediator**

**Article 24.** The convenors of the two Committees shall prior to the Committees walking the boundary, meet and together appoint a Mediator who will be available to assist the Committees to reach agreement on the boundary if the Committees are not able to reach such an agreement without such assistance.

### **Negotiations between Committees**

**Article 25.** (1) When the Committees have completed their walk of the boundary, they shall return to those parts of the boundary on which they have different opinions and taking each such part separately, they shall discuss and negotiate their differences together in a peaceable and flexible manner concentrating on the issues of the boundary and eschewing other matters which are not relevant to those issues and being prepared to compromise with each other so as to facilitate the reaching of an agreement.

(2) In exercising their functions of walking the boundary and discussing the disputed parts of the boundary, a Committee shall have regard to and follow the principles set out in the Guidelines.

(3) If the Committees are not able to reach an agreement, the two convenors shall call upon the Mediator to work with the Committees to assist them to reach an agreement on the boundary.

#### **Adviser to fix boundary where no agreement**

**Article 26.** If after not less than three months from the commencement of the process of walking the boundary, the two Committees involved in that process have been unable to reach an agreement on the boundary and the Mediator has been unable to assist in bringing the two Committees to an agreement, the Minister may direct the Adviser to meet with the two Committees, and after hearing and considering their representations on those parts of the boundary on which they have been unable to reach agreement, the Adviser shall determine and fix the boundary on those parts.

#### **Minister to declare agreed boundary as legal boundary**

**Article 27.** When a boundary has been fully or partially agreed between the Committees or the Adviser has, in a case where the boundary has been only partially agreed between the Committees, determined the boundary on those parts where the Committees have been unable to reach agreement, Minister shall as soon as maybe, declare the boundary to be the legal boundary and publish the details of the boundary in a form calculated to bring it to the attention of the two communities and all other persons in the state.

### **Sub-Chapter 2 Grant of customary usufruct**

#### **Application for a customary usufruct**

**Article 28.** (1) Any person may apply to a Council for a customary usufruct of tribal land.

(2) An applicant shall submit verbally or in writing to the secretary of the Council within whose area the land is located the following information which the secretary shall record –

(a) the name and address of the applicant;

- (b) whether the applicant is married and how many children he/she has;
- (c) the place within the community area where the customary usufruct is sought;
- (d) the nature of the use which the applicant intends to put the land;
- (e) the description and extent of the land applied for;
- (f) what other customary usufructs the applicant holds in the community area.

(3) An applicant may also produce a letter from his or her local representative or the responsible heads of two families in the place where the land for which he is applying for a customary usufruct is located stating whether they have any objection to the granting of a customary usufruct to the applicant.

(4) A Council may require an applicant to submit such further relevant information as it may specify and shall not be obliged to determine an application until that further information has been submitted or a satisfactory explanation provided as to why it is not practical or possible to submit that additional information.

#### **Procedure on receipt of application**

**Article 29.** (1) As soon as may be after receipt of an application for a customary land right the secretary shall –

- (a) notify the applicant of the date and place of the next meeting of the Council, not being less than 21 days after the receipt of the application, at which representations concerning the application will be heard;
- (b) post on a notice board open to public inspection at the Council's offices a notice of the application and its details and the date and place of the meeting at which representations concerning the application will be heard and calling upon any interested person who wishes to make representations to appear at the meeting; and
- (c) ascertain in the most expedient manner the attitude of the people in the area and any local representatives towards the application, if it has not already been communicated to him.

(2) Any meeting of the Council at which representations concerning an application for a customary usufruct are heard shall be held in public and any interested person shall be entitled to make representations concerning the application, the substance of which shall be recorded by the secretary.

(3) For the purpose of resolving any dispute or difference arising from the representations submitted to it, or otherwise for the purpose of enabling it to decide upon an application, a Council shall have power to summon persons to give evidence before it.

(4) A Council shall have power, for the purpose of determining any application for a customary land right, to administer an oath or affirmation to any person appearing to give evidence before it.

(5) No evidence shall be heard by a Council unless the applicant and any interested person whose name has been recorded as objecting to the application has been given notice of the meeting at which the evidence is heard.

(6) The applicant and any interested person attending the meeting of the Council at which representations concerning the application are heard shall be entitled to call and question any witness.

#### **Procedure before grant of customary usufruct in made**

**Article 30.** (1) In determining whether to grant the applicant a customary usufruct, the Council shall satisfy itself –

- (a) whether or not the applicant is a member of the community occupying the tribal area where the land the subject of the application is located;
- (b) whether or not the land is subject to rights in favour of any person other than the applicant;
- (c) whether or not the land is available for the use proposed by the applicant.

and shall have regard to any advice on land management either in general terms or relating to the specific application that the Adviser may have given.

#### **Decision of Council to be communicated**

**Article 31.** The Council's decision on an application for a customary land right shall be communicated in writing to the applicant by the secretary and shall be posted by the secretary on a notice board open to public inspection at the Council's offices, as soon as the Council has made its decision.

#### **Demarcation of land**

**Article 32.** (1) With the object of avoiding disputes arising from imprecise or conflicting grants, it shall be the duty of a Council in making a grant of a customary usufruct in respect of a piece of land which is not defined by a diagram to describe it in the certificate of grant by reference to permanent and ascertainable boundary points or boundaries, whenever possible, and whenever possible to attach a sketch plan.

(2) For the purposes of fixing boundary points not otherwise readily ascertainable it shall be the duty of the grantee within six weeks of the issue to him of a certificate of grant to demarcate the land in respect of which a customary usufruct has been granted to him in such a manner as the Council may direct.

(3) Any grantee who fails to demarcate land in respect of which a customary usufruct have been granted to him in the manner directed by the Council within the period prescribed in sub-article (2) or who fails to maintain any mark which has been established to demarcate such land shall forfeit his rights to such land.

(4) Before a certificate of grant of customary land rights is issued, it shall be the duty of the Council to ensure that the boundaries of the area of land concerned are pointed out to the grantee by a person designated by it for the purpose in the presence of two responsible heads of family, and such pointing out shall be recorded in the certificate of grant.

#### **Certificate of grant of customary usufruct**

**Article 33.** (1) A certificate of grant of any customary usufruct issued by a Council shall specify whatever conditions the Council with the approval of the Minister imposes, and shall be signed by the chairman or the secretary, and shall be in Form I set out in the Third Schedule.

(2) A duplicate copy of every certificate issued under sub-article (1) shall be retained by the secretary of the Council and kept in a register which shall be open to inspection during office hours on payment of such fees as may be prescribed.

### **Grounds for cancellation of grant of customary usufruct**

**Article 34.** (1) The grounds upon which a grant of a customary usufruct may be cancelled shall be that –

- (a) the holder of the customary usufruct is no longer eligible to hold land under the provisions of this Part;
- (b) there has been a failure to observe conditions attached to the grant or to observe the principles of good husbandry in using the land;
- (c) the cancellation is necessary for ensuring the fair and just distribution of land among members of the community resident in the tribal area and entitled thereto;
- (d) the land has been used for a purpose not authorised by customary law or that the customary usufructuary has contravened any customary law relating to the use thereof;
- (e) in the case of agricultural land, for a period of five consecutive years the land has not been cultivated and that there is no sufficient excuse for this; or
- (f) the land is required for public purposes,

and no cancellation for any other reason shall be of any force or effect.

### **Procedure for cancellation of customary usufruct**

**Article 35.** (1) Before any decision is made to cancel a grant of a customary usufruct, the Council shall notify the holder of the customary usufruct in writing of the grounds on which it proposes to cancel the grant and shall allow the holder not less than 30 days to show cause why the grant should not be cancelled, unless it is satisfied for reasons which must be recorded in its minutes that it is impossible to notify the holder of the proposed cancellation.

(2) The Council may seek the opinion of any other interested party on the proposed cancellation of the grant but if it does so, it must allow the holder an opportunity to comment on that other opinion.

(3) Any decision of a Council to cancel a grant of a customary usufruct shall, as soon as it is made, be posted by the secretary on a notice board open to public inspection at the Council's offices and unless the Council is satisfied for

reasons stated in its minutes that it is impossible to do so, be communicated to the holder in writing.

### **Setting aside of common land**

**Article 36.** (1) A Council may after consultation with the community residing in the community land area by resolution set aside any common land for the purpose of making grants of that land for individual customary usufructs.

(2) Upon setting aside any common land, the Council shall notify the Minister and shall send to the Minister a description of the land sufficient for the Minister to identify the land and the reasons for the setting aside of the land.

(3) If the Minister is satisfied of the reasons for the setting aside of the land and the adequacy of the description of the land set aside he shall confirm the setting aside of the land and direct the Council to give publicity to the setting aside.

(4) If the Minister is not satisfied of the reasons for the setting aside of the land, he shall –

- (a) not confirm the setting aside of the land; and
- (b) inform the Council, giving reasons for his decision.

(5) A Council shall have regard to the Minister's reasons before exercising its powers under this article with respect to any common land the prior setting aside of which the Minister has refused to confirm.

## **Sub-Chapter 3**

### **Certificates of customary usufruct**

#### **Application for certificate of customary usufruct**

**Article 37.** (1) Any person (hereafter referred to as an applicant) holding land under a customary usufruct as a result of the operation of article 11(4) may acquire a certificate of customary usufruct in respect of that land in accordance with the provisions of this Sub-Chapter.

(2) A certificate of customary usufruct shall be in the prescribed form and shall be issued by the Recorder on the authorisation of the Commission.

(3) An application for a certificate of customary usufruct shall be in the prescribed form and shall be submitted, together with the prescribed fee, to the Council of the community land area in which the land the subject of the application is located.

**Functions of Council on application for certificate of customary usufruct**

**Article 38.** (1) On receipt of an application for a certificate of customary usufruct, the Council shall:

- (a) adjudicate, determine and verify the boundaries of and all interests in the land which is the subject of the application;
- (b) demarcate rights of way and other easements over the land the subject of the application and any contiguous land which benefit or burden or are reputed to benefit or burden any such land or which it considers will be necessary for the more beneficial occupation of any such land in respect of which an application may be granted or any contiguous land;
- (c) adjudicate upon and decide in accordance with and applying customary law any question or matter concerning the land referred to it by any person with an interest in land which is the subject of an application or any contiguous land thereto;
- (d) record that if any person has exercised rights under customary law over the land the subject of the application that should be recognised as ownership of that land shall, *prima facie*, be entitled to be issued with a certificate of customary usufruct, and where two or more persons have applied for a certificate, the shares of each such person and the nature of their rights in the land;
- (e) record that if any persons have exercised any right over the land or any part of the land or are entitled to any interest in the land or part of the land not amounting to ownership (hereafter referred to as a third party right), shall record the nature, incidents and extent of that third party right and the persons entitled to the benefit of it;
- (f) safeguard the interests in the land the subject of the application of women, absent persons, minors and persons under a disability;
- (g) take account of any interest in land in respect of which, for any reason, no claim has been made;



- (h) exercise such other functions as may be prescribed.

(2) The Council shall in the exercise of any of its powers under this section which involve a hearing comply with the rules of natural justice and, subject to that duty, may –

- (a) hear evidence which would not be admissible in a court of law;
- (b) call evidence of its own motion;
- (c) use evidence contained in any official record or adduced in any other claim;
- (d) refer any matters to any institution or person habitually accepted within the community land area as an institution or person with traditional functions over land for advice and where relevant, use, with or without adaptations and additions, customary procedures relating to the settlement of disputes over land recognised and in general use within the community where the land is situate; and
- (e) generally, determine its own procedures.

(3) In order to discharge the functions referred to in sub-article (1), the chairman of a Council shall be legally competent to administer oaths and to issue summonses, notices and orders requiring the attendance of such persons and the production of such documents, as he may consider necessary for the carrying out of the functions of the Council.

#### **Procedures connected with application for certificate of customary usufruct**

**Article 39.** (1) The chairman of a Council shall be responsible for ensuring that the procedures to be followed by the Council as set out in this section and any other procedures that may be prescribed are complied with.

(2) Where an application has been submitted to the Council, a notice in the prescribed form shall be published and posted in one or prominent places in the community land area and on the land which is the subject of the application –

- (a) specifying the location and approximate area of the land;

- (b) requiring all persons who claim any interest in the land or in any contiguous land which may be affected by the application, including in respect of any contiguous land, claims as to the boundaries of such land, to attend a meeting of the Council at a specified time and put forward their claims.
  
- (3) On the specified date, the Council shall hear and determine all claims made under sub-article (2).
  
- (4) The Council may adjourn any hearing into any claim and request a person or a group of persons recognised within that part of the community land area where the land is located as having knowledge about that land and its incidents of tenure to conduct investigations into that claim.
  
- (5) In hearing and determining any claim, the Council shall use its best endeavours to mediate between and reconcile parties having conflicting claims to the land.
  
- (6) The Council shall –
  - (a) prepare a report on the application setting out its findings and recommendations with reasons, including in all cases whether the application should be approved with or without conditions and whether there are any third party rights which should be recognised;
  - (b) give or send a copy of the report to the applicant;
  - (c) send a copy of the report to the Commission;
  - (d) make a copy of the report available for inspection by all persons who submitted claims to or who were heard by the Council.

**Functions of Commission on application for certificate of customary ownership**

**Article 40.** (1) The Commission shall upon receipt of the report and recommendations of the Committee referred to in article 40, consider the application in the light of that report and those recommendations and may either –

- (a) confirm the recommendations of the Council and where those recommendations are to issue, with or without conditions, a certificate

of customary usufruct, issue that certificate and where the recommendations are to refuse to issue a certificate of customary usufruct, confirm that refusal;

- (b) where the recommendation of the Council is to issue a certificate, subject to conditions, vary the recommendations of the Council and issue a certificate of customary ownership, with any such variations as it may make;
- (c) return the report to the Council with directions as to what action the Council is to undertake on the application;
- (d) reject the report of the Council and substitute its own decision for that of the Council.

- (2) The Commission shall give reasons for its decisions.

(3) Where the Council have recorded, under article 40, that a person is entitled to the benefit of a third party right, a certificate of customary usufruct may only be issued by the Commission subject to that third party right, a record of which shall be endorsed on the certificate.

(4) The Commission shall communicate its decision in writing to the Recorder.

(5) Where the decision of the Commission is to issue a certificate, the Recorder shall issue a certificate in the terms of the decision of the Commission to the applicant.

(6) A certificate may be issued to and in the name of one person or more than one person.

(7) Any person aggrieved by a decision of the Commission under this section may appeal to the Court against that decision and the Court may confirm, vary, reverse or modify the decision of the Commission or the determination of the Council as the case may be and make such other order in respect of that decision or determination as by this Act, it is empowered to make.

### **Incidents of certificate of customary usufruct**

**Article 41.** (1) A certificate of customary usufruct confirms and is conclusive evidence of the customary rights and interests specified in it and the land to which the certificate refers shall, unless the contrary is provided for in accordance with this section, continue to be occupied, used, regulated and any dealings in respect of such land undertaken and any third party rights over the land exercised in accordance with the principles and rules of customary tenure.

(2) A customary certificate of usufruct shall confirm the right of the holder of the certificate to undertake, subject to the conditions contained in the certificate and to the provisions of subsection (1), any dealings in respect of that land.

(3) Where the holder of a certificate of customary usufruct and a person with whom such a holder proposes to undertake a dealing in respect of the land to which the certificate applies agree in writing that such a transaction shall be governed by the Registrable Transactions Act that transaction shall thereupon be governed by that Act and customary tenure shall no longer apply to that dealing or any dealing or use or occupation of the land ancillary to or consequent upon or arising out of that dealing.

(4) The holder of a certificate of customary usufruct who undertakes any dealing in respect of the land to which the certificate relates shall provide the Recorder with a copy or other accurate record of the dealing and the Recorder shall keep all such records in the prescribed manner.

#### **Certificate of commonhold**

**Article 42.** (1) A Council which is holding as trustee on behalf of a community any common land within a community land area shall send to the Commission a description of such common land sufficient for the Commission to identify the land and evidence to show that it is and has for not less than thirty years been recognised and accepted by the community as common land.

(2) If the Commission is satisfied by the description and evidence sent to it by a Council, it shall direct the Recorder to issue a certificate of commonhold to the Council.

(3) If the Commission is not satisfied by the description and evidence or any part of either sent to it by the Council, it shall inform the Council of what additional information must be sent to it before it can authorise the issuing of a certificate of commonhold to the Council.

#### **Sub-Chapter 4**

#### **Customary land recordation**

### **Office of Customary Land Recordation**

**Article 43.** (1) There is hereby established an Office of Customary Land Recordation which is a part of and under the authority of the Land Commission.

(2) The Office shall be headed by a Chief Land Recorder who shall be appointed by the Land Commission and shall be responsible for the keeping of all records in the state relating to certificates of customary usufruct and certificates of commonhold.

(3) There may be appointed such number of land recorders and assistant land recorders as may be necessary, having regard to economy and efficiency of operation, to ensure that the records referred to in sub-article (2) are maintained in an effective and up-to-date manner.

### **Functions of Chief Land Recorder and land recorders**

**Article 44.** (1) The Chief Land Recorder shall have jurisdiction over all land records relating to certificates of customary usufructs and certificates of commonhold.

(2) Land recorders and assistant land recorders shall have jurisdiction over the certificates of customary usufructs and certificates of commonhold within the communal land areas which are assigned to them by the Chief Land Recorder.

(3) Land recorders and assistant land recorders will work closely with Councils in assisting them to maintain accurate records of their decisions and of copies of all certificates and other documents that they may grant or issue to persons within the communal land areas over which they have jurisdiction.

### **Registration of documents**

**Article 45.** (1) The Chief Land Recorder shall cause to be prepared a simplified system of the registration of documents relating to customary usufructs and all dealings with customary usufructs, commonhold and such other matters as may be prescribed for use in all communal land areas.

(2) Any register prepared under this article shall be open to the public during the usual office hours and any member of the public may take copies of any registered document or part of any such document on payment of a reasonable fee.

## **CHAPTER 7**

## **REGISTRABLE USUFRUCTS**

### **Sub-Chapter 1 The Blue Nile State Land Board**

#### **Establishment of the Board**

**Article 46.** (1) There is hereby established a body to be known as the Blue Nile State Land Board.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of –

- (a) suing and being sued;
- (b) acquiring, holding and disposing of real and personal property;
- (c) exercising the powers and performing the functions conferred upon it by or under this Act;
- (d) entering into any contract or other transaction, and doing all such other acts and things which a body corporate may lawfully perform.

#### **Composition of the Board**

**Article 47.** (1) The Board shall be composed of the members of the Commission.

(2) The provisions of articles 6, 7 and 8 of the Blue Nile State Land Commission Act shall apply to the appointment and membership of the Board in the same way as they apply to the appointment and membership of the Commission.

(3) The provisions of Schedule 1 of the Blue Nile State Land Commission Act shall apply to the Board in the same way as it applies to the Commission.

#### **Objectives of the Board**

**Article 48** (1) The objectives of the Board shall be to manage and regulate the process of the grant of registrable usufructs and leases of land and their disposition in the state so as to –

- (a) implement the provisions of articles 10, 11 and 12 of the Constitution;
- (b) instil public confidence in the fairness and transparency of the process;
- (c) facilitate the protection of consumers; and
- (d) eliminate dishonest and unconscionable conduct within the process.

### **Functions of the Board**

**Article 49.** (1) In order to achieve the objectives specified in article 48, the functions of the Board shall be to –

- (a) determine applications for the granting of registrable usufructs and leases;
- (b) determine whether to approve or refuse permission for any legal disposition of a registrable usufruct or a lease and to impose conditions on any such disposition that it may approve;
- (c) oversee the operation of the land registry within the state;
- (d) exercise a general supervision over the operation of the land market within the state;
- (e) keep under continuous review the effectiveness of all laws applicable to the operation of the land market and draw the attention of the Minister to any deficiencies in existing laws or the need for additional laws or for existing laws to be repealed or amended;
- (f) review the performance and activities of –
  - (i) practitioners in the land market offering services to consumers with a view to ensuring that there is genuine competition where this may reasonably be expected and that high professional standards are maintained and without prejudice to the generality of the above term, practitioners in the land market include conveyancers, lawyers, estate agents, mortgage brokers, land developers, town planners, land officers, officials of the deeds register and other registries, valuers and surveyors;
  - (ii) banks, building societies, insurances companies and all other institutions offering financial services to the public in connection with the purchase of land and houses either through instalments or with the aid of a mortgage;
- (g) issue guidelines, standards and practice notes, model contracts and provide advice to actors in the land market on the most appropriate manner to ensure that efficient, effective and honest services providing clear information with transparent and

reasonable fee structures are offered to consumers in the land market;

- (h) investigate complaints made by persons with grievances against the conduct of any practitioner in the land market or over any matter required to be regulated by the Authority under this Act;
- (i) collect and make available statistical and other information about the operation of the land market;
- (j) publish and disseminate the reports of any reviews it carries out under this section;
- (k) undertake such other functions as may be prescribed or as the Minister shall invite the Board to undertake.

(3) Where it appears to the Board that there is a case for the exercise of functions under paragraph (h) of subsection (2), the Board shall, in accordance with such procedures as may be prescribed, provide an opportunity for any practitioner in the land market whose conduct is to be investigated to be heard before any decision is made about that conduct.

- (4) The Board shall perform its functions in a manner that –
  - (a) is open and objective;
  - (b) is fair and reasonable;
  - (c) facilitates competition and equity; and
  - (d) has due regard to the principle of subsidiarity and to economy and efficiency in all its activities.

#### **Role of the Minister in relation to the Board**

**Article 50.** (1) The Board shall, subject to the provisions of this section, be independent in the performance of its functions.

(2) The Minister may from time to time give directions in writing to the Board with respect to the policies on the land market to be observed and implemented by the Board but no such direction shall adversely affect or impede the realisation by the Board of its objectives nor shall any such direction purport to instruct the Board as to how it shall exercise any of its functions.

(3) The Board shall have regard to any policy directions given to it by the Minister.



### **Employees of the Board**

**Article 51.** (1) The Director and Deputy Director of the Commission and the staff of the Commission shall be the Director and Deputy Director and staff of the Board.

(2) The provisions of articles 13 of the Blue Nile State Land Commission Act shall apply to the appointment of the Director and Deputy Director and staff of the Board in the same way as they apply to the appointment and management of those persons on the Commission.

(3) The provisions of article 14 of the Blue Nile State Land Commission Act shall apply to the appointment and use of persons and organisations to help the Board in the same way as they apply to the appointment and management of those persons with respect to the Commission.

### **Powers and proceedings of the Board**

**Article 52.** The provisions of articles 15 to 25 of the Blue Nile State Land Commission Act shall apply to the Board in the same way as they apply to the Commission.

### **Sub-Chapter 2 Grant of registrable usufruct**

#### **Application of this Sub-Chapter**

**Article 53.** (1) This Sub-Chapter applies to the grant or renewal of any registrable usufruct of land within the state.

(2) References in this Sub-Chapter to “registrable usufruct of land” or “registrable usufruct” shall be taken to include a sub-usufruct, a lease and a sub-lease of land.

#### **Principles applicable to grants of registrable usufruct**

**Article 54.** (1) In considering whether to grant or renew any registrable usufruct, the Board shall have regard to and apply the principles of the Constitution that there shall be –

- (a) an equitable distribution of wealth;
- (b) a redressing of imbalances of income;
- (c) the ensuring of social justice among the people of Sudan; and
- (d) the involvement of the people at all levels of government.

(2) The principles of the Constitution set out in sub-article (1) take precedence over any principles or criteria contained in articles 561 to 565 of the Civil Transactions Act and any provisions relating to the grant of land for a project under the Investment Encouragement Act 1999 as amended in 2003, all of which shall henceforth be applied in the light of and subject to those principles of the Constitution.

(3) Article 561(f) of the Civil Transactions Act is hereby repealed.

#### **Procedure for application for registrable usufruct**

**Article 55.** (1) An application for a registrable usufruct shall be –

- (a) submitted on a prescribed form;
- (b) accompanied by the prescribed fee;
- (c) signed by the applicant or a duly authorised representative or agent of the applicant;
- (d) accompanied by such plans, maps and other information as may be prescribed or as the authorised officer may in writing require the applicant to supply;
- (e) accompanied by a declaration in the prescribed form of all rights and interests in land in the state which the applicant has at the time of the application;
- (g) where any law requires the consent of any public authority or other body or person before an application for a registrable usufruct may be submitted, accompanied by a document of consent, signed by the duly authorised officer of that public authority or other body or that person; and
- (h) if made by a foreign national or a foreign company, accompanied a licence under the Investment Encouragement Act 1999 as amended in 2003 and by such other documentation as may be prescribed by any written law or any regulations made under this Act.

(2) The Board may require an applicant to submit information relevant to that application, additional to that already submitted with the application, and shall not be obliged to proceed with the application until that additional information has been submitted or a satisfactory explanation provided as to why it is not practical or possible to submit that additional information.

(3) The Board shall maintain a register of such applications in the prescribed form which shall be available for inspection by members of the public at specified times during office hours.

#### **Application for registrable usufruct on occupied land**

**Article 56** (1) No grant or renewal of land which is occupied and used by any persons or any communities under customary tenure shall be made unless and until –

(a) the persons and communities occupying and using that land have –

- (i) been consulted about the proposed grant or renewal of land;
- (ii) had an opportunity to make representations about the grant of renewal of land to the government; and
- (iii) freely and in writing given their consent to the grant or renewal of land;

(b) a social justice audit has been carried out by a person or persons independent of the state and the national government and the proposed grantee which clearly demonstrates that the principles of the Constitution referred to in sub-article (1) will not be infringed by the grant or renewal.

(2) Where, notwithstanding that the persons and communities referred to in sub-article (1)(a) do not consent to the grant, or that the social audit referred to in sub-article (1)(b) concludes that the principles referred to in article 4 or 54 will be infringed by the grant, the government considers that an overriding public interest necessitates the acquisition of the land and its use for the purposes for which the grants is to be made, no person or community occupying or using that land shall be moved from that land unless and until alternative land or fair compensation under article 43(2) of the Constitution has been agreed with the persons or communities concerned or, failing agreement, determined by the Court, in the case of alternative land, the persons or communities have been assisted to move to such alternative land and in the case of compensation, it has been and paid promptly to that person or community.

(3) The report of a social justice audit referred to in sub-article (1) shall be published and made readily available at the offices of the Board.

(4) For the avoidance of doubt, this article takes precedence over article 23 of the Investment Encouragement Act 1999 and regulation 13 of the Investment Encouragement Regulations 2000 as amended in 2003 as they apply in the state and no land to which this article applies shall be made available to any foreign national or any foreign company unless and until the provisions of this article have been strictly complied with.

#### **Determination of application**

**Article 57.** (1) The Board shall within 30 working days of the receipt of the last document which contains any advice, comment, recommendation or certificate which the authority is required to take into consideration in determining an application for a registrable usufruct determine whether to grant, grant subject to conditions or refuse to grant that application.

(2) The Board shall refer an application for a registrable usufruct to the local authority and the Council within whose area of jurisdiction the land the subject of the application is located for their comments and shall have regard to any such comments as may be received when determining the application.

(3) Where an application is submitted for a registrable usufruct in unsurveyed land the Board shall, prior to proceeding with the determination of the application, inform the applicant that he will be required to undertake the survey of the land at his own expense and request the applicant to inform the Board of his decision as to whether, in the circumstances he wishes to proceed with the application.

(4) In determining whether to grant, to grant subject to conditions or to refuse an application for a registrable usufruct, the Board shall, in addition to the principles set out in articles 4 and 54 take into consideration –

- (a) any written advice or guidance issued by the Minister under article 50;
- (c) any approved development plan applicable to the land which is the subject of an application;
- (d) the information contained in the application and any additional information which the applicant was required to submit;
- (e) any representations made by the applicant at the meeting at which his or her application is considered;
- (f) any representations made under article 56; and
- (g) such other matters as may be prescribed,

and shall give and record reasons for its decisions.

(5) Where the Board is of the opinion that it will not be able to make a decision on an application within the time limit specified in sub-article (1) it may at any time before the expiry of that time limit –

- (a) serve a notice on the applicant specifying the time, being not more than 30 working days from the date of the notice, within which it will make a decision on the application; or

- (b) make an agreement with the applicant as to the date by which it will make a decision on the application,

but where the Board does not take either action specified in paragraphs (a) or (b) before the expiry of that time limit, the applicant who is ordinarily resident in the state shall be deemed to have been granted a registrable usufruct in the terms of his application on the expiry of that time limit but an applicant who is not ordinarily resident in the state or who is a foreign national or a foreign company shall be deemed to have had his application refused.

#### **Offer of a registrable usufruct**

**Article 58.** (1) Where the Board has determined to grant the applicant a registrable usufruct it shall make an offer in writing, hereinafter referred to as a 'letter of offer' to that applicant setting out the terms and conditions upon which a registrable usufruct may be made to that applicant.

- (2) A letter of offer shall –
  - (a) be in a prescribed form;
  - (b) contain all the terms and conditions subject to which a grant of a registrable usufruct shall be made;
  - (c) be signed by the Director or Deputy Director or an authorised officer and stamped with an official stamp;
  - (d) contain the details of any rent which shall be payable;
  - (e) be delivered or sent to the applicant or his or her duly authorised representative or agent.

(3) The terms and conditions subject to which a registrable usufruct shall be offered to any person shall be –

- (a) the statutory conditions;
- (b) such other conditions relating to the purposes for which the land which is to be usufruct is to be used as may be prescribed or as the Board after taking such advice as it considers relevant determines shall be imposed;
- (c) such of the conditions requested by the Council or the local authority to be included in the usufruct which the Board considers it appropriate to impose.

#### **Acceptance of offer of registrable usufruct**

**Article 59.** (1) An applicant who determines to accept a letter of offer of a registrable usufruct shall deliver or send to the Board an acceptance in writing within

30 working days of the receipt of the letter of offer, or such longer period as may be agreed upon between the Director or Deputy Director and the applicant.

- (2) An acceptance in writing shall
  - (a) be in a prescribed form;
  - (b) be accompanied by such fee or deposit, or bankers' draft, letter of credit or other irrevocable commitment to pay such fee or deposit as shall have previously been agreed upon in writing or as may be required by the letter of offer;
  - (c) be signed by the applicant or his or her duly authorised representative or agent.

#### **Grant of registrable usufruct**

**Article 60.** When an acceptance referred to in article 59 has been received by the Board and a premium has been paid in accordance with any demand for any such payment, the Director shall –

- (a) send or deliver the documents of usufruct to the applicant; and
- (c) inform the applicant that he is required within 3 months of the receipt of the documents of usufruct to apply to the Registrar for a registered certificate of usufruct to occupy and use the land, the usufruct of which which has been granted to him.

#### **Length of term of a registrable usufruct**

**Article 61.** (1) A registrable usufruct granted to a citizen for a housing plot may be granted for a term of not less than 30 years nor more than 90 years.

(2) A registrable usufruct granted for a purpose other than for a housing plot to a citizen may be granted –

- (a) for a term of not less than 10 years nor more than 90 years;
- (b) for a term together with an option for a further term or terms which together with the original term may be up to but shall not exceed 90 years; or
- (c) for different lengths of terms up to but not exceeding 90 years for different purposes as the Minister may determine or as may be prescribed.

(3) A registrable usufruct granted to a foreign national or a foreign company shall be granted for a term that shall not exceed 30 years.

(4) Where a registrable usufruct has been granted for a term certain, with or without an option for a further term or terms certain, no reduction in the length of that term certain or the term or terms certain contained in the option or options shall thereafter be made to or introduced into that registrable usufruct by the Board without the prior agreement of the usufructuary.

(5) At any time within 5 years before the term of a registrable usufruct is due to expire, the usufructuary may apply, using a prescribed form, to the Board for a renewal of the usufruct and if he has complied with the terms and conditions of that registrable usufruct in a satisfactory manner and it is practical so to do, he shall be offered a renewal of that registrable usufruct on such terms and conditions as the Board may determine.

(6) The provisions of sub-article (5) shall not operate to preclude the Board from determining that the land occupied under the registrable usufruct to which sub-article (5) refers should be developed or redeveloped at the end of the term for which the usufruct was granted for such purposes that it is impractical to renew a grant of a registrable usufruct of that land to the former usufructuary and where such development or redevelopment takes place, the former usufructuary shall not be entitled to any compensation for the loss of any expectation created by the provisions of sub-article (5).

### **Sub-Chapter 3**

#### **Dispositions of registrable usufructs**

##### **General provisions as to dispositions**

**Article 62.** (1) A disposition of a registrable usufruct shall comply with the provisions of this sub-Chapter and shall be of no effect if the provisions of this sub-Chapter are not complied with.

(2) A person who proposes to carry out a disposition to which article 63(6)(a) applies or which is the subject of a general consent issued under article 63(4) shall send or deliver a notification in the prescribed form to the Director before or at the time the disposition is carried out.

(3) The Director shall, on receipt of a notification under sub-article (2) with all due dispatch, endorse that notification with his signature and official seal and send or deliver a copy to the Registrar.

(4) A person who proposes to carry out a disposition to which sub-article (2) applies shall pay all such premia, taxes and dues as may be prescribed

to be paid in connection with that disposition to the Director before or at the time the disposition is carried out.

(5) The Director shall provide a receipt to the payer for a payment made in accordance with sub-article (4) and shall send or deliver a copy of the receipt to the Registrar.

(6) The Registrar shall not make any entry on the register in respect of any disposition or any registrable usufruct transferred as a result of a disposition to which sub-article (2) applies unless and until he is satisfied that the transferee has complied with the provisions of this article.

### **Consent to dispositions**

**Article 63.** (1) The Board shall, subject to the provisions of this Sub-Chapter, have power to consent or refuse to consent to dispositions of registrable usufructs.

(2) Consent may be given specifically in writing or as a general consent.

(3) Where consent to a disposition is given specifically, it may be given subject to terms and conditions as the Board may, after considering any advice it may receive from the Adviser, consider appropriate, or as may be prescribed.

(4) Where a general consent is given, it may apply –

- (a) to all or some dispositions of a particular class; or
- (b) to all or some dispositions within a specified area of the state;  
or
- (c) to all or some dispositions below or above a specified value; or
- (d) to a variation of all or any of paragraphs (a), (b) or (c); and

may be given subject to such terms and conditions as the Board shall, after giving due and proper consideration to any advice received from the Adviser, determine.



(5) The Board shall, by notice in the Gazette and by placing a notice in the Public Register, publish the details of any general consent given under this article.

(6) Subject to this Act or regulations made under this Act, a disposition of a registrable usufruct or other interest in land the value of which is –

(a) less than 500,000 dinars shall not require any consent under this Act; and

(b) *subject to sub-article (5), more than 500,000 dinars shall require the consent of the Board but that consent may be either a specific consent or a general consent.*

(7) A loan granted on the security of a mortgage by a prescribed lender or a disposition of a registrable usufruct made by a prescribed lender in the exercise of any power to foreclose on a mortgage or to seek an order for sale and possession of the mortgaged usufruct shall not require any consent under this section, whatever the value of the mortgage or disposition and whenever such disposition is made but any such disposition shall come within the provisions of article 64.

(8) Where the Board has reasonable cause to believe that a disposition has taken place or is about to take place which in order to avoid the requirement to obtain consent under this section has been agreed between the parties to be for a value less than the market value of the interest in land which is the subject of the disposition, the Board may take such action in relation to that disposition as is specified in article 64 in relation to dispositions to which that article applies.

(9) A disposition to which sub-article (6)(b) applies which has been carried out without first obtaining the consent required by that sub-article shall be of no effect.

(10) The requirement to obtain consent to a disposition under this article shall not absolve an applicant for such consent from any other requirement to obtain any other consent, approval, permit, licence, or other authorisation in respect of that disposition or for the use and development of the land to be acquired through that disposition under any other law.

(11) The Minister may, after seeking and giving consideration to the views of the Board, and with the consent of the Minister responsible for finance, alter the value of dispositions set out in sub-article (6) for which consent is or is not required and any such alteration shall be published by notice in the Gazette: provided that no alteration shall provide that a disposition of a value greater than 2 million dinar may be made without obtaining a consent under paragraph (b) of that sub-article.

### **Supervisory powers over dispositions**

**Article 64.** (1) The Director may, on receipt of a notification of a disposition under article 63, issue a notice in the prescribed form to the parties requiring them not to proceed with the disposition until –

- (a) they have sent or delivered to the Board such additional information and documentation about the disposition as is specified in the notice; or
- (b) they have applied for and received consent to that disposition.

(2) Where the Director has reasonable cause to believe that a disposition is about to take place or has taken place of which he or she has not received a notification under article 63, the Director may issue a notice in the prescribed form to persons which it has reasonable cause to believe are parties to the disposition requiring them –

- (a) to comply with article 63;
- (b) not to proceed with the disposition until –
  - (i) they have sent or delivered to him such additional information and documentation about the disposition as is specified in the notice; or
  - (ii) they have applied for and received consent to the disposition.

(3) Where the Director has reasonable cause to believe, either of his own motion or as a result of representations made to him by or on behalf of one of

the parties to the disposition, that a disposition has been or is in the process of being or is likely to be affected by fraud or lack of good faith, or the fact that one party has engaged in conduct that is in all the circumstances, unconscionable or that the disposition, not being a gift, is for substantially less than the market value of the interest in land the subject of the disposition, the Director shall –

- (a) where the disposition has taken place and not more than 2 years have elapsed since the conclusion of the formalities necessary to complete the disposition, apply to the Court for the disposition to be reopened and reviewed;
- (b) where the disposition has not yet taken place –
  - (i) issue any notice that the Director may issue under sub-article (2); or

*(ii) issue a notice that invites the parties to the disposition to appear before, and give an explanation to the Director of the circumstances of the disposition.*

(4) Where the Director issues a notice under sub-article (3)(b)(ii), he may after hearing the parties to the disposition, issue a notice under sub-article (3)(b)(i) or (ii).

(5) Where the parties or any of them refuse to accede to the invitation of the Director issued to them under sub-article (3)(b)(ii), and proceed with the disposition, that disposition shall be of no effect.

#### **Powers of the Court on a reference to it by the Director**

**Article 65.** Where the Court, after hearing the parties to the disposition on an application made to it by the Board under article 64(3)(a) or (b)(i) is satisfied that any of the matters specified in those sub-articles have occurred, it may –

- (a) set aside the disposition; or

- (b) order the party which it determines to have been guilty of such conduct as is referred to in article 64(3) to make restitution to the party which it determines to have suffered loss by such conduct; and
- (c) in either case, make such ancillary and consequential orders as the circumstances of the case may require.

#### **Unconscionable conduct**

**Article 66.** Without in any way limiting the matters to which the Director or Court may have regard for the purpose of determining whether a person has engaged in unconscionable conduct the Director and the Court may have regard to –

- (a) the relevant strengths of the bargaining positions of the parties to the disposition;
- (b) whether as a result of conduct engaged in by one or more parties to the disposition, some other party or parties to the disposition was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the party or parties imposing those conditions;
- (c) whether the parties were able to understand any documents relating to the disposition;
- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against any of the parties or a person acting on behalf of any of the parties by the any other of the parties to the disposition.

#### **Application for grant of consent to disposition.**

**Article 67.** (1) An application for a consent to a disposition shall be –

- (a) made on a prescribed form;
- (b) signed by the parties to the proposed disposition;
- (c) accompanied by plans, maps and other information as is prescribed or as may be required by the Board;

- (d) accompanied by such fees as may be prescribed; and
- (e) sent or delivered to the Board.

(2) One application may be made for a consent for two or more dispositions and where such an application is made, the provisions of this article shall apply to each disposition as if a separate application had been made in respect of a consent for each disposition.

(3) The Board may require relevant information from one or more of the parties to the proposed disposition additional to that which is referred to in sub-article (1)(c) and shall not be obliged to proceed with the application until that additional information has been submitted or a satisfactory explanation provided as to why it is not practical or possible to submit that additional information.

(4) The Board shall, after considering the information provided in the application, the principles specified in article 54 and the matters set out in article 69 –

- (a) grant consent, subject to such conditions as may be prescribed which apply to that disposition; or
- (b) grant consent, subject to the conditions referred to in paragraph (a) and such other conditions as the Board may consider it appropriate to impose; or
- (c) refuse to grant consent,

to the application and where the Board grants consent subject to conditions imposed under paragraph (b) or where the Board refuses consent, the Board shall give reasons for its decision.

(5) Where the Board does not make a determination in terms of sub-article (6) within 40 working days or such longer period (not being a period in excess of an additional 40 working days or such longer period as may be agreed to with the applicant) the application for consent shall be deemed to have been granted in terms of sub-article (6)(a).

### **Matters subsequent to grant of consent**

- Article 68.** (1) A consent under article 67 shall –
- (a) be personal to the parties to the disposition;
  - (b) not be assignable or transferable in any way; and
  - (c) be valid for one year from the date on which it was given.
- (2) A consent under article 67 shall be –
- (a) in the prescribed form to be known as a certificate of consent;
  - (b) signed by the Chairman or Deputy Chairman of the Board;
  - (c) delivered or sent to the transferor and the transferee by the Director accompanied by a demand for such premium, taxes or dues as may be prescribed; and
  - (d) copied to the Registrar.
- (3) A consent deemed to have been granted under section 83(7) shall not be required to comply with sub-article (2)(b).
- (4) The Director may refer a deemed consent to the Court which shall have the powers specified in article 65 to set aside the disposition on the terms and only on the terms that –
- (a) the state shall bear the costs of the parties to the transaction unless the Court finds that the provisions of article 64(3) apply to the transaction; and
  - (b) the Board shall pay compensation to the parties for losses that they may have suffered as a consequence of the failure of the Board to determine the application within the period specified in article 67(5).
- (5) A person who has received consent to a disposition or who has a deemed consent to a disposition shall pay all such premia, taxes and dues as are required to be paid in connection with the disposition to which the consent or deemed

consent refers and a disposition shall not be valid or effective to transfer any interest in a usufruct or give rise to any rights in the transferee unless and until all such premia, taxes and dues have been paid accordingly.

(6) The Director shall endorse and sign a receipt for that premium, tax or due on the certificate of consent.

(7) The registrar shall not make an entry on the register in respect of a disposition or registrable usufruct the subject of a disposition to which this article applies unless and until he is satisfied that all premia, taxes and dues in respect of that disposition have been paid and a receipt for the same has been validly endorsed on the certificate of consent.

**Criteria for determining application for consent to a disposition**

**Article 69.** (1) Subject to the provisions of this article, there shall be a presumption that an application for a consent to a disposition shall be granted.

(2) To determine whether to grant a consent to a disposition, the Board, shall, taking into account the presumption set out in sub-article (1), have regard to –

- (a) *whether the transferor has complied strictly with all the conditions in the usufruct or other interest in land which is the subject of the disposition;*
- (b) the normal place of residence of the transferee and his family and the normal place of residence of the transferor and his family;
- (c) where a registrable usufruct is to be assigned whether the price at which the assignment or grant, is to be made is at a significant undervalue or overvalue of the land;
- (d) the financial resources of the transferee to whom the disposition is to be made;

*(e) whether there is plausible evidence that the transferee had been engaging in a course of conduct in relation to the land of the transferor or to the commercial or industrial activities of the transferor on that land that amounted to unconscionable conduct so that the transferor was constrained by pressures brought on by that unconscionable conduct to make the disposition to the transferee;*

- (f) where the transferee already occupies or has at some time in the past occupied land in the state under a usufruct, the amount of land occupied and whether the land is being or was occupied and is being or was used in accordance with the conditions of the usufruct for which it is or was held;
- (g) whether the transferee to whom the registrable usufruct is to be assigned has had previous dispositions set aside by the Land Court under article 65;
- (h) whether on all the evidence there is a reasonable likelihood that the disposition is connected to or is a part of or will lead to speculation in the market for land or to the hoarding of land or to the transferee holding the land as a bare lessee for another person.

(3) Where the Board is of the opinion that a registrable usufruct is to be transferred at a significant undervalue or overvalue, the Board shall –

- (a) invite the parties to explain the circumstances of the proposed disposition; and
- (b) where the Board is dissatisfied with the explanations offered by the parties, require the parties to that disposition to obtain, at the expense of the proposed transferee, a valuation of that land from a qualified valuer which the Director shall nominate,

and where the Board has exercised its powers under paragraph (b), then, subject to sub-article (4), consent shall not be granted to a disposition to which this sub-article applies at a price which is significantly less or greater than the value put upon the land by the nominated valuer.



(4) A party to a disposition to which sub-article (3) applies may appeal against the valuation of the nominated valuer to the Court.

**Surrender of registrable usufruct**

**Article 70.** (1) A usufructuary may, using the prescribed form and complying with prescribed procedures surrender his registrable usufruct or a part of the land comprised in his registrable usufruct to the Board.

(2) The Board shall not be obliged to accept a surrender of a registrable usufruct or a part of a land comprised in a registrable usufruct unless the following circumstances apply–

- (a) *all premia, rent, taxes and dues owed to the government in respect of that land are fully paid up;*
- (b) the land shall not create, cause or give rise to or a transfer of, any civil liability to the state;
- (c) the land is not subject to any subsisting derivative real right or any personal right which gives rise to the occupation or use of the land or any restrictive conditions on the land which are likely to limit the beneficial use of the land;
- (d) the land is not subject to an action of foreclosure or possession and sale by a lender;
- (e) the land is not subject to any action in connection with the insolvency of the usufructuary, has not been sequestered or is not otherwise subject to a debt which can be enforced against the land;
- (f) the surrender is not designed to defeat the rights of any member of the family of the usufructuary to share in or obtain part of the land;

- (g) every co-owner and person or body who has any interest in that land has consented in writing to the surrender; and
- (h) that it is not, in all the circumstances, generally disadvantageous to the state.

(3) Where the Board is satisfied that an application for the surrender of the whole or a part of the land is due to hardship or poverty or a life-threatening or terminal illness and by reason of that hardship or poverty or life-threatening illness, the lessee is not able to pay any rent, taxes and other dues which he or she owes to the state, the Board may direct the Director to remit the whole or a part of monies which the usufructuary owes the state.

## **CHAPTER 8**

### **DISPUTE SETTLEMENT**

#### **Sub-Chapter 1**

#### **Land courts**

#### **Jurisdiction of Blue Nile State Land Claims Court**

**Article 71.** (1) The Blue Nile State Land Claims Court has exclusive jurisdiction, subject to the provisions of this Chapter, to hear and determine all manner of disputes, actions and proceedings concerning land whether arising under this Act or any other law applicable to land within the state.

- (2) The Court shall exercise, throughout the whole of the state –
  - (a) original and unlimited civil jurisdiction in land cases;
  - (b) an appellate jurisdiction from decisions of local land courts.
- (3) Where the Court is exercising –
  - (a) original jurisdiction, it shall be composed of one judge;
  - (b) appellate jurisdiction, it shall be composed of not less than two judges.
- (6) An appeal shall lie to the state Court of Appeal –
  - (a) from the original jurisdiction of the Court;
  - (b) from the appellate jurisdiction of the Land Court, in any case where that Court has certified that a point of law of exceptional importance is involved.

#### **Local land courts**

**Article 72.** (1) There is hereby established such number of local land courts having jurisdiction within such areas as the Chief Justice of the state after consulting with the Chief Judge and the Deputy Chief Judge of the Court shall determine to be necessary to ensure that there is no undue delay in the hearing of land cases.

(2) A local land court shall consist of such persons as the Chief Justice shall, after consulting with the Chief Judge and the Deputy Chief Judge of the Court and having regard to their qualifications, skill, competence, training and probity, and the nature of the cases coming before the court designate to sit in a local land court.

(3) A local land court shall have and exercise, within the area for which it is established, jurisdiction over all land cases where the value of the matter in dispute is less than 500,000 dinar.

(4) A local land court may be held at any place within the area for which it has been established.

#### **Administration of land courts**

**Article 73.** (1) The persons appointed under article 42 of the Blue Nile State Land Commission Act shall, in addition to their duties of management with respect to the Court have the duty to manage the local land courts, assisted by such additional persons as may be necessary to provide an efficient and economical management service of the land courts within each area.

#### **Appeals against decisions on land matters made by public authorities**

**Article 74.** (1) The Court shall hear and determine an appeal brought by a person aggrieved by a decision of the Board –

- (a) to refuse him a grant of a registrable usufruct or to impose any condition other than a statutory or any prescribed condition on the grant of a permit
- (b) to refuse him a consent to a disposition or impose any condition other than a prescribed condition on the grant of a consent;
- (c) with respect to any other decision of the Board under this Act adversely affecting the appellant.

(2) The Court shall hear and determine an appeal brought by a person aggrieved by any decision made by a Minister with respect to a land matter which adversely affects the appellant.

(3) The Court shall hear and determine an appeal brought by any person aggrieved by any decision made by a Committee, a Council or a local authority with respect to a land matter under this Act

(4) In hearing and determining an appeal under this section the Court shall have the same powers and exercise these powers in accordance with the same procedures and comply with the same criteria applicable to the determination of the Board or any other public or local authority from which the appeal is being brought.

(5) A person proposing to appeal to the Court shall, within 30 working days of the decision being made in respect of which that appeal is to be brought, submit a notice of appeal in the prescribed form, containing the prescribed information, to the registrar of Court.

(6) Until such time as Rules of Court are made under article, the procedure to be followed in hearing an appeal by the Court shall be the procedure of the state Court of Appeal in hearing an appeal on a civil matter from a lower court;

(7) The parties to an appeal to which this section refers may appear in person or be represented by a legal practitioner.

#### **Power of Director and Deputy Director to state a case**

**Article 75.** Whenever a question arises with regard to the performance of a duty or the exercise of any of the functions by this Act conferred or imposed on the Minister, the Board, the Director or a public officer, the Director or Deputy Director may state a case for the opinion of the Court; and thereupon that Court shall, after hearing argument on the matter, give its opinion thereon, which shall be binding on the Director and all other public officers.

#### **Rules of Court**

**Article 76.** (1) The Chief Justice of the state shall, in consultation with the Chief Judge and Deputy Chief Judge have power to make Rules of Court regulating

the conduct of cases and the fees to be paid in connection therewith before the Court and the local land courts established by this sub-Chapter.

(2) Rules of Court to be made under this section shall have regard to the need for the system of land courts established under this Act to be efficient, expeditious and economical and to dispense justice without undue regard for technicalities.

## **Sub-Chapter 2**

### **Alternative dispute resolution**

#### **Customary mediation**

**Article 77.** Nothing in this Chapter shall be taken to prevent or hinder or limit the continued exercise by traditional authorities of alternative dispute resolution functions between persons who are in dispute over any matters arising out of land tenure regulated by customary law.

#### **Using alternative dispute resolution processes**

**Article 78.** At the commencement of a case concerning land or at any time during the hearing of such a case, a court may advise the parties to that case that, in its opinion, the nature of the case is such that the parties would be better served by using alternative dispute resolution processes to resolve their differences than by continuing with litigation in the court and where such a direction has been given, the court may adjourn the case for such period as it thinks fit to enable the parties to use the services of the Land Mediator or the Local Land Mediation Panel to assist in resolving the dispute.

#### **The Land Mediator**

**Article 79.** (1) There shall be a Land Mediator who shall be appointed by the Board after seeking the advice of the Chief Justice of the state, and such deputy land mediators as the Board shall after, considering the advice of the Mediator, appoint to assist him or her in the performance of his or her functions.

(2) The Land Mediator and all deputy land mediators shall be persons of high moral character and proven integrity who by virtue of their skill, knowledge, work, standing or reputation in society are capable and likely to be able to bring parties together who are in disagreement or dispute about an issue over land arising out of any matter provided for in this Act or otherwise to reach a mutually satisfactory agreement or accommodation on that matter or to accept a decision of the Mediator on that matter.

(3) The Land Mediator shall have such functions as are provided for in this Act or as may be conferred on him or her by regulations.

(4) In the exercise of his or her functions, the Land Mediator shall be independent and shall not be subject to the direction or control of any other person.

(5) *In exercising any alternative dispute resolution functions under this Act, the Land Mediator shall be guided by the principles of natural justice, general principles of mediation and conciliation and the desirability of assisting the parties to reconcile their differences, understand each other's point of view and be prepared to compromise to reach an agreement but the Land Mediator shall not compel or direct a party to a mediation to arrive at a particular conclusion or decision on any matter the subject of the mediation.*

#### **Function of the Land Mediator**

**Article 80.** (1) Where any one or more persons holding land under a usufruct has a dispute about that land with any other person or persons, all parties to that dispute may agree to call in the services of the Land Mediator to act as a mediator or conciliator between and assist such parties to arrive at a mutually acceptable solution to the dispute.

(2) Where the parties or any of them do not accept the conclusions of any mediation into a dispute or wish to cease to make use of the services of the Land Mediator, they may refer the dispute to a land court having jurisdiction over the subject matter of the dispute.

(3) A person shall not be compelled or required to use the services of the Land Mediator.

(4) The Land Mediator shall exercise a general supervision over the deputy land mediators and the panels and without prejudice to the generality of this provision, may issue practice notes and written guidance on alternative dispute resolution processes and procedures to all or any deputy land mediators and all or any panels.

#### **Local Land Mediation Panels**

**Article 81.** (1) There is established in each communal area a Local Land Mediation Panel hereafter referred to as “the Panel” or “a Panel” as the case may be.

(2) The designated local authorities within a communal area shall, in accordance with such procedures as may be prescribed, and subject to the provisions of this article nominate persons from their areas of jurisdiction to the Panel having jurisdiction within the district .

(3) A Panel shall consist of not less than nine but not more than fifteen persons of whom not less than four persons shall be female and not less than four persons shall be male.

(4) Where a member of a Panel resigns or dies, the designated local authority shall nominate another person to be a member of the Panel.

(5) In determining who to nominate as members of a Panel, a designated local authority shall have regard to the standing and reputation of a nominee within the community as a person of integrity and with knowledge of the rules and principles of the customary law.

(6) A person shall not be eligible to be nominated as a member of a Panel if he or she is:

- (a) not ordinarily resident in the communal area in which the Panel is to function;
- (b) a member of the state or National Legislature;
- (c) a member of a local authority or a Council;
- (d) a magistrate or a judge;
- (e) a minor;
- (f) a mentally unfit person;
- (g) a person who has been convicted of a criminal offence involving dishonesty or moral turpitude.

(7) A person who falls within one of the categories set out in sub-article (6) while serving as a member of a Panel shall automatically and without more cease to be a member of that Panel but where such a person was acting as a mediator in any case, then, except where the provisions of subsection (6)(f) or (g) apply, the person may continue to act as a mediator in that case until the process of mediation has been concluded.

(8) A member of a Panel shall, unless he or she sooner resigns, dies or falls within a category set out in sub-article (6), serve for three years and shall be eligible for reappointment.

(9) A Panel shall elect one of its members to be convenor of the Panel who shall keep the records of the Panel and preside at all meetings at which he or she is present; and if at a meeting the convenor is absent, the members present shall elect one of themselves to preside at the meeting.

(10) The quorum of a meeting of the Panel shall be three persons, of which at least one shall be a woman and one shall be a man.

(11) The Board may, in consultation with the Minister responsible for finance, determine the sitting allowances payable to members of the Panel.

### **Functions of Panel**

**Article 82.** (1) Where any one or more persons holding land under a customary usufruct has a dispute about land with any other person or persons, all parties to that dispute may agree to call in the services of a Panel or a member thereof from the communal land area in which the land the subject of the dispute is located to act as a mediator or conciliator between and assist such parties to arrive at a mutually acceptable solution to the dispute.

(2) Where the parties to a dispute referred to in sub-article (1) agree to call in the Panel, the convenor of the Panel shall, after discussing the matter with the parties to the dispute and considering their views (if any) on which members of the Panel might be suitable to act as mediators in the dispute, designate one or more members of the Panel to act as mediators and conciliators between the parties to the dispute.

(3) Where the convenor becomes aware of, or is informed by a member of the Panel of, a dispute as referred to in sub-article (1), the convenor shall use his or her best endeavours to persuade the parties to the dispute to make use of the services of the Panel or one or more members thereof to act as mediators in the dispute.

(4) A Panel shall exercise its functions of mediation and conciliation in accordance with –

(a) any guidance on alternative dispute resolution issued by or under the authority of the Land Mediator;



- (b) any traditional principles of alternative dispute resolution that do not conflict with any guidance referred to in paragraph (a);
- (c) in so far as any traditional principles of alternative dispute resolution do not already provide for them, in accordance with the principles and rules of natural justice;
- (d) any principles and practices of alternative dispute resolution in which the members may have received any training.

(5) A member of a Panel shall not act as a mediator in any case in which he or she or a member of his or her immediate family has an interest and for the avoidance of any doubt, a member of a panel who is a member of or an employee of any organisation which is involved in a case, the subject of mediation by the Panel, is deemed to have an interest in that case.

(6) A person shall not be compelled or required to use the services of the Panel.

(7) Where the parties or any of them do not accept the conclusions of any mediation into a dispute or wish to cease to make use of the services of a Panel, they may refer the dispute to a court having jurisdiction over the subject matter of the dispute.

#### **Courts to have regard to mediation**

**Article 83.** (1) A land court which exercises jurisdiction over a dispute which has been the subject of mediation as provided for in this Chapter shall hear the case anew and in doing so, shall have regard to but shall not be bound to accept any evidence given to the Land Mediator or the Panel or follow any conclusions or agreements arrived at as a consequence of that mediation when giving judgement in that case.

(2) Where the parties to a mediation have agreed to the conclusions of the Land Mediator or the Panel and wish those conclusions to have the same force and effect as a judgement of a court, the parties may request a court to give judgement in the terms of those conclusions and the court shall, on being satisfied that all the parties are agreed on the said course of action and that the conclusions do not contravene any law or any rule of public policy or public morality, give judgement in the terms of the conclusions.

## **CHAPTER 9**

## MISCELLANEOUS

### **Substituted service**

**Article 84.** (1) Where a person or a public authority authorised to serve a notice under this Act is satisfied that a notice affecting land cannot be served personally or by post, either because the person to be served is evading service or for some other reason, that person or public authority may order service to be effected by –

- (a) affixing a copy of the notice in a conspicuous place –
  - (i) on or as near as may be to the land where possible; and
  - (ii) at the offices of the local authority within the jurisdiction of which the land is located; and
- (b) notifying the person concerned of the contents of the notice through an announcement on the radio.

### **Publication etc of notices and other information**

**Article 85.** (1) Where, by a provision of this Act, a notice or other information is to be published or given such publicity as will bring it to the attention of all persons likely to be affected by it, that duty shall be construed as requiring a copy of the notice or other information to be –

- (a) fixed in a conspicuous position on or as near as may be to the land to which it relates; and
- (b) fixed in a conspicuous position at the offices of the local authority and the Council in the area where the land is located and in such other public places in any villages as the Council shall direct; and
- (c) summarised and communicated orally to the people living and working in the area where the land is situate at such meetings as may be convened by the local authority or the Council for that purpose.

(2) Where the land consists of or includes land or a dwelling house and the notice or other information affects or may affect the continued occupation of that land or dwelling house by any person, then, in addition to the actions which must be taken under paragraphs (a) and (b), the notice or other information shall be summarised and communicated –

- (i) to that person orally at a meeting called for that purpose in the area where the land or dwelling house is; and
- (ii) to that person or a member of the household of that person living in that dwelling house personally.

### **Rights of entry**

**Article 86.** (1) A person authorised in that behalf by the Director shall have power, on the giving of not less than 48 hours notice, to enter and inspect at all reasonable times between the hours of 6.00 am and 6.00 pm any land, other than land occupied exclusively as a dwelling house, for any purpose connected with the implementation of this Act.

(2) The notice which is required by subsection (1) to be given prior to any entry on to land shall specify clearly the purpose for which and the approximate time at which the authorised person shall enter the land.

(3) A person authorised to enter or inspect land under this section shall be furnished with a written authorisation signed by the Director and if so required by a person having an interest in or occupying the land which he enters and inspects, shall produce the same to the person.

(4) Where a person authorised under this section causes any damage to land or anything on the land during his entry and inspection, the Director, shall forthwith appoint a person to assess such damage and pay promptly compensation based on that assessment to the person whose land or things on the land have been damaged.

(5) Where in pursuance of the implementation of functions of the Board, it is necessary for an employee of the Board to enter on to any land, the Director shall on being requested by the Board so to do, authorise such employees as the Board nominates to enter on that land.

### **Call for information**

**Article 87.** (1) The Director may, for any purpose connected with the implementation of this Act, by notice in writing, require a usufructuary or other occupier of land to send or deliver to the Director or the Board within 30 working days of the date on which the notice was sent or delivered such documents and other information about the occupation and use of that land and the interests and rights he and any other persons have in or over that land, so far as they are known to him as is specified in the notice.

(2) The notice sent by the Director shall specify clearly and in a language calculated to be understood by the recipient of the notice the information that is required.

(3) Where the recipient of the notice is unclear as to the information which he is required to provide, he shall, as soon as may be, seek further clarification and elucidation from the Director.

(4) It shall be a defence to a person charged with a failure to comply with the notice or with giving misleading information in his reply to the notice that he could not reasonably have been expected to understand the notice or any further clarification and elucidation provided by the Director in response to any communication sent or made to the Director under sub-article (3).

(5) Where the Director requires information from a person whom it is reasonable to assume from his age, circumstances, education, and location will not be able to understand or reply in writing to the written notice, the Director shall authorise an officer in writing to interview that person and obtain the required information by means of that interview.

(6) An officer authorised to conduct an interview under subsection (5) shall give not less than 7 days notice of the time, being a reasonable time between the hours of 8.00 am and 5.00 pm, at which he proposes to conduct the interview and such interview shall be conducted in a reasonable manner.

### **Fees**

**Article 88.** (1) The Minister shall, after consultation with the Board and the Minister responsible for finance prescribe the rates of fees for all matters in respect of which, by this Act, prescribed fees are required to be paid by any person and may after following the same procedure alter the rates of fees from time to time.

(2) Fees prescribed under this section shall be at a rate per cent of the value of the land the subject of the application or other matter in respect of which fees are required to be paid.

(3) A registrar and the Chief Land Recorder shall refuse to make an entry on the register or register a document in respect of a usufruct or a disposition of or arising in connection with a usufruct in respect of which a fee has not been paid in whole or in part, unless and until he is satisfied on the basis of written evidence produced before him that such fee has been waived in whole or in part or that it has been agreed between the payer and payee that such fee may be paid in instalments and there are no arrears in those instalments.

(4) Unpaid fees or expenses incurred by the government in connection with any attempt to recover the unpaid fees shall constitute a civil debt owed by the payer to the government.

### **Mortgages**

**Article 89.** (1) The Minister shall, after consultation with the Minister responsible for finance, by notice published in the *Gazette* specify the financial organisations which shall be prescribed lenders for the purposes of article 63(7)

(2) A notice made under this section may be amended from time to time but a proposal for an amendment shall comply with the procedures specified in sub-article (1).

### **Offences**

**Article 90.** (1) A person who –

- (a) knowingly makes a false statement, orally or in writing, in connection with a disposition or other transaction affecting land or any other matter arising under this Act;
- (b) knowingly gives a false information or makes a false statement, either orally or in writing, in connection with a call for information made under article 87 or in connection with an investigation into the commission of an offence under this Act;
- (c) knowingly gives any false evidence either orally or in writing in connection with the implementation of this Act; or
- (d) fraudulently procures –
  - (i) the registration or issue of a usufruct or any other document or instrument relating to land; or
  - (ii) the making of an entry or the endorsement of a matter on the document or instrument referred to in subparagraph (i);
  - (iii) the cancellation or amendment of any of the above mentioned documents or instruments or entries or endorsements;
- (e) fraudulently alters, adds to, erases, defaces, mutilates or destroys a document or instrument relating to land or an entry on or endorsement of the document or instrument;
- (f) suppresses or conceals from a public officer or an officer of a local authority or an officer of the Board exercising powers

under this Act or assists or joins in so doing, any material document, fact or matter,  
commits an offence and is liable on conviction to a fine not exceeding 500,000 dinar or imprisonment for a term not exceeding 2 years or to both the fine and imprisonment.

(2) A person who without reasonable excuse, fails to produce a document as required by a notice served on him or her under article 87 or otherwise under this Act commits an offence and is liable on conviction to a fine not exceeding M100,000 or imprisonment for a term not exceeding one year or to both the fine and imprisonment.

(3) A person who wilfully and unlawfully –

- (a) delays;
- (b) obstructs;
- (c) hinders;
- (d) intimidates; or
- (e) assaults,

a person authorised under this Act to enter and inspect any land in the lawful exercise of the power in that behalf commits an offence and liable, on conviction, to a fine not exceeding 100,000 dinars or to a term of imprisonment not exceeding one year or to both the fine and imprisonment.

(6) A person who corruptly accepts or obtains or agrees to accept or attempts to obtain from any person, either for himself or any other person, any gift or consideration or service as an inducement or reward for doing or omitting to do or for having done or omitted to do any act or make any official statement which it is or was his duty to do or to make or refrain from doing or making under this Act or for showing or refraining from showing favour or disfavour to any person in relation to any matter referred to in this Act commits an offence and is liable on conviction to a fine not exceeding 500,000 dinars or to a term of imprisonment not exceeding 5 years or to both the fine and imprisonment.

(7) A person who corruptly gives or agrees to give or offers a gift or consideration or service as an inducement or reward for doing or forbearing to do or for having done or forborne to do an act in relation to a duty imposed upon a public

officer, an officer in the employ of a Local Authority, an officer in the employ of the Authority or a person exercising functions under this Act commits an offence and is liable on conviction to a fine not exceeding 500,000 dinars or to a term of imprisonment not exceeding 5 years or to both the fine and imprisonment.

(8) A person who, being an authorised officer under this Act, whether generally or for a specific function, in the course of an official function or otherwise, unlawfully or with force enters on the land of a person or while on land, wilfully commits any damage to the land or anything on the land, whether naturally on the land, or stock owned by a person using the land or crops planted or buildings or other structures lawfully erected on the land commits an offence and is liable on conviction, to a fine not exceeding 500,000 dinars or to imprisonment for a term not exceeding 2 years or to both the fine and imprisonment.

(9) Where a court has convicted a person of an offence under this section and the commission of the offence enabled the person to obtain or retain or regain an interest in land which he or she would otherwise not have been able to obtain, retain or regain, the court may in addition to a punishment provided for by this section imposed on that person, make an order in relation to that interest in land so obtained, retained or regained by that person as appears to the court necessary to ensure that such person does not profit by the offence of which he or she has been convicted and without prejudice to the generality of this provision, the order may direct –

- (a) the Director in the case of a registrable usufruct to terminate the usufruct;
- (b) the registrar to cancel an entry in the register which has been obtained by virtue or on account of the offence;
- (c) the Chief Land Recorder to cancel an entry in the register which has been obtained by virtue or on account of the offence;
- (d) such person to make restitution to a person who has suffered loss by virtue or on account of the offence, including taking all necessary action to transfer to the person any interest in land obtained, retained or regained by such offence from that person,

and the order may be made subject to such conditions as the court shall consider just and reasonable.

### **Corrupt transactions**

**Article 91.** (1) Nothing in this Act shall be taken or construed to validate, affirm, authenticate or give any legal effect whatsoever to a grant of a usufruct, or any issue of any documents purporting to confer any rights to land on a person, or a disposition, or a contract for any of the aforementioned transactions which was obtained or induced by a corrupt or fraudulent action, on the part of any public officer working for any public authority whether that official was directly involved in that transaction or not or on the part of a person who has obtained a document that purports to confer on or grant to that person any rights or interests in land and, notwithstanding any rule of law in the Sudan applicable to the state to the contrary, such a transaction is hereby declared to be and to have been from its inception an illegal transaction, having absolutely no legal effect whatsoever.

(2) For purposes of this section, a transaction shall be taken to be affected or tainted by corruption when either –

(a) a party to or involved directly or indirectly in the transaction in respect of which it is alleged that an action was corrupt is convicted of corruption and all final appeals arising from that conviction have been concluded; or

*(b) a public official or local government official or an employee of the Board is interdicted, or is retired in the public interest, from his post on the grounds that he has been or that there is a reasonable suspicion that he has been engaged in corrupt actions and that these actions involved that transaction; or*

(c) an official investigation or inquiry reports that it is satisfied or that that transaction was procured by corrupt practices.

(3) A person occupying land which he obtained as a consequence of participating in any of the transactions covered by subsections (1) and (2) shall be liable to forfeit that land to the state without any entitlement to any compensation whatsoever.

(4) Notwithstanding that a transaction covered by this section is of no effect, a person occupying land as a consequence of that transaction shall be and shall always have been obliged to comply with all the terms and conditions of the transaction and of the usufruct, or other right to occupy the land acquired as a result of that transaction as if it had been a valid transaction and shall be liable to all the



remedies which may be applied to a person who fails to comply with the terms and conditions of a valid transaction or a valid usufruct or other right to occupy land in addition to any penalties which may be applied under this section.

### **Regulations**

**Article 92.** (1) The Minister may make regulations prescribing anything which may be prescribed under this Act and generally for the better carrying into effect of the purposes and provisions of this Act and removing any difficulties occasioned by the coming into operation of this Act and without prejudice to the generality of the foregoing, such regulations may prescribe –

- (a) the manner in which usufructs are to be executed by or on behalf of the state;
- (b) the conditions under which usufructs may be granted and enjoyed;
- (c) the terms and conditions of sharecropping contracts;
- (d) the size of plots which may be held by a person or for a specified purpose;
- (e) the number of plots which may be held by a person;
- (f) ways and means of preventing speculative dealings in land;
- (g) the forms to be used in connection with this Act;
- (h) the manner of the exercise of the functions of –
  - (i) the Board;
  - (ii) the Committees
  - (iii) the Councils
- (i) the area under the jurisdiction and the membership of each Council;
- (j) the manner and form of the local land record offices, the procedures to be followed by the offices and hours they are to be open for business;
- (k) the functions of public officials implementing this Act and the manner in which they are to be exercised;
- (l) the management of community land and commonhold;
- (m) the lenders of funds on the security of a mortgage, being financial institutions which may be prescribed of purposes of this Act;
- (n) the amount of any fees payable under this Act and the manner and form of their payment;
- (o) the manner and form of the payment of ground rent;

- (p) the manner and form of the payment of a premium;
- (q) the arrangements for providing for relief from the payment of ground rent and premia;
- (r) the manner and form of the selection of Local Mediation Panels;
- (s) the manner and form of the exercise of their functions by Local Mediation Panels.

(2) Any regulations made under this section may at any time be amended or repealed by further regulations made by the Minister under this section.

### **Application of this Act**

**Article 93.** On and after the commencement of this Act, notwithstanding any other written law to the contrary except the Constitution and the state constitution, this Act shall apply to all land in the state and any provisions of any other written law applicable to land which conflict with or are inconsistent with any of the provisions of this Act shall to the extent of that conflict or that inconsistency cease forthwith and completely to be applicable to land or any matter connected with land in the state.

### **Public education and awareness**

**Article 94.** Prior to the coming into operation of this Act or any Part of this Act, the Minister shall cause to be undertaken a programme of public education and awareness using all forms of media to inform the members of the public of the contents of this Act, the functions of public authorities under this Act and the opportunities and responsibilities of members of the public in relation to this Act.

### **Amendments to written laws**

**Article 95.** The Minister may, at any time before the expiry of 6 months from the date of commencement of this Act, lay an order before the state legislative assembly amending or modifying any written law applicable in the state in order to bring the same into conformity with this Act but no such order shall take effect until it has been approved by the state legislative assembly.

### **Savings and transitional provisions with respect to rights, actions, dispositions etc.**

**Article 96.** (1) Unless the contrary is specifically provided for in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall be exercisable only to the extent that it complies with the Constitution and the constitution.

(2) Unless the contrary is specifically provided for in this Act or the circumstances are such that the contrary is to be presumed to be the case, where a step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition, any such transaction shall, provided it accords with the Constitution and the constitution be continued in accordance with the law applicable to it immediately prior to the commencement of this Act.

(3) An instrument executed before the commencement of this Act whereby a disposition permitted under this Act is completed may be presented for registration in the register and –

- (a) the question whether the instrument so presented is to be registered shall be determined by the Registrar by reference to the law in force at the time of its execution; and
- (b) subject to paragraph (a), this Act shall apply to such instrument as if it had been executed after the commencement of this Act.

**Savings and transitional provisions with respect to rules, orders etc.**

**Article 97.** Any rule, order, regulation, direction, notice, notification, condition, permit or other administrative act made, given, issued or undertaken before the commencement of this Act under any land law repealed or amended in a material particular by this Act shall, if it could have been made, given, issued or undertaken under any corresponding provision of this Act and complies with the Constitution and the constitution continue in force and have the like effect as if it had been so made, given issued or, as the case may be, undertaken.

**Transitional provisions as to judicial proceedings**

**Article 98.** On and after the establishment of the land courts provided for by Chapter 8, any case relating to a land dispute pending before any court or tribunal may be transferred to and heard by a land court having jurisdiction over that case and if it is convenient so to do and there is an accurate transcript of the proceedings of the case up to the point at which it was transferred to the land court, and the parties to the case are in agreement on the matter, the land court to which the case has been transferred may continue the case from the point at which it was transferred to that land court.

**Transitional provisions with respect to officers**

**Article 99.** A person who immediately prior to the commencement of this Act was holding an office to which appointments may be made under this Act shall continue in

the office and be deemed for the purpose of this Act to have been appointed under the provisions of this Act.

**Act to bind government**

**Article 100.** This Act shall bind the government.

## 6.5 Draft Program of Activities to Promote Equitable Legal and Institutional Mechanisms

| <b>USAID Sudan Customary Land Tenure Project</b><br><b>Work Plan Timeline from November 2006 to January 2007</b><br>(Sourced from Table B-1, ARD Project Proposal) |        |  |  |   |        |   |   |   |        |   |   |   |        |   |   |   |  |  |
|--|--------|--|--|---|--------|---|---|---|--------|---|---|---|--------|---|---|---|--|--|
| Activity   | Period |  |  |   |        |   |   |   |        |   |   |   |        |   |   |   | Comment  |  |
|  | Oct 06 |  |  |   | Nov 06 |   |   |   | Dec 06 |   |   |   | Jan 07 |   |   |   |  |  |
| <b>COMPONENT 1</b>   |        |  |  |   |        |   |   |   |        |   |   |   |        |   |   |   |  |  |
| <b>Task 1. Laying CLTP's Foundations</b>   |        |  |  |   |        |   |   |   |        |   |   |   |        |   |   |   |  |  |
| 1.1 Hold Consultative Meetings   |        |  |  |   | X      | X | X | X |        |   |   |   |        |   |   |   | <ul style="list-style-type: none"> <li>Organization of initial visits to Sudan (BN Demazin, and SK - Kadugli); Senior Staff visit to Khartoum</li> </ul> |  |
| 1.2 Establish CLTP Offices   |        |  |  | X |        |   |   |   |        | X | X | X |        |   |   |   | <ul style="list-style-type: none"> <li>Office Construction in SK (Jilud, and movement of office in Kauda); Establishment of Nairobi Office</li> </ul>    |  |
| 1.3 Form Technical Advisory Groups   |        |  |  |   | X      |   |   |   |        |   |   |   |        |   |   |   | <ul style="list-style-type: none"> <li>Exploratory visit to Khartoum</li> </ul>  |  |
| 1.4 Produce training/PIE   |        |  |  |   |        |   |   |   |        |   |   |   | X      | X | X | X | <ul style="list-style-type: none"> <li>Subject to the passage of SLC Legislation</li> </ul>  |  |

**USAID Sudan Customary Land Tenure Project**  
**Work Plan Timeline from November 2006 to January 2007**  
(Sourced from Table B-1, ARD Project Proposal)

| Activity                                     | Period |  |  |  |        |   |  |  |        |  |  |  |        |  |  |  | Comment<br><br>(refer to Narrative for more details)   |
|--|--------|--|--|--|--------|---|--|--|--------|--|--|--|--------|--|--|--|--|
|  | Oct 06 |  |  |  | Nov 06 |   |  |  | Dec 06 |  |  |  | Jan 07 |  |  |  |  |
| materials                                    |        |  |  |  |        |   |  |  |        |  |  |  |        |  |  |  | (refer to Task 8.1), work with the BN to design a public education campaign that addresses the role of the SLC and how persons may use it<br><br>• Produce materials for use in the field that explain the Project and concepts of customary land tenure |
| 1.5 Assess hiring and needs                  |        |  |  |  | X      | X |  |  |        |  |  |  |        |  |  |  | • Hiring of Kenyan lawyers to support activities under Task 8.   |
| 1.6 Hold CLTP short courses for Trainers/GOS |        |  |  |  |        |   |  |  |        |  |  |  |        |  |  |  | No activity planned for this Work Plan period  |
| 1.7 Draft Technical Implementation Plan      |        |  |  |  |        |   |  |  |        |  |  |  |        |  |  |  | No activity planned for this Work Plan period  |
|  |        |  |  |  |        |   |  |  |        |  |  |  |        |  |  |  | No activity planned for this Work Plan period  |
| Task 2 Mobilizing                            |        |  |  |  |        |   |  |  |        |  |  |  |        |  |  |  | No activity planned for this Work Plan period  |

**USAID Sudan Customary Land Tenure Project**  
**Work Plan Timeline from November 2006 to January 2007**  
(Sourced from Table B-1, ARD Project Proposal)

| Activity   | Period |   |   |   |        |   |  |  |        |   |   |   |        |  |   |   | Comment<br><br>(refer to Narrative for more details)   |
|--|--------|---|---|---|--------|---|--|--|--------|---|---|---|--------|--|---|---|--|
|  | Oct 06 |   |   |   | Nov 06 |   |  |  | Dec 06 |   |   |   | Jan 07 |  |   |   |  |
| Beneficiary Communities                            |        |   |   |   |        |   |  |  |        |   |   |   |        |  |   |   |  |
| 2.1 Mobilize County Stakeholder Groups             |        |   | X | X | X      | X |  |  | X      | X | X | X |        |  | X | X | <ul style="list-style-type: none"><li>Awareness meetings starting in SK (Dilling, Lagawa, Kadugli)</li></ul>         |
| 2.2 Identify Right Holder/Conflict Flashpoints     |        |   |   |   | X      | X |  |  |        |   |   |   |        |  |   |   | <ul style="list-style-type: none"><li>Initiate inter-agency dialogue on farmer-pastoralist conflict issues</li></ul> |
| 2.3 Hold CLTP Workshop for local leaders           |        |   |   |   |        |   |  |  |        |   |   |   |        |  |   | X | <ul style="list-style-type: none"><li>Traditional Leaders Workshop in BN</li></ul>                                   |
| 2.4 Mobilize community Institutions                |        |   |   |   |        |   |  |  |        |   |   |   |        |  |   |   | No activity planned for this Work Plan period  |
| 2.5 Train Boundary Teams                           |        | X | X |   |        |   |  |  |        |   |   |   | X      |  |   | X | BN Training of Field Officers including GPS Training (completed) and follow-up training                              |
| Task 3 Adjudication of Rights, Defining Boundaries |        |   |   |   |        |   |  |  |        |   |   |   |        |  |   |   |  |

**USAID Sudan Customary Land Tenure Project**  
**Work Plan Timeline from November 2006 to January 2007**  
(Sourced from Table B-1, ARD Project Proposal)

| Activity                                     | Period |   |   |   |        |   |   |   |        |   |   |   |        | Comment<br>(refer to Narrative for more details) |  |   |  |
|--|--------|---|---|---|--------|---|---|---|--------|---|---|---|--------|--|--|---|--|
|  | Oct 06 |   |   |   | Nov 06 |   |   |   | Dec 06 |   |   |   | Jan 07 |  |  |   |  |
| 3.1 Hold first BC meeting                    |        |   |   |   |        |   |   |   |        |   |   |   |        |  |  | No activity planned for this Work Plan period   |  |
| 3.2 Gather information and walk boundaries   |        |   |   |   |        |   |   |   |        |   |   |   |        |  |  | No activity planned for this Work Plan period   |  |
| 3.3 Develop provisional record               |        |   |   |   |        |   |   |   |        |   |   |   |        |  |  | No activity planned for this Work Plan period   |  |
| 3.4 Facilitate inter-CLA Agreements          |        |   |   |   |        |   |   |   |        |   |   |   |        |  |  | No activity planned for this Work Plan period   |  |
| 3.5 Hold Community Meetings                  | X      | X | X | X | X      | X | X | X | X      | X | X | X |        |  |  | Boundary Agreement Meetings for SK (Rashad County)  |  |
| Task 4 Validating Rights, Mapping Boundaries |        |   |   |   |        |   |   |   |        |   |   |   |        |  |  | No activity planned for this Work Plan period   |  |
| 4.1 Validate land boundaries                 |        | X | X | X | X      | X | X | X |        |   |   |   |        |  |  | Demarcation activities for BN (Jabus, Kurmuk, Akeli, Kern Kern and Payam) and SK (Rashad) |  |



**USAID Sudan Customary Land Tenure Project**  
**Work Plan Timeline from November 2006 to January 2007**  
(Sourced from Table B-1, ARD Project Proposal)

| Activity   | Period |  |  |  |        |   |   |   |        |   |   |   |        |   |   |   | Comment<br><br>(refer to Narrative for more details)   |
|--|--------|--|--|--|--------|---|---|---|--------|---|---|---|--------|---|---|---|--|
|  | Oct 06 |  |  |  | Nov 06 |   |   |   | Dec 06 |   |   |   | Jan 07 |   |   |   |  |
| 4.2 Map the boundary with GPS descriptions       |        |  |  |  | X      | X | X | X | X      | X | X | X | X      | X | X | X | Implementation of Recommendations of GIS Report (including coordination with mapping agencies and establishment of new mapping relationships)  |
| 4.3 Create boundary and cadastre maps            |        |  |  |  | X      | X |   |   |        |   |   |   |        |   |   |   | To any extent possible, large size maps of those Bomas in Blue Nile with complete demarcated boundaries will perhaps be produced, laminated and available for public inspection locally. |
| 4.4 Undertake provisional registration of CLAs   |        |  |  |  |        |   |   |   |        |   |   |   |        |   |   |   | No activity planned for this Work Plan period  |
| Task 5 Establishing Local Authority/Institutions |        |  |  |  |        |   |   |   |        |   |   |   |        |   |   |   |  |
| 5.1 Elect Community Land Council                 |        |  |  |  |        |   |   |   |        |   |   |   |        |   |   |   | No activity planned for this Work Plan period  |
| 5.2 Hold Meeting on CLC responsibilities         |        |  |  |  |        |   |   |   |        |   |   |   |        |   |   |   | No activity planned for this Work Plan period  |

**USAID Sudan Customary Land Tenure Project**  
**Work Plan Timeline from November 2006 to January 2007**  
(Sourced from Table B-1, ARD Project Proposal)

| Activity                                       | Period |  |  |  |        |  |  |  |        |  |  |  |        |  |  |   | Comment<br>(refer to Narrative for more details) |
|--|--------|--|--|--|--------|--|--|--|--------|--|--|--|--------|--|--|---|--|
|  | Oct 06 |  |  |  | Nov 06 |  |  |  | Dec 06 |  |  |  | Jan 07 |  |  |   |  |
| 5.3 Hold CLTP Workshops on land use planning   |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  | No activity planned for this Work Plan period |  |
| 5.4 Garner community endorsement               |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  | No activity planned for this Work Plan period |  |
| 5.5 Completion of CLAs under CLSP Pilots       |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  | No activity planned for this Work Plan period |  |
| Task 6 Registering Community Land Areas        |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  | No activity planned for this Work Plan period |  |
| 6.1 Reproduce the Community Land Action Plan   |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  | No activity planned for this Work Plan period |  |
| 6.2 Record the Community Land Action Plan      |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  | No activity planned for this Work Plan period |  |
| Task 7 Establishing County Land Administration |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |   |  |

**USAID Sudan Customary Land Tenure Project**  
**Work Plan Timeline from November 2006 to January 2007**  
(Sourced from Table B-1, ARD Project Proposal)

| Activity                                    | Period |  |  |   |        |   |  |  |        |  |  |  |        |  |   |   | Comment<br>(refer to Narrative for more details)   |  |
|---|--------|--|--|---|--------|---|--|--|--------|--|--|--|--------|--|---|---|--|--|
|   | Oct 06 |  |  |   | Nov 06 |   |  |  | Dec 06 |  |  |  | Jan 07 |  |   |   |  |  |
| 7.1 Establish CLO                           |        |  |  |   |        |   |  |  |        |  |  |  |        |  |   |   | No activity planned for this Work Plan period  |  |
| 7.2 Interface between the SLC and CLC       |        |  |  |   |        |   |  |  |        |  |  |  |        |  |   |   | No activity planned for this Work Plan period  |  |
| 7.3 Coordinate and mediate                  |        |  |  |   |        |   |  |  |        |  |  |  |        |  |   |   | No activity planned for this Work Plan period  |  |
| COMPONENT 2                                 |        |  |  |   |        |   |  |  |        |  |  |  |        |  |   |   |  |  |
| Task 8 Strengthening Land Policy/Law        |        |  |  |   |        |   |  |  |        |  |  |  |        |  |   |   |  |  |
| 8.1 Create and provide for support for SLCs |        |  |  |   |        |   |  |  |        |  |  |  |        |  |   |   | <ul style="list-style-type: none"><li>• Subject to passage of SLC Legislation, develop PIE to support SLC process (see Task 1.4)</li></ul>   |  |
| 8.2 Develop a Legal Strategy Plan           |        |  |  | X | X      | X |  |  |        |  |  |  |        |  | X | X | <ul style="list-style-type: none"><li>• 3 month plan to January 2007 (ARD) (Oct week 4 – Nov week 1)</li><li>• Further legal review and planning session for 6 months ending July 2007 (RDI) (Jan week 3 –</li></ul> |  |

**USAID Sudan Customary Land Tenure Project**  
**Work Plan Timeline from November 2006 to January 2007**  
(Sourced from Table B-1, ARD Project Proposal)

| Activity                                    | Period |  |  |   |        |   |  |   |        |  |  |  |        |   |   |   | Comment<br>(refer to Narrative for more details)  |   |
|---|--------|--|--|---|--------|---|--|---|--------|--|--|--|--------|---|---|---|---|---|
|   | Oct 06 |  |  |   | Nov 06 |   |  |   | Dec 06 |  |  |  | Jan 07 |   |   |   |   |   |
|   |        |  |  |   |        |   |  |   |        |  |  |  |        |   |   |   | Jan week 4)   |   |
| 8.3 Support acceptance of rule of law       |        |  |  |   |        |   |  |   |        |  |  |  |        |   |   |   |   |   |
| 8.4 Strengthen SLC, TAG and civil authority |        |  |  |   |        |   |  |   |        |  |  |  |        |   |   |   | <ul style="list-style-type: none"><li>Assessment of Institutional capacity to operate SLC and TAG (including an assessment of the likely operating costs of the SLC) (Jan week 3 to Jan week 4)</li></ul> |   |
| 8.5 Strengthen customary tenure             |        |  |  | X | X      | X |  | X | X      |  |  |  |        | X | X | X | X   | <ul style="list-style-type: none"><li>Review draft legislation and provide recommendations for facilitating legislative development (October week 4 to November week 2)</li><li>Design a strategy that supports public comment on draft legislation in terms of customary land tenure (BN and SK) (Jan week 3 to Jan week 4)</li><li>Assess the current situation with the SK Constitutional draft and provide support on the development of protections for customary land</li></ul> |

**USAID Sudan Customary Land Tenure Project**  
**Work Plan Timeline from November 2006 to January 2007**  
(Sourced from Table B-1, ARD Project Proposal)

| Activity                                 | Period |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | Comment<br>(refer to Narrative for more details)  |
|--|--------|--|--|--|--------|--|--|--|--------|--|--|--|--------|--|--|--|---|
|  | Oct 06 |  |  |  | Nov 06 |  |  |  | Dec 06 |  |  |  | Jan 07 |  |  |  |   |
|  |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | tenure with the Constitution (Jan week 1 to Jan week 4)<br><br>• BN MP Briefing on Customary Land Tenure issues in the context of draft legislation (P McAuslan) (Nov week 4 – Dec week 1)<br><br>• Assessment of alternative or additional legislation that will be required in the area of land administration supporting customary land tenure (RDI) (Jan week 3 – Jan week 4) |
| 8.6 Provide miscellaneous legal drafting |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | • Plan for legislative development and support deriving from McAuslan and RDI inputs in Task 8.5 (Jan week 3 – Jan week 4)  |
| 8.7 Undertake land policy studies        |        |  |  |  |        |  |  |  |        |  |  |  |        |  |  |  | • Gum Arabic issue as a source of conflict for targeted research (NOTE: NOT BEFORE JAN 07)<br><br>• Assessment of farmer/pastoralist conflict issues for the development of policy responses (NOTE: NOT BEFORE JAN 07)  |

**USAID Sudan Customary Land Tenure Project**  
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(Sourced from Table B-1, ARD Project Proposal)

| Activity   | Period |  |  |  |        |   |   |  |        |  |  |  |        |  |  |  | Comment<br><br>(refer to Narrative for more details) |
|--|--------|--|--|--|--------|---|---|--|--------|--|--|--|--------|--|--|--|--|
|  | Oct 06 |  |  |  | Nov 06 |   |   |  | Dec 06 |  |  |  | Jan 07 |  |  |  |  |
| <b>Task 9 Developing Mechanisms for Conflict Mediation</b> |        |  |  |  |        |   |   |  |        |  |  |  |        |  |  |  |  |
| 9.1 Undertake tenure/conflict assessments                  |        |  |  |  | X      | X | X |  |        |  |  |  |        |  |  | <ul style="list-style-type: none"><li>Assessment of conflict mitigation strategies being employed by other donor assisted projects</li></ul> |  |
| 9.2 Create ancillary policy reforms                        |        |  |  |  |        |   |   |  |        |  |  |  |        |  |  | No activity planned for this Work Plan period  |  |
| 9.3 Design conflict resolution procedures                  |        |  |  |  |        |   |   |  | X      |  |  |  |        |  |  | Conflict mitigation training (SEE NOTES AT THE END OF THIS TABLE FOR CLARIFICATION)  |  |
| 9.4 Devolve dispute resolution to CLCs                     |        |  |  |  |        |   |   |  |        |  |  |  |        |  |  | No activity planned for this Work Plan period  |  |
| <b>Task 10 Facilitating Registration of CLAs</b>           |        |  |  |  |        |   |   |  |        |  |  |  |        |  |  |  |  |

**USAID Sudan Customary Land Tenure Project**  
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(Sourced from Table B-1, ARD Project Proposal)

| Activity                                  | Period |  |  |  |        |  |  |  |        |  |  |  | Comment<br><br>(refer to Narrative for more details) |  |  |   |  |
|---|--------|--|--|--|--------|--|--|--|--------|--|--|--|--|--|--|---|--|
|   | Oct 06 |  |  |  | Nov 06 |  |  |  | Dec 06 |  |  |  | Jan 07   |  |  |   |  |
| 10.1 Compile and assess comparative law   |        |  |  |  |        |  |  |  |        |  |  |  |  |  |  | No activity planned for this Work Plan period             |  |
| 10.2 Optimize CLTP Formalization Practice |        |  |  |  |        |  |  |  |        |  |  |  |  |  |  | No activity planned for this Work Plan period             |  |
| MONITORING AND EVALUATION                 |        |  |  |  |        |  |  |  |        |  |  |  |  |  |  |   |  |
| Baseline study/assessment                 |        |  |  |  |        |  |  |  |        |  |  |  |  |  |  | NOTE: BASELINE STUDIES NEED TO BE DESIGNED AND UNDERTAKEN |  |
| Annual Assessment                         |        |  |  |  |        |  |  |  |        |  |  |  |  |  |  | No activity planned for this Work Plan period             |  |
| Assessment Panel Established              |        |  |  |  |        |  |  |  |        |  |  |  |  |  |  | No activity planned for this Work Plan period             |  |
| GENERAL PROJECT ADMINISTRATION            |        |  |  |  |        |  |  |  |        |  |  |  |  |  |  |   |  |

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**Work Plan Timeline from November 2006 to January 2007**  
(Sourced from Table B-1, ARD Project Proposal)

| Activity                    | Period |  |  |   |        |   |   |  |        |  |  |  |        |   |   |  | Comment<br><br>(refer to Narrative for more details)   |
|-----------------------------|--------|--|--|---|--------|---|---|--|--------|--|--|--|--------|---|---|--|--|
|                             | Oct 06 |  |  |   | Nov 06 |   |   |  | Dec 06 |  |  |  | Jan 07 |   |   |  |  |
| Office Staff Training       |        |  |  | X | X      | X |   |  |        |  |  |  |        |   |   |  | <ul style="list-style-type: none"><li>Computer and office administration training (BN and SK)</li></ul>  |
| Formal Administration Tasks |        |  |  |   | X      | X |   |  |        |  |  |  |        |   |   |  | <ul style="list-style-type: none"><li>Obtain Nairobi Office Registration/accreditation</li></ul>   |
| Planning                    |        |  |  |   | X      | X | X |  |        |  |  |  |        | X | X |  | <ul style="list-style-type: none"><li>Development of Field Transport Plan including process for travel to BN and SK for expatriate staff</li><li>Develop 6-month Project Work Plan</li></ul> |



## 6.6 Scopes of Work for Proposed Activities

### **DRAFT SCOPE OF WORK** **USAID Sudan Customary Land Tenure Project** **Task 8 Strengthening Land Policy/Law**

#### **Land Law Advisor for Briefing of Parliamentarians in Blue Nile State (Short-term TA)**

Approved legislation that reflects “good practice” in customary land tenure is crucial for meeting the objectives of USAID Customary Land Tenure Project (**CLTP**). A constitution has been passed in Blue Nile and draft land legislation is being considered by Parliamentarians in that State. In particular, the Blue Nile Parliamentarians (primarily from the Sudan Peoples Liberation Movement (**SPLM**)) have provided input toward the development of two draft pieces of legislation that were designed to flow from the Comprehensive Peace Agreements (**CPA**):

- Land Commissions Bill
- Land Bill

Earlier legislative development support occurred under an earlier land tenure-related project of USAID known as the Customary Land Security Project (**CLSP**). The Blue Nile Parliamentarians have now requested support to further the development of the above legislative drafts. In particular, the Blue Nile Parliamentarians have asked that the briefing session address the current state of the draft legislation in general.

In addition, others in the field have suggested that the additional areas of the institutional structure envisaged by the legislation and the status of customary land tenure should also be covered.

#### **Objectives**

- a) Ascertain through dialogue with the BN Parliamentarians if the proposed legislation is the appropriate vehicle in the circumstances for the protection of customary land rights
- b) Provide the BN Parliamentarians with an understanding of the importance of the protection of customary land rights in the State
- c) Ascertain the capacity of BN Parliamentarians to advocate for the passage of the draft legislation through Parliament
- d) Arrive at a program of potential interventions designed to assist each state government in developing legislation conducive to protection of customary land rights through to January 2007.

#### **Tasks**

- a) Work with the Senior Land Law Advisor (Patrick McAuslan under a separate Scope of Work) in Nairobi on the key draft legislative issues to be discussed at the Parliamentary Briefing session in Blue Nile State.
- b) Travel with the Senior Land Law Advisor to BN to brief Blue Nile Parliamentarians (including SPLM and National Congress Party

- representatives if possible) on the following issues set out above and any other relevant issues raised by the Parliamentarians.
- c) Work with the Senior Land Law Advisor to review the proposed legal interventions provided in the Draft Work Plan to January 2007 (under Task 8) and, on the basis of the results from the Parliamentary Briefing, fine-tune and/or revise the planned program of legal and legislative activities for CLSP. This program will include TA needs (CLTP staff and short-term), in respect of legislative development and Parliamentary support in respect of the BN State.
  - d) Assist the Senior Land Law Advisor with the preparation of a final report.

### **Deliverable**

A final report on the Parliamentary Briefing by 10 December 2007 that:

- Sets out the methodology and format of the Parliamentary Briefing
- Summarizes the results of the Briefing in terms of:
  - Parliamentarians' apparent understanding of the issues relating to customary land tenure
  - An assessment of the Parliamentarians' capacity to advocate for customary land tenure rights
  - The Parliamentarians' view as to whether the existing draft legislation is appropriate in the circumstances and, if so, what changes/amendments should be incorporated in the drafts
  - Any other issue considered important by the Consultant in furthering the objectives of the CLTP
- Schedule of proposed legal/legislative interventions for the CLTP to further legislative development in the context of the protection of customary land tenure to January 2007.

**Level of Effort**      9 days including preparation, travel and report writing (travel to be undertaken between 24 November and 2 December 2006).

**DRAFT SCOPE OF WORK**  
**USAID Sudan Customary Land Tenure Project**  
**Task 8 Strengthening Land Policy/Law**

**Senior Land Law Advisor for Briefing of Parliamentarians in Blue Nile State  
(Short-term TA)**

Approved legislation that reflects “good practice” in customary land tenure is crucial for meeting the objectives of USAID Customary Land Tenure Project (**CLTP**). A constitution has been passed in Blue Nile and draft land legislation is being considered by Parliamentarians in that State. In particular, the Blue Nile Parliamentarians (primarily from the Sudan Peoples Liberation Movement (**SPLM**)) have provided input toward the development of two draft pieces of legislation that were designed to flow from the Comprehensive Peace Agreements (**CPA**):

- Land Commissions Bill
- Land Bill

Earlier legislative development support occurred under an earlier land tenure-related project of USAID known as the Customary Land Security Project (**CLSP**). The Blue Nile Parliamentarians have now requested support to further the development of the above legislative drafts. In particular, the Blue Nile Parliamentarians have asked that the briefing session address the current state of the draft legislation in general.

In addition, others in the field have suggested that the additional areas of the institutional structure envisaged by the legislation and the status of customary land tenure should also be covered.

**Objectives**

- a) Ascertain through dialogue with the BN Parliamentarians if the proposed legislation is the appropriate vehicle in the circumstances for the protection of customary land rights
- b) Provide the BN Parliamentarians with an understanding of the importance of the protection of customary land rights in the State
- c) Ascertain the capacity of BN Parliamentarians to advocate for the passage of the draft legislation through Parliament
- d) Arrive at a program of potential interventions designed to assist each state government in developing legislation conducive to protection of customary land rights through to June 2007.

**Tasks**

- a) Brief the CLTP’s Kenyan Lawyers (Land Law Advisers under a separate Scope of Work) in Nairobi on the key draft legislative issues to be discussed at the Parliamentary Briefing session in Blue Nile State.
- b) Travel to BN to brief Blue Nile Parliamentarians (including SPLM and National Congress Party representatives if possible) on the following issues set out above and any other relevant issues raised by the Parliamentarians.
- c) Review the proposed legal interventions provided in the Draft Work Plan to January 2007 (under Task 8) and, on the basis of the results from the Parliamentary Briefing, fine-tune and/or revise the planned program of legal and legislative activities for CLSP. This program will include TA needs (CLTP

- staff and short-term), in respect of legislative development and Parliamentary support in respect of the BN State.
- d) Work with the Kenyan Land Law Adviser to prepare a final report.

### **Deliverable**

A final report on the Parliamentary Briefing by 10 December that:

- Sets out the methodology and format of the Parliamentary Briefing
- Summarizes the results of the Briefing in terms of:
  - Parliamentarians' apparent understanding of the issues relating to customary land tenure
  - An assessment of the Parliamentarians' capacity to advocate for customary land tenure rights
  - The Parliamentarians' view as to whether the existing draft legislation is appropriate in the circumstances and, if so, what changes/amendments should be incorporated in the drafts
  - Any other issue considered important by the Consultant in furthering the objectives of the CLTP
- Schedule of proposed legal/legislative interventions for the CLTP to further legislative development in the context of the protection of customary land tenure to January 2007.

**Level of Effort**      15 days including preparation, travel and report writing (travel to be undertaken between 23 November and 3 December 2006).

**DRAFT SCOPE OF WORK**  
**USAID Sudan Customary Land Tenure Project**  
**Task 8 Strengthening Land Policy/Law**

**Land Law Advisor for Long-Term Legal Strategy  
(Short-term TA)**

Approved legislation that reflects “good practice” in customary land tenure is crucial for meeting the objectives of USAID Customary Land Tenure Project (CLTP). A constitution has been passed in Blue Nile and draft land legislation is being considered by Parliamentarians in that State. In particular, the Blue Nile Parliamentarians (primarily from the Sudan Peoples Liberation Movement (SPLM)) have provided input toward the development of two draft pieces of legislation that were designed to flow from the Comprehensive Peace Agreements (CPA):

- Land Commissions Bill
- Land Bill

Earlier legislative development support occurred under an earlier land tenure-related project of USAID known as the Customary Land Security Project (CLSP). Further to requests from SPLM Parliamentarians in Blue Nile State, the CLTP provided support in November and December 2006 on issues relating, among other things, to the protection of customary land tenure in that State.

**Objectives**

- a) Provide guidance to the Project and the governments of SK and BN on appropriate legal strategy for the protection of customary land rights.

**Tasks**

- a) Review the results of the BN Parliamentarian’s Briefing (report by P McAuslan)
- b) Review the Work Plan and recommendations of ARD’s land law/policy adviser (November 2006)
- c) Coordinate, as appropriate with Project staff, USAID personnel, staff of other projects, Sudanese stakeholders in the formulation of legal/policy needs
- d) Design appropriate legal/policy inputs that respond to project needs as well as assisting to direct activities in furtherance of project deliverables.

**Deliverable**

A Work Plan for land law/policy inputs for the period from February 2007 to July 2007 including:

- Land law/policy inputs Work Plan designed to integrate with an overall Project Work Plan
- Scopes of Work in relation to inputs, as appropriate
- Schedule of proposed legal/legislative interventions for the CLTP to further legislative development and the promotion of public dialogue in the context of the protection of customary land tenure.

**Level of Effort** 22 days including preparation, travel and report writing (travel to be undertaken between 14 January 2007 and 15 February 2007).

**DRAFT SCOPE OF WORK**  
**USAID Sudan Customary Land Tenure Project**  
**Task 8 Strengthening Land Policy/Law**

**Land Administration Institutional Development Specialist  
(Short-term TA)**

Approved legislation that reflects “good practice” in customary land tenure is crucial for meeting the objectives of USAID Customary Land Tenure Project (CLTP). A constitution has been passed in Blue Nile and draft land legislation is being considered by Parliamentarians in that State. In particular, the Blue Nile Parliamentarians (primarily from the Sudan Peoples Liberation Movement (SPLM)) have provided input toward the development of two draft pieces of legislation that were designed to flow from the Comprehensive Peace Agreements (CPA):

- Land Commissions Bill
- Land Bill

Earlier legislative development support occurred under an earlier land tenure-related project of USAID known as the Customary Land Security Project (CLSP). Further to requests from SPLM Parliamentarians in Blue Nile State, the CLTP provided support in November and December 2006 on issues relating, among other things, to the protection of customary land tenure in that State.

**Objectives**

- a) Assess the capacity of the State Governments of SK and BN to administer respective State Land Commissions and provide options for appropriate institutions, staffing and funding.

**Tasks**

- a) Review the results of the BN Parliamentarian’s Briefing (report by P McAuslan) and current institutional requirements/Terms of Reference in the CPA, INC, State Constitutions and proposed State Legislation
- c) Coordinate, as appropriate with Project staff, USAID personnel, staff of other projects, Sudanese stakeholders in the formulation of ideas for the effective and sustainable establishment and operations of proposed State Land Committees (and other relevant institutions)
- d) Develop options for the establishment of effective and sustainable SLCs (and other relevant institutions) as required by the CPA, INC, State Constitutions and proposed legislation.

**Deliverable**

A Report that:

1. assesses the capacity of the State Government of SK and BN to establish and effectively administer currently proposed SLCs; and
2. proposes options that speak to the establishment of effective and sustainable institutions given proposed legislation, likely funding and likely staffing capacity.

**Level of Effort**      22 days including preparation, travel and report writing.



**DRAFT SCOPE OF WORK**  
**USAID Sudan Customary Land Tenure Project**  
**Task 8 Strengthening Land Policy/Law**

**Public Information and Education Specialist:  
Land Legislation and Policy  
(Short-term TA)**

Approved legislation that reflects “good practice” in customary land tenure is crucial for meeting the objectives of USAID Customary Land Tenure Project (**CLTP**). A constitution has been passed in Blue Nile and draft land legislation is being considered by Parliamentarians in that State. In particular, the Blue Nile Parliamentarians (primarily from the Sudan Peoples Liberation Movement (**SPLM**)) have provided input toward the development of two draft pieces of legislation that were designed to flow from the Comprehensive Peace Agreements (**CPA**):

- Land Commissions Bill
- Land Bill

Earlier legislative development support occurred under an earlier land tenure-related project of USAID known as the Customary Land Security Project (**CLSP**). Further to requests from SPLM Parliamentarians in Blue Nile State, the CLTP provided support in November and December 2006 on issues relating, among other things, to the protection of customary land tenure in that State.

To date, however, there has been no comprehensive dialogue with the public as to the principles that are to apply in relation to the development of land law and policy, in particular, the protection of customary land tenure.

**Objectives**

- a) Design a strategy for promoting the broad public discussion of land law and policy in the context of draft legislation for consideration in BN and SK concerning customary land tenure; in particular, noting the objectives and proposed powers of the State Land Commissions set out in the CPA, the Interim National Constitution and the respective State Constitutions.

**Tasks**

- a) Discuss with relevant stakeholders appropriate mechanisms for encouraging public discussion of customary land tenure
- b) Work closely with the Legal Adviser from RDI who is providing support on technical legal inputs in the development of protection of customary land tenure in SK and BN
- c) Work closely with Project staff for the purposes of developing a budget for the implementation of the Strategy for Public Discussion.
- d) Coordinate, as appropriate with Project staff, USAID personnel, staff of other projects, Sudanese stakeholders in the formulation of a strategy that encourages broad public discussion about customary land rights in the context of legislative development of the State Land Commissions (or other relevant legislation) in Blue Nile and Southern Kordofan States

- e) Design an appropriate strategy that encourages broad public discussion about customary land rights in the context of legislative development

**Deliverable**

A Public Information Strategy for encouraging public dialogue in relation to the protection of customary land tenure in BN and SK including:

- A Schedule of inputs for the implementation of the Strategy (including a budget that is coordinated with the Project budget and deliverables)
- Scopes of Work in relation to major inputs, as appropriate

**Level of Effort** 22 days including preparation, travel and report writing (travel to be undertaken between 14 January 2007 and 15 February 2007).

## **6.7 Email from Consultant to the UN FAO Concerning NLC Status**

*Email to the Author from Paul de Wit dated 6 November 2006*

...Indeed since last year we have been doing some work on the National Land Commission. Firstly we have provided technical support to the preparatory team of the NLC which is responsible for the drafting of the law establishing the commission. This support included the compilation and analysis of comparative material, the preparation of some concept notes, participation in some meetings and workshops. This process was promising until end last year but then stalled and became self contained with little transparency for the outside world. Note however that FAO was the only organization that was invited by the GoNU to get involved in this exercise. During my last visit to Sudan in October, I met with some people from the National Constitutional Review Commission. It appears now that FAO will play a more prominent role in this process, which has not yet resulted in law that was passed by Parliament. This implies thus that there is not yet a National land Commission. This may indeed have some direct consequences for the eventual functioning of Land Commissions in the Transitional areas, though it is not clear. I have been asking around but no one could give me a clear answer. It is my thought however that if these Land Commissions have concurrent powers to the NLC, it is logic that the establishment, mandate and functioning of these are contingent to the creation of a national commission.

For you information I include a short overview of the process so far:

- 09/2005: Creation of Commission Preparatory Teams (2 plus 2 members) to draft the legislation establishing the NLC
- 09-12/2005: Some technical support to the CPT of the NLC by the UN through FAO: meetings and workshop, preparation of concept notes, compilation of comparative legislation
- 12/2005: first consolidated but weak draft prepared by the CPT
- 02-03/2006: design of an FAO project to support the establishment and initial functioning of the NLC
- 08/2006: approval of “a” draft by the Presidency for submission to the Council of Ministers
- 09/2006: the Council of Ministers rejects the presented draft

As you notice FAO has designed a project to support the functioning of the NLC which is still to be initiated.

I believe that we should streamline as much as possible initiatives that provide support to the land commissions, which has not always been the case. For instance we got never access to the draft legislation that was produced in Blue Nile and Southern Kordofan States, which makes it also difficult for the GoNU to consider these for the NLC.

## 6.8 Proposed Parliamentarian Questionnaire

### Sudan CLTP Target Group Program Assessment Questionnaire

**DATE:**

**STATE: BN SK (circle as appropriate)**

**LOCAL GOVT AREA:** \_\_\_\_\_

**Target Group: Parliamentarians / Land Commissions / Ministries / Public / NGOs (circle as appropriate)**

**Political Affiliation (if applicable):**      **SPLM**              **NCP**              **Not Applicable**  
(circle)

**Gender of Respondent:**      **Male**      **Female (circle as appropriate)**

1. Do you think that the protection of Customary Land Rights is important?
  - a. Yes
  - b. No. If no, why not?  
\_\_\_\_\_
  
2. In your opinion, are Customary Land Rights adequately protected now?
  - a. Yes
  - b. No
  
3. If no to Q2, in your opinion, what are the biggest issues affecting Customary Land Rights? (prioritize the following list)
  - a. Lack of protection in the law
  - b. Lack of enforcement of rights by Government
  - c. Lack of knowledge of Customary Land Rights within Government
  - d. Lack of knowledge of Customary Land Rights within the community
  - e. Rejection of Customary Land Rights
  - f. Other. What?  
\_\_\_\_\_
  
4. On a scale of 1 to 3 (3 being biggest and 1 being smallest), the activities of which groups are the biggest sources of tension in relation to Customary Land Rights?
 

|  |   |   |
|--|---|---|
| a. Government  | 1 | 2 |
| 3  |   |   |
| b. Returnees (either IDPs or returning refugees)                   | 1 | 2 |
| 3  |   |   |
| c. Other Customary Groups (e.g. Transhumant Pastoralists, farmers) | 1 | 2 |
| 3  |   |   |
| d. Commercial interests  | 1 | 2 |
| 3  |   |   |
| e. Other. Who? _____   | 1 | 2 |
| 3  |   |   |
  
5. On a scale of 1 to 3 (3 being most useful and 1 being least useful), what ways can be used to protect Customary Land Rights?
 

|  |          |
|--|----------|
|  | 1        |
| 2      3   |          |
| a. Written laws/Constitution and their enforcement                                   | 1      2 |
| 3  |          |
| b. Strong formal system to deal with disputes (e.g. Courts)                          | 1      2 |
| 3  |          |
| c. Strong customary systems to deal with disputes (e.g. Customary Dispute Processes) |          |
| 1      2      3  |          |

- d. Cooperation between customary rights holders and other sections of society (including law makers) 1  
2 3
- e. Government and Public Information Campaigns 1 2  
3
- f. Other? What? \_\_\_\_\_ 1 2  
3
6. On a scale of 1 to 3 (3 being most useful and 1 being least useful), rate these ways to inform peoples about respect for Customary Land Rights
- a. Radio (or other electronic media) 1 2  
3
- b. Television 1 2  
3
- c. Newspaper 1 2  
3
- d. Community Meetings 1 2  
3
- e. Targeted meetings with individual stakeholder groups 1 2  
3
- f. Other. What? \_\_\_\_\_ 1 2  
3
7. Do you think that a Target Group would benefit from activities designed to give them more information about customary land rights and the development of appropriate land laws?
- a. Yes?
- b. No? If no, why not?
- \_\_\_\_\_
8. If yes to Q6, on a scale of 1 to 3 (3 being most important and 1 being least important) what form of information activities would be important?
- a. Workshops/seminars including other Target Groups 1 2  
3
- b. Workshops with only the single Target Group 1 2  
3
- c. Open Public Debates at a community level 1 2  
3
- d. Open Public Debates at a state level 1 2  
3
- e. Other Activities? What? \_\_\_\_\_ 1 2  
3
9. If yes to Q6, on a scale of 1 to 3 (3 being most important and 1 being least important) what should be the topics of discussion?
- a. Land law and customary land rights 1 2  
3
- b. Advocacy 1 2  
3
- c. Other? What? \_\_\_\_\_ 1 2  
3
10. On a scale of 1 to 3 (3 being most important and 1 being least important) who should be informed about Customary Land Rights?
- a. Parliamentarians (Law Makers) 1 2  
3
- b. Land Commissions 1 2  
3

|                      |   |   |
|----------------------|---|---|
| c. Other Government  | 1 | 2 |
| 3                    |   |   |
| d. Customary Leaders | 1 | 2 |
| 3                    |   |   |
| e. Farmers           | 1 | 2 |
| 3                    |   |   |
| f. Pastoralists      | 1 | 2 |
| 3                    |   |   |
| g. General Public    | 1 | 2 |
| 3                    |   |   |
| h. Other. Who? _____ | 1 | 2 |
| 3                    |   |   |

11. On a scale of 1 to 3 (3 being most important and 1 being least important) which groups are most important for communicating the message about the protection of customary land rights?

|   |   |   |
|---|---|---|
| a. Law makers                               | 1 | 2 |
| 3   |   |   |
| b. Other Government (e.g. Land Commissions) | 1 | 2 |
| 3   |   |   |
| c. NGOs                                     | 1 | 2 |
| 3   |   |   |
| d. Customary Leaders                        | 1 | 2 |
| 3   |   |   |
| e. Others? Who?                             | 1 | 2 |
| 3   |   |   |

## **6.9 Legal Opinion on the Status of SLCs by Professor Patrick McAuslan**

### **The Blue Nile State Land Commission**

#### **A legal opinion**

##### **1. Introduction**

1. I have been asked to advise on whether the establishment of the Blue Nile State Land Commission is dependant on the establishment of National Land Commission (NLC) so that no law can be brought forward to the Blue Nile State legislature on the State Land Commission (SLC) until national legislation has provided for the NLC.

##### **2. The Opinion**

2. This question requires a close analysis of the relevant provisions of the National Interim Constitution (NIC) and the Protocol between the Government of Sudan and the Sudan People's Liberation Movement on the Resolution of Conflict in Blue Nile/Nuba Mountains and Blue Nile States dated the 26<sup>th</sup> day of May 2004 (the Protocol).

3. Considering first the NIC, article 187 states:

- (1)... there shall be established a National Land Commission...
- (2) The National Land Commission shall be independent and representative of all levels of government
- (3) Membership, appointment, and conditions of service of the NLC shall be regulated by law...

4. In sub-article (1) there are 8 paragraphs which set out the functions of the NLC. These include:

- (f) advise different levels of government on how to co-ordinate policies on national projects affecting land and land rights

5. It is clear then that the NLC is a separate and independent body established by the NIC, with the details of its functioning to be provided for by a national law.

6. Turning now to the Protocol, article 182 of the NIC provides that:

Without prejudice to any of the provisions of this Constitution, the Agreement on the Resolution of the Conflict in Southern Kordofan and Blue Nile States shall apply with respect to those two states.

7. This means that while the NIC is the supreme law of the land, the provisions of the Protocol apply to the governance of the two states of Southern Kordofan and Blue Nile. Where there is any conflict between the NIC and the Protocol, the NIC applies. Where there is no conflict the Protocol applies.

8. Article 9 of the Protocol is headed **State Land Commission**. Various sub-articles deal with the SLC:

- 9.3. There shall be established a State Land Commission, in the State of Southern Kordofan/Nuba Mountains and Blue Nile respectively.
- 9.5. The SLC shall exercise all the powers of the NLC at the state level.
- 9.6. The SLC shall be competent of review existing land leases and contracts and examine the criteria for the present land allocations and recommend to the State authority the introduction of such necessary changes, including restitution of land rights and compensation.
- 9.7. The NLC and the SLC shall cooperate and coordinate their activities so as to use their resources efficiently...
- 9.8. In case of conflict between the findings and recommendation of the NLC and the SLC which cannot be resolved by agreement, the two Commissions shall reconcile their positions...

9. It is clear from these provisions in the Protocol that the establishment of an SLC is an entirely separate and distinct legal matter from the establishment of the NLC. The *establishment* of the NLC is provided for by the NIC; the *establishment* of the SLC is



provided for by the Protocol. There is no reference in the NIC to the establishment of the SLCs; there is no reference in the NIC to any duty of co-operation between any SLC and the NLC (as there is with respect to the Southern Sudan Land Commission in article 189(1) INC). So for the state legislature of Blue Nile State to enact a law providing for the details of the functions of the SLCs in no way conflicts with any provision of the NIC.

10. Indeed it is considered that (a) as the Protocol is by article 182 INC made a part of the INC, and (b) as the Protocol has provided for the establishment of an SLC for Blue Nile, it would *unconstitutional* for the state legislature to refuse to proceed to enact a law providing for the details of the SLC until a law providing for the details of the NLC had been enacted, for that would be to *add into* the constitutional provisions for an SLC something that is not in the INC and the Protocol.

11. We may go further. The SLC has functions separate and distinct from the functions of the NLC. There is no equivalent in article 187 INC dealing with the NLC to article 9.6 of the Protocol dealing with the SLCs. There is absolutely nothing in the INC or the Protocol to suggest that it could have been within the contemplation of the drafters of the INC and the Protocol that an SLC with one set of powers would not be able to get started on carrying out its constitutional mandate until the details of the NLC with a different set of powers had been provided for by a national law.

12. What of the provision in the Protocol that there must be co-operation and co-ordination between the SLCs and the NLC? If that proves anything, it supports the argument being advanced here. There are two separate and distinct constitutional entities: an NLC and an SLC. They must co-operate together. The SLC is not subordinate to the NLC, dependant on the NLC's being in existence before it can begin its work. In just the same way, there are two distinction entities provided for by articles 187 and 188 INC: the NLC and the Southern Sudan Land Commission. They too much co-operate together but as two separate and distinct entities.

13. Finally, the Blue Nile State Constitution may be referred to. Articles 94 and 95 of the State Constitution deal with land. There is nothing in those articles limiting the establishment of the SLC to coming after the establishment of the NLC. And rightly so for if such provisions had been included they would have been contrary to the provisions of the NIC. Indeed, the State constitution does not even mention the NLC.

### 3. The conclusion

- the establishment of the State Land Commission is provided for by article 9.6 of the Protocol
- the establishment of the National Land Commission is provided for by article 187 of the Interim National Constitution
- the State Land Commission is a separate and distinct legal body from the National Land Commission
- the State Land Commission has functions separate and distinct from the functions conferred on the National Land Commission
- it is unconstitutional for the Blue Nile State legislature to refuse to provide for the operationalisation of the Blue Nile State Land Commission by state law until the National Land Commission has been operationalised by a national law.
- since the State Constitution makes it plain that the State's Land Commission will play an active role in the management of land within the state, it is under a clear duty both by the Interim National Constitution *and its own Constitution* to bring forward a law to operationalise the State Land Commission as soon as possible.

Patrick McAuslan  
ARD Legal Expert

Nairobi

1 December 2006