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Legal Framework for Land (Administration) in Sudan

Assessment Report

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**Development Law Branch,
FAO Legal Office**

Prepared under project GCP/SUD/074/EC: Promoting the provision of legitimate land tenure rights using the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) in the context of national food security for conflict-displaced communities, including small-scale rural farmers, pastoralists, and Internally Displaced Persons in the Greater Darfur region of the Sudan.

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1. INTRODUCTION

1.1 Methodology of the report

This report assesses the legislation of Sudan relating to land tenure and administration (see the list in the Annex to this report) against the provisions of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the VGGT). The assessment is structured along a set of indicators from the VGGT that were considered most relevant for the legal framework on governance of land tenure in Sudan. These indicators are grouped under the VGGT's guiding principles: (1) to recognize and respect all tenure rights holders and their rights; (2) to protect tenure rights against threats and infringements; (3) to promote and facilitate the enjoyment of legitimate tenure rights; (4) to provide access to justice; and (5) to prevent tenure disputes, conflicts and corruption. Based on the findings of the legislative assessment, and with a view to the gaps and weaknesses identified, the report recommends amendments to the existing legislation and/or enacting new legal instruments to strengthen the governance of tenure in Sudan and to more closely align it to the guidance provided by the VGGT.

1.2 National legal framework of Sudan

The current constitution of Sudan is the Interim National Constitution of the Republic of Sudan, 2005, adopted on 6 July 2005 (2005 Constitution). It remains applicable in Sudan, after the secession of South Sudan in 2011, until a permanent constitution is adopted, Article 226(9). After a constitutional amendment in 2013, the 2011 Doha Document for Peace in Darfur (DDPD) is considered an integral part of the 2005 Constitution and since applies to all states of Sudan.

The Sudanese legal system is based on a combination of statutory and customary laws. Art. 7 of the Civil Transactions Act states that, when the law does not contain provisions on an issue, decisions of both the judiciary or custom shall be applied, provided that those are not in conflict with the Sharia and the law. The legal framework for land is primarily governed by statutory laws and customary systems.

Sudan has a decentralized system of governance. According to Article 24 of the 2005 Constitution, the levels of government are the following:

- The national level of government,
- The state level of government, “which shall exercise authority at the state level throughout the Sudan and render public services through the level closest to the people”,
- Local level of government.

Regarding law-making, the 2005 Constitution states that there shall be established a National Legislature composed of two chambers, the National Assembly and the Council of States (Article 83). The Constitution allows the National Legislature or any of its Chambers to delegate the powers of adopting subsidiary legislation, “by law, to ... any public body, the

power to make any subsidiary regulations, rules, orders or any other subsidiary instrument having the force of law; provided that such subsidiary legislation shall be tabled before the concerned Chamber and be subject to adoption or amendment by a resolution of that Chamber in accordance with the provisions of its regulations” (Article 115).

Land resources and regulations are addressed in Article 186 of the Constitution, which states: “(1) The regulation of land tenure, usage and exercise of rights thereon shall be a concurrent competence, 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.

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

Accordingly, Schedule (D) on Concurrent Powers specifies these powers as follows: “the National Government, the Government of Southern Sudan and state governments, shall have legislative and executive competencies on the regulation of land tenure, usage and exercise of rights in land“ (para. 32).

While land tenure is thus generally a concurrent competence of the federal and state level, state land is excluded from this. Concerning state-owned land, Schedule (C) on the Powers of States determines that the exclusive executive and legislative powers of a state of the Sudan shall include “state land and state natural resources” (para. 8) and “the management, lease and utilization of lands belonging to the State” (para. 13). This Schedule also adds “traditional and customary law” to the powers of states (para. 34).

As the national-level authority responsible for land issues, the National Land Commission (NLC) is established by Article 187 of the Constitution, which also details its functions. The Commission shall inter alia “make recommendations to the appropriate level of government concerning land reform policies and recognition of customary rights or customary land law” (para. d).

2. LEGAL ASSESSMENT OF LAND TENURE

2.1 Legal recognition and respect of all tenure right holders and their rights

Legal recognition and allocation of tenure rights and duties

The law recognizes all existing tenure rights, including customary tenure rights, whether recorded or not, in accordance with the VGGT. The 2011 DDPD contains several provisions recognizing tenure rights, including customary tenure rights.

DDPD Article 34 (188) states that tribal traditional land ownership rights (*hawakeer*), historical rights to land, traditional and customary livestock routes and access to water sources shall be recognized and protected. It requires all relevant levels of Government to “initiate and complete

a process to progressively amend relevant laws to incorporate customary laws, in accordance with international trends and practices”. Land laws amended in accordance with paragraph 188 shall recognize and protect the historical, traditional and customary rights to land (Article 34 (189)). Concerning non-registered tenure rights, Article 36 (194) of the DDPD states that individuals in the local communities may register their customarily owned lands as their own. Article 40(209) DDPD states that the Darfur Land Commission (DLC) shall take into account “rights to land, including customary and traditional rights“.

However, it should be noted that there are types of tenure rights regarding land and natural resources in customs that are different from those provided for in formal legislation. There is no official transcript of customary tenure rights and systems with regard to land in Darfur. According to the Summary of Customs on Land Tenure and the Use of Natural Resources in Darfur prepared by the DLC in 2016, customary tenure rights in Darfur are classified in five types: land of the sultan; land of tribes; land of primary tribe branches; land of secondary tribe branches; and land of the families.

The 1970 Unregistered Land Act determined that all land in Sudan that was not registered before its entry into force shall be the property of the Government and be deemed registered as such (Article 4(1)). However, the 1970 Act has been expressly repealed through the 1984 Civil Transactions Act, which provides in Article 560, para. 4 that all tenure rights are protected by the law and will not be expropriated except for public purpose against compensation.

Based on the Constitution and the DDPD, men and women have the same tenure rights under the law, including in customary systems. The equality of men’s and women’s tenure rights is however generally required by the 2005 Constitution. Article 32 anchors the equality of men and women with regard to economic rights, while not mentioning tenure rights specifically: “The State shall guarantee equal right of men and women to the enjoyment of all civil, political, social, cultural and economic rights”. The article also requires the State to “promote women rights through affirmative action” and to “combat harmful customs and traditions which undermine the dignity and status of women”. Specifically addressing the resources and common wealth of Sudan, Article 185 (1) states that those shall be shared equitably to ensure that the quality of life, dignity and living conditions of all citizens are promoted without discrimination on grounds of gender, amongst others. The 2005 Constitution emphasizes the equality of men and women in several other provisions. According to Article 15 (2) of the Constitution, the State shall "promote gender equality and the role of women in family, and empower them in public life". Article 31 anchors equality of men and women before the law. The specific legislation on land tenure neither distinguishes between men’s and women’s rights, nor does it explicitly determine that they have the same tenure rights.

There appears to be no law or policy in Sudan that provides for the systematic legal recognition and allocation of tenure rights of men and women, families and communities to provide full opportunities to acquire legal recognition of their tenure rights. The DDPD only states that individuals in the local communities may register their customarily owned land as their own, but does not provide for a systematic legal recognition. It determines that the registration shall be free, if possible, or otherwise for a reduced fee, and it shall be coupled with facilitated

procedures and campaigns for raising public awareness (Article 36(194)). However, this provision has not yet been incorporated into legislation on land tenure.

The Constitution addresses this aspect, but only states concerning land resources that all levels of government shall institute a process to progressively develop and amend the relevant laws to incorporate customary laws, practices and local heritage (Article 186(3)). It requires the NLC to make recommendations to the appropriate level of government concerning land reform policies and recognition of customary rights or customary land law” (Article 187(d)). However, this has not been incorporated into legislation or policy. It should be mentioned that there is a draft National Land Commission Act of 2007 that regulates the composition and powers of the Commission, but that act has not been enacted yet.

The Sudanese law recognizes the legitimate tenure rights to the ancestral lands on which local communities with customary tenure systems live. Pursuant to DDPD Article 34 (188), tribal traditional land ownership rights (*hawakeer*), historical rights to land, traditional and customary livestock routes and access to water sources shall be recognized and protected. Furthermore, to protect the traditional heritage, the closed traditional and customary livestock routes shall be re-opened, whenever possible, or alternative routes shall be demarcated. Again, this constitutional provision has not been incorporated into and specified by legislation on land tenure.

The consulted Sudanese legislation does not acknowledge informal tenure, whether or not arising from large-scale migrations.

2.2 Protection of tenure rights against threats and infringements

2.2.1 Legal recognition and allocation of tenure rights and duties

The law includes safeguards to avoid infringing on or extinguishing tenure rights of others, in particular women, including legitimate and subsidiary tenure rights that are not currently protected by law. With regard to registered tenure rights, the law includes safeguards to avoid infringing on or extinguishing the rights of others, in particular through the detailed provisions on transactions in tenure rights of the 1925 Land Settlement and Registration Act. However, this protection does not cover unregistered tenure rights. The 1925 Act is applicable to registered land only, but not to tribal or customarily owned land unless it is registered or settled with the competent authorities.

In addition, the Civil Transactions Act contains such guarantees. More generally, the 1984 Civil Transactions Act protects the right of ownership, stating that “ownership shall not be acquired” without Sharia cause, save for public interest (Article 517), and regulates transactions with respect to titles on land. The Act also protects easement rights (Article 574 et seqq.) and determines that “every person may make use of the water sources, its distributaries and channels having public usufruct, in pursuance of such special laws, systems and customs” (Article 592(2)).

The law provides rural communities with customary tenure systems against the unauthorized use of their land, fisheries and forests by others. The above-cited Article 34 (188) of the DDPD states that tribal traditional land ownership rights, historical rights to land, traditional and customary livestock routes and access to water sources shall be recognized and protected.

The law requires holding good faith consultation with rural communities before adopting and implementing legislative or administrative measures affecting the resources for which the communities hold rights. The DDPD contains provisions with regard to the management and use of land and natural resources. It determines that all citizens affected by land development and natural resources utilization shall be consulted and their views be taken into consideration (Article 33(186)). Specifically concerning local communities' land, Article 35(192) stipulates that the federal and state governments may develop communities' lands in good-faith consultation with the participation of the local communities that have rights to those lands. It also determines that the community shall either be entitled to receive an equitable share of the revenue accruing from the development of those lands, or be compensated in kind and/or in cash. It should be noted, however, that there is no legislation that implements this constitutional provision and requires consultation with rural communities.

The consulted Sudanese legislation does not contain explicit provisions preventing unlawful forced evictions where it is not possible to provide legal recognition to informal tenure.

2.2.2 Transfers and other changes to tenure rights and duties

The consulted legislation does not contain transparent rules on the scale, scope and nature of allowable transactions in tenure rights, and those that define what constitutes large-scale transactions in tenure rights. The 1984 Civil Transactions Act governs transactions in tenure rights, including ownership, leases, easements, and usufruct rights. It does not define large-scale transactions. The 1925 Land Settlement and Registration Act contains rules on transactions in tenure rights (Articles 54 et seqq. on the transfer of land ownership), but it does not address or define large-scale transactions.

The consulted legal framework does not set ceilings on permissible land transactions to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions in tenure rights.

Generally, the reviewed Sudanese legislation does not require parliamentary approval for transfers exceeding any set ceiling. Concerning the state of Darfur, the DDPD determines that the Darfur Regional Authority Council and the Darfur States Legislative Councils may, in exceptional circumstances, empower the Darfur State Governments to enter into agreements to implement major development projects which may not be in conformity with any plan for land use or planning legislation (Article 39(208)). It does not however define major development projects or a corresponding ceiling. In addition, it should be noted that the 1984 Civil

Transactions Act provides that foreigners and foreign investors cannot own land without permission of the Council of Ministers.

The National Investment Encouragement Act 2013, which governs both domestic and foreign direct investment in Sudan, neither provides incentives for investors nor requires them to seek such partnerships with local tenure right holders. There appears to be no other legislation providing for such incentives or duties. Rather, investors reportedly deal only with the Government.

The reviewed Sudanese laws do not require the parties to consult indigenous peoples before any investment project is initiated affecting the resources for which the communities hold rights. DDPD Article 39 (208) addresses major development projects. It determines that the Darfur Regional Authority Council and the Darfur States Legislative Councils “may, in exceptional circumstances, empower the DSG [Darfur State Government] to enter into agreements to implement major development projects which may not be in conformity with any plan for land use or planning legislation”. However, the DSG may seek to obtain this mandate only if the proposed agreement contains detailed provisions explaining, inter alia, the steps to be taken to carry out consultations with all those communities and individuals whose interests are adversely affected by the proposed development project. Yet, this provision applies to an exception only, namely where major development projects do not conform to land use or planning legislation. For all other investment projects and thus the majority of cases, the DDPD does not require such consultations.

There appears to be no other law that requires such consultations either. Notably the National Investment Encouragement Act 2013 does not require consultations with indigenous peoples. Rather, as previously mentioned, investors deal directly and only with the Government.

The Sudanese legal framework included in this review does not explicitly encourage responsible investments that respect human rights, promote food security and sustainable use of the environment. In particular, the National Investment Encouragement Act 2013 does not directly encourage responsible investments in this sense. However, it determines that the duties of the concerned ministries in the scope of an investment include the initial approval for establishing the project based on a technical, economical, environmental and social feasibility study (Article 18c). The Act itself does not contain any details on how such a feasibility study is to be carried out.

The 2001 Environment Protection Act requires that any person seeking to engage in a project that is likely to adversely impact on the environment and natural resources to carry out a study of the expected environmental impacts (Article 17).

Neither the National Investment Encouragement Act 2013 nor other consulted pieces of legislation require agreements for investments to clearly define the rights and duties of all parties to the agreement or to comply with national legislation and investment laws. However, compliance with national legislation is generally required for any agreements concerning investments on Sudanese territory.

The reviewed legal framework does not provide for the consultation of all stakeholders prior to the transaction of tenure rights, including partnership agreements. DDPD Article 40(212) on natural resources only stipulates that the citizens of Darfur should be represented through their local authorities in investment agreements related to their lands or natural resources, especially with regard to the signature of contracts. Likewise, there are no provisions on professional assistance to ensure that men and women are aware of their tenure rights and could participate in consultations.

The consulted legislation does not require an independent assessment to be carried out to identify the potential positive and negative impact of large-scale transactions of tenure rights on men's and women's tenure rights specifically. The National Investment Encouragement Act 2013 only requires the concerned ministries in broad terms to base their initial approval for establishing the project on a social feasibility study, amongst others (Article 18c). Likewise, the consulted legislation does not require such an assessment to be carried out to identify the potential impact on food security and the realization of the right to adequate food.

The consulted legal framework in Sudan does not require legitimate formal and informal tenure rights of men and women to be identified and recorded.

Neither the National Investment Encouragement Act 2013 nor other consulted pieces of legislation establish a specific obligation of investors to recognize and respect tenure rights. However, the law more generally requires all persons, including investors, to respect the law and not to infringe on the rights of others.

Neither the National Investment Encouragement Act 2013 nor other consulted pieces of legislation establish a monitoring system for the implementation and impact of agreements involving large-scale transactions in tenure rights, or set up a grievance mechanism specifically to ensure that parties affected through large-scale transactions can seek corrective action. However, the holders of tenure rights that are protected by law have access to the general dispute resolution mechanisms.

The 1994 Urban Planning and Land Disposal Act provides for voluntary approaches for the readjustment of parcels. It should be noted that a new draft Urban Planning and Land Disposal Act 2018 and two implementing regulations were prepared by a group of Sudanese experts that would replace the 1994 Act, which was not a government-led process. At the time of writing, that draft act has not been submitted to the legislative process.

The 1994 Urban Planning and Land Disposal Act states that any urban planning and related policies shall be in line with the National Economic and Social Development Plan (Articles 9(1) and 11). Neither the Act itself nor other consulted legislation contains more specific requirements for readjustment approaches to be socially, economically and environmentally sustainable, and gender sensitive.

The 1994 Urban Planning and Land Disposal Act establishes clear procedures for the reorganization of parcels and their uses (Chapter 4).

The consulted legislation, including the 1994 Urban Planning and Land Disposal Act, does not establish environmental safeguards to readjustment projects that prevent or minimize degradation and loss of biodiversity and reward changes that foster good land management, best practices and reclamation.

The Sudanese legislation provides for restitution and compensation for the loss of legitimate tenure rights to land, while it does not explicitly address fisheries and forests. The law does not explicitly state that compensation should include subsidiary right holders such as the spouse. The DDPD states in Article 40(211) that: “Individuals holding land rights shall be entitled to compensation on adequate and prompt basis in the event their land property is expropriated or exploited to develop natural resources.” The 2005 Constitution determines that, without prejudice to the jurisdiction of the courts, the NLC shall assess appropriate land compensation including but not limited to monetary compensation, for applicants in the course of arbitration or in the course of a reference from a court (Article 187(1)).

The consulted legislation does not provide a clear definition of the concept of expropriation for public purpose. The 1930 Land Acquisition Act provides for the acquisition of land for public purpose (Article 4(1)). It does not, however, define the concept of expropriation for public purpose or otherwise determine potential public purposes. Rather, the Governor decides on the expropriation of land, if land “is likely to be required permanently or temporarily for any public purpose” (Articles 4-6). Article 6 states that “the declaration of intended acquisition [by the President of the Republic] shall be conclusive evidence that the land specific in such declaration is required for a public purpose”. Also the 1994 Urban Planning and Land Disposal Act does not contain a definition of the concept and simply refers to the 1930 Land Acquisition Act concerning the expropriation for public purpose.

The Sudanese legal framework provides for the basis for assessment and payment of compensation. According to the 1930 Land Acquisition Act, the expropriation officer shall “attempt to come to an agreement as to the amount of compensation” with the persons concerned (Article 14). If they do not reach an agreement, a board of arbitration shall be constituted (Article 15c, Article 16). Article 19 determines the rules for the assessment of compensation to be given “due regard” by the board of arbitration in assessing the compensation. The 1994 Urban Planning and Land Disposal Act refers to Article 19 of the 1930 Land Acquisition Act and specifies additional rules for the assessment and payment of compensation (Article 14(3)).

The legislation does not provide for transparent and participatory plans and processes for expropriation. The 1930 Land Acquisition Act does not provide for participatory plans and processes for expropriation. Rather, the Governor decides on the expropriation of land, if land “is likely to be required permanently or temporarily for any public purpose” (Articles 4-6). The Governor shall publish the corresponding notification “at convenient place in such locality”, and the Government shall pay compensation for the damage caused (Article 4). The 1994 Urban

Planning and Land Disposal Act (Article 13) states that expropriation for public purpose is possible in accordance with the provisions of the 1930 Land Acquisition Act.

The reviewed legislation does not provide for cases where proposed expropriation involves areas of particular cultural, religious or environmental significance, or where the land, fisheries and forests in question are particularly important to the livelihoods of the poor or vulnerable.

The 1994 Urban Planning and Land Disposal Act requires consideration is given to all tenure rights, without specifically mentioning overlapping and periodic rights.

The consulted laws do not provides for surveying and mapping of parcels for the determination of all tenure rights including customary and community tenure rights.

2.3 Promote and facilitate the enjoyment of legitimate tenure rights

2.3.1 Legal recognition and allocation of tenure rights and duties

The legislation reviewed does not require competent authorities to ensure that people whose tenure rights are recognized or who are allocated new tenure rights have full knowledge of their rights and also their duties.

Reportedly, effective participation of all members, men, women and youth, in decisions regarding their tenure systems is promoted through their local or traditional institutions, including in the case of collective tenure systems. The pieces of legislation that are included in this review do not explicitly address this.

2.3.2 Transfers and other changes to tenure rights and duties

The 1994 Urban Planning and Land Disposal Act requires that all stakeholders be heard in the process of planning a readjustment project (Article 31). It does not explicitly require providing them with sufficient information in applicable languages, and it does not specifically provide for gender-sensitive approaches.

There appear to be no policies, laws, regulatory systems or agencies ensuring transparent and efficient sale and lease market operation, provide non-discriminatory access, and prevent uncompetitive practices, as well as no simplified administrative procedures to help avoid discouragement of market participation by the poor and the most vulnerable.

The consulted laws do not include safeguards to protect the legitimate tenure rights of spouses, family members and others who are not shown as holders of tenure rights in recording systems. Members of a family can agree to establish a family ownership according to Article 538 of the 1984 Civil Transactions Act, in which case they would be shown as right holders in the recording system.

2.3.3 Administration of tenure

The 1925 Land Settlement and Registration Act is the primary law governing the registration of tenure rights. It regulates the recording, updating and publication of tenure rights and duties of the holder. This Act does not however provide for the recording of the holder's family status and associated spousal rights (see Article 14).

Based on the legislative assessment it cannot be determined whether the recording systems is appropriate for the particular circumstances, as well as the available human and financial resources, and adequate human and financial resources are made available to support tenure service provision. However, it has been reported that the existing systems might need development in this respect. The same applies to the accessibility of land administration services (surveying and mapping, land valuation, land taxation, land use planning and land registration) and the qualification of their personnel to deliver information on the tenure rights of men and women, including spousal rights and the capacity to ensure that woman's tenure rights are identified, recorded and protected.

The 2005 Constitution emphasizes decentralization of governance structures in numerous articles, without however addressing tenure governance and land administration specifically. The Constitution determines as one of its fundamental bases the principle of “decentralized democratic governance” (Article 4(a)). The 1994 Urban Planning and Land Disposal Act incorporates the subsidiarity principle and establishes a structure of governance with local-level authorities responsible for specific decisions at state and local level (see for example Article 11). According to the 2003 Local Government Act, the responsibilities of the local government include to “advise in the land planning for residential, agriculture, industry and investment purposes according to the plan of the state” (Annex, Part 3(9)); and to “support the planning of villages’ lands according to the 1994 Urban Planning and Land Disposal Act” (10).

Surveying and mapping, land valuation, land taxation and land use planning form part of the core land administration services and are provided by separate agencies (see 1994 Urban Planning and Land Disposal Act). However, specific implementing legislation in this regard appears to be lacking. Land registration and land use planning are carried out by separate agencies: Land registration is provided by the registration services under the 1925 Land Settlement and Registration Act. Land use planning is provided by the authorities established for this purpose under the 1994 Urban Planning and Land Disposal Act. Neither act provides for coordination between these agencies. Land valuation is provided for government-owned land by a technical committee created by the minister responsible for urban planning from time to time under Article 52 of the 1994 Urban Planning and Land Disposal Act.

Information on tenure rights is not easily available to all and very unclear, which is said to cause great problems.

The reviewed legislation does not task competent authorities to contribute to the understanding of transboundary tenure issues affecting communities, such as with rangelands or seasonal migration routes of pastoralists.

2.4 Access to justice

2.4.1 Legal recognition and allocation of tenure rights and duties

The Sudanese legislation recognizes and promotes customary approaches used by rural communities with customary tenure systems to resolving tenure disputes or conflicts within communities. The DDPD states that, without prejudice to the jurisdiction of the courts, parties to land disputes shall be encouraged to exhaust traditional methods of dispute settlement, including arbitration (Article 38 (203)). The Law on Civil Procedure determines that both custom and Sharia are applied. The legislation does not, however, contain explicit provisions strengthening means of resolving conflict between communities in case of conflict over land, fisheries and forests that are used by more than one community.

2.4.2 Administration of tenure

The legislation does not explicitly guarantee or address gender-equality regarding the access to judicial systems and dispute resolution mechanisms. However, as previously mentioned, the 2005 Constitution anchors the equality of men and women before the law (Article 31).

Based on the stakeholder discussion, it appears that there are impartial and competent judicial and administrative bodies that provide timely, affordable and effective remedies to disputes over tenure rights, while detailed procedures for the effective enforcement of their decisions are lacking.

A right to appeal exists in the Sudanese justice systems, including in customary justice systems. The 2005 Constitution refers in Article 181(2) to a right of appeal, although such right is not included in the Bill of Rights (Part Two of the Constitution). The Constitution also determines that the structure of the national judiciary includes national courts of appeal (Article 124). Also the customary justice systems provide for a right to appeal.

There appear to exist no specialized tribunals that deal solely with disputes over tenure rights or land valuation and land taxation disputes. But there are two commissions that shall deal, not solely but in particular, with disputes over tenure rights, namely the NLC and the DLC. At the time of writing, only the DLC has been established, not however the NLC. The 2005 Constitution provides for the establishment of the NLC. It determines in Article 187 that this commission, without prejudice to the jurisdiction of the courts, shall have the following functions: (a) arbitrate between willing contending parties on claims over land, and (b) entertain claims, at its discretion, in respect of land, be they against the relevant government or other parties interested in the land. It also establishes that 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. The above-mentioned draft National Land Commission Act 2007 incorporates these provisions in Article 9.

In addition, the DDPD Article 38 (201) assigns to the DLC, without prejudice to the jurisdiction of courts, the arbitration on land rights disputes as one of its functions. The DLC has the authority to receive applications for arbitration and may, with the agreement of the parties of the dispute, apply customary and traditional laws or principles of justice and equity. The arbitration decision shall be binding upon the parties, and it may be enforced by a competent court (202). Concerning the relation between the NLC and the DLC, the DDPD Article 38 (205) states that both commissions shall cooperate and coordinate their activities so as to use their resources effectively. The DLC shall be a permanent member of the NLC (206). If there is conflict between the results and recommendations of the NLC and those of the DLC, the two commissions are required to reconcile their positions. Otherwise, the issue shall be referred to the Constitutional Court for decision (207).

The DDPD states that, without prejudice to the jurisdiction of the courts, parties to land disputes shall be encouraged to exhaust traditional methods of dispute settlement, including arbitration (Article 38 (203)). However, this has not been incorporated into legislation concerning dispute resolution at the local level. Notably the 2003 Local Government Act does also not contain provisions on strengthening alternative forms of dispute resolution.

None of the reviewed laws provides for clear mechanisms to prevent corruption in dispute resolution mechanisms.

2.5 Prevention of disputes, conflicts and corruption

Responses to climate change and emergencies

There appears to be no clear policy that supports the revision or repeal of discriminatory legal instruments.

In general, when conflicts arise, existing legitimate tenure rights are protected and it is guaranteed that these are not extinguished by other parties. However, it appears that there exist no provisions on the recognition and protection of legitimate tenure rights of refugees and displaced persons. DDPD Chapter IV only provides in Article 52 that refugees and internally displaced persons have the right to have their houses, land and properties, which they were unlawfully deprived of, restored to them. In the event that recovery of such property is not possible, they shall be entitled to compensation, in accordance with international principles (260). The Property Claims and Restitution Committee (PCRC) is required to ensure that refugees and internally displaced persons have their houses, land and property restored to them (262). The DLC is required to respect the decisions made the PCRC (Article 38(204)).

There is no legislation prescribing that information on tenure rights and unauthorized use shall be disseminated to all affected persons.

There appear to exist no special procedures that provide, where possible, the vulnerable, including widows and orphans, with secure access to land, fisheries and forests.

3. CONCLUSIONS

The above analysis of the legal framework on land tenure and administration shows that it does not accommodate for all elements of land tenure and administration that should be regulated in line the VGGT. Based on the above assessment, the main gaps and weaknesses appear to be as follows:

Legal recognition and respect of all tenure right holders and their rights

- In Sudan, both customary and formal systems of land tenure and administration co-exist in parallel, and they are not fully harmonized. Land tenure in the states of Darfur has traditionally been governed by customary tenure systems. However, the formal laws enacted since the British colonial rule did not incorporate or accommodate for those systems. Customary land tenure systems were only explicitly recognized in the 2011 DDPD. In the five states of the Greater Darfur region, most tenure rights are traditional land ownership rights (*hawakeer*) that are not registered. DDPD Article 34, para. 188 states that traditional land ownership rights, historical rights to land, traditional and customary livestock routes and access to water sources shall be recognized and protected. It requires all relevant levels of government to “initiate and complete a process to progressively amend relevant laws to incorporate customary laws, in accordance with international trends and practices”. To date, the Government has not adopted such amendments to relevant laws to recognize the customary norms.
- The consulted legislation in Sudan does not provide for a systematic legal recognition and allocation of tenure rights of men and women, families and communities to provide full opportunities to acquire legal recognition of their tenure rights.
- The formal laws reviewed for the assessment do not explicitly acknowledge informal tenure in cases of large-scale migrations.

Protection of tenure rights against threats and infringements

- The DDPD requires the protection of the customary tenure systems of rural communities, including their consultation prior to legislative or administrative measures affecting the resources for which they hold rights. However, this requirement has not been incorporated into specific legislation.
- The reviewed pieces of legislation do not contain explicit provisions preventing unlawful forced evictions where it is not possible to provide legal recognition to informal tenure.
- Neither the National Investment Encouragement Act 2013 nor other reviewed legislation addresses the potential impacts of large-scale transactions in tenure rights, in particular:
 - It does not define what constitutes large-scale transactions in tenure rights;
 - There are no transparent rules on the scale, scope and nature of allowable transactions in tenure rights;

- Legislation does not set ceilings on permissible land transactions to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions in tenure rights;
 - No parliamentary approval is required for transfers exceeding a certain scale;
 - Legislation neither provides incentives for investors nor requires them to seek partnerships with local tenure right holders;
 - Legislation does not require consultations with indigenous peoples before an investment project is initiated affecting the resources for which the communities hold rights, except for major development projects that do not conform to land use or planning legislation;
 - There are no provisions on professional assistance to ensure that men and women are aware of their tenure rights and can participate in consultations;
 - Legislation does not require an independent assessment to be carried out, to identify the potential positive and negative impact of large-scale transactions of tenure rights on men's and women's tenure rights specifically;
 - The legislation does not establish a monitoring system for the implementation and impact of agreements involving large-scale transactions in tenure rights;
 - Neither the National Investment Encouragement Act 2013 nor other consulted legislation establishes a grievance mechanism specifically to ensure that parties affected through large-scale transactions can seek corrective action.
- The reviewed legislation does not require legitimate formal and informal tenure rights of men and women to be identified and recorded.
 - Neither the 1994 Urban Planning and Land Disposal Act nor other consulted legislation establishes environmental safeguards to readjustment projects that prevent or minimize degradation and loss of biodiversity and reward changes that foster good land management, best practices and reclamation.
 - The legal framework does neither provide a definition of the concept of expropriation for public purpose, nor participatory plans and processes for expropriation. The concept appears not to have been specified by the jurisprudence either. The reviewed legislation does not provide for cases where proposed expropriation involves areas of particular cultural, religious or environmental significance, or where the land, fisheries and forests in question are particularly important to the livelihoods of the poor or vulnerable.
 - The consulted laws do not provide for surveying and mapping of parcels for the determination of all tenure rights including customary and community tenure rights.

Promote and facilitate the enjoyment of legitimate tenure rights

- The legislation reviewed does not require competent authorities to ensure that people whose tenure rights are recognized or who are allocated new tenure rights have full knowledge of their rights and also their duties.
- There appear to exist no provisions to ensure transparent and efficient sale and lease market operation, provide non-discriminatory access, and prevent uncompetitive practices, and simplified administrative procedures that help avoid discouragement of market participation by the poor and the most vulnerable.

- The reviewed laws do not include safeguards to protect the legitimate tenure rights of spouses, family members and others who are not shown as holders of tenure rights in recording systems.
- The 1925 Land Settlement and Registration Act regulates the recording, updating and publication of tenure rights and duties of the holder, but it does not provide for the recording of the holder's family status and associated spousal rights.
- Information on tenure rights is not easily available to all.
- It appears that competent authorities are not required to contribute to the understanding of transboundary tenure issues affecting communities, such as with rangelands or seasonal migration routes of pastoralists.

Access to justice

- There are no specialized tribunals or courts for dealing with disputes over tenure rights or land valuation and land taxation disputes.
- It appears that there are no clear mechanisms in place to prevent corruption in dispute resolution mechanisms.

Prevention of disputes, conflicts and corruption

- There appears to be no policy that supports the revision or repeal of discriminatory legal instruments.
- The consulted legislation does not contain provisions on the recognition and protection of legitimate tenure rights of refugees and displaced persons.
- There appears to be no legislation prescribing that information on tenure rights and unauthorized use is disseminated to all affected persons.
- There are no special procedures that provide the vulnerable, including widows and orphans, with secure access to land, fisheries and forests.

4. RECOMMENDATIONS

In order to strengthen the legal framework on land tenure and administration and more closely align it to the guidance provided by the VGGT, it is recommended to consider amendments to the existing legal framework as detailed below. It should be noted that any of these amendments to existing legislation might entail the necessity to adapt other pieces of primary or secondary legislation. Furthermore, it would be recommended that, if legislative reform concerning land tenure and administration is initiated, this should be based on an inclusive and participatory process that involves the legislative bodies, Native Administration, and all other stakeholders at both federal and local levels. This would help to determine and harmonize existing formal and customary tenure rights and ensure that all stakeholders are heard and aware of possible legislative changes.

The recommended amendments are grouped under the five major issue areas below.

Legal recognition and respect of all tenure right holders and their rights

It is recommended that the legal recognition and respect of all tenure right holders and their rights be strengthened through the following legislative amendments:

- Provisions should be introduced in the formal law that more precisely determine and recognize all legitimate tenure rights that exist in the customary systems, such as the five types of tenure rights in the Darfur states described in the above assessment. Relevant laws should be amended to incorporate customary laws that are compatible with gender equality and the requirements set out in the VGGT, and shall recognize and protect the historical, traditional and customary rights to land as required by the 2011 DDPD.
- Provisions should be included that provide for the systematic legal recognition and allocation of tenure rights of men and women, families and communities to provide full opportunities to acquire legal recognition of their tenure rights.
- Legislation should acknowledge informal tenure, in particular arising from large-scale migrations, as provided for in the VGGT.

Protection of tenure rights against threats and infringements

The protection of tenure rights against threats and infringements through the legal framework should be strengthened. To this end, the following amendments are recommended:

- Provisions should be introduced that contain explicit provisions preventing unlawful forced evictions where it is not possible to provide legal recognition to informal tenure.
- Transparent rules on the scale, scope and nature of allowable transactions in tenure rights should be determined in the legislation.
- Specifically concerning investments, several amendments would be important to ensure they do not constitute potential threats or infringements to tenure rights. Such amendments would relate to and complement the provisions contained in the 2013 Investment Encouragement Act in particular, and should thus be harmonized with the latter. In particular, legislation should be amended to:
 - Determine when transactions in tenure rights constitute large-scale transactions in tenure rights;
 - Set ceilings on permissible land transactions to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions in tenure rights, and consider to require parliamentary approval for transfers exceeding a ceiling;
 - Establish clear and transparent procedures and criteria to ensure the participation of all affected tenure right holders before investment, require the parties to consult indigenous peoples before any investment project is initiated affecting the resources for which the communities hold rights;
 - Encourage responsible investments that respect human rights, promote food security and sustainable use of the environment;
 - Require consultation of all stakeholders prior to the transaction of tenure rights, including partnership agreements;
 - Require an independent assessment to be carried out to identify the potential positive and negative impact of large-scale transactions of tenure rights on men's and

women's tenure rights, on food security and the realization of the right to adequate food;

- Establish an effective system for monitoring the implementation and impact of agreements involving large-scale transactions in tenure rights;
 - Set up a grievance mechanism for such investments specifically to ensure that affected parties can seek corrective action;
 - Address the power imbalances by ensuring that professional assistance is available to ensure that men and women are aware of their tenure rights and can participate in consultations.
- It is furthermore recommended that legislation should establish environmental safeguards to readjustment projects that prevent or minimize degradation and loss of biodiversity and reward changes that foster good land management, best practices and reclamation.
 - Provisions should be introduced that require transparent and participatory plans and processes for expropriation, and take into account cases where proposed expropriation involves areas of particular cultural, religious or environmental significance, or where the land, fisheries and forests in question are particularly important to the livelihoods of the poor or vulnerable. These amendments would affect both the 1930 Land Acquisition Act and the 1994 Urban Planning and Land Disposal Act.
 - Lastly, provisions should be adopted that provide for surveying and mapping of parcels for the determination of all tenure rights including customary and community tenure rights.

Promote and facilitate the enjoyment of legitimate tenure rights

It is recommended that the legislation set out more clearly and more in detail measures to promote and facilitate the enjoyment of legitimate tenure rights. In this regard, the recommended amendments would be the following:

- Provisions should be included that require competent authorities to ensure that people whose tenure rights are recognized or who are allocated new tenure rights have full knowledge of their rights and also their duties.
- Provisions should also be included for ensuring transparent and efficient sale and lease market operation, provide non-discriminatory access, and prevent uncompetitive practices. They should be accompanied by simplified administrative procedures that help avoid discouragement of market participation by the poor and the most vulnerable.
- The legislation should be amended to include safeguards to protect the legitimate tenure rights of spouses, family members and others who are not shown as holders of tenure rights in recording systems. This appears particularly important in Sudan to protect women's interests.
- For the same reason, the existing provisions on recording, updating and publication of tenure rights and duties of the holder should be amended to provide for the recording of the holder's family status and associated spousal rights.
- Legislation should be amended to require that information on tenure rights is easily available to all.

- Lastly, legislation should also require competent authorities to contribute to the understanding of transboundary tenure issues affecting communities, such as with rangelands or seasonal migration routes of pastoralists.

Access to justice

Concerning the access to justice, two key aspects should be addressed:

- It is recommended to consider introducing specialized tribunals that deal solely with disputes over tenure rights, land valuation and land taxation disputes.
- Legislation should provide for clear mechanisms to prevent corruption in dispute resolution mechanisms, also with regard to land tenure and administration specifically.

Prevention of disputes, conflicts and corruption

For the prevention of disputes, conflicts and corruption, it is recommended to:

- Introduce provisions on the recognition and protection of legitimate tenure rights of refugees and displaced persons.
- Adopt provisions prescribing that information on tenure rights and unauthorized use is disseminated to all affected persons.
- Set out special procedures that provide, where possible, the vulnerable, including widows and orphans, with secure access to land, fisheries and forests.

Lastly, it would generally be advisable to adopt a policy that supports the revision or repeal of discriminatory legal instruments.

ANNEX LIST OF LEGISLATION AND OTHER TEXTS CONSULTED

- Interim Constitution for Sudan, 2005
 - Doha Document for Peace in Darfur, 2011
 - Land Settlement and Registration Act, 1925
 - (Unregistered Land Act, 1970 - repealed by Civil Transactions Act, 1984)
 - Urban Planning and Land Disposal Act, 1994
 - National Investment Encouragement Act, 2013
 - Land Acquisition Act, 1930
 - Land Demarcation and Survey Act, 1905
 - Forests and Renewable Natural Resources Act, 2002
 - Central Forest Act, 1932
 - Environment Protection Act, 2001
 - Freshwater Fisheries Act, 1954
 - Civil Transactions Act, 1984, 1990 (amendment)
 - (Local Government Act, 2003 - repealed by Local Government Act, 2017)
 - Procedures of the Land Registration Office
 - Summary of Customs on Land Tenure and the Use of Natural Resources in Darfur, prepared by the DLC, 2016
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- Draft National Land Commission Act, 2007
 - Draft Urban Planning and Land Disposal Act, 2018
 - Draft Pasture Act, 2015