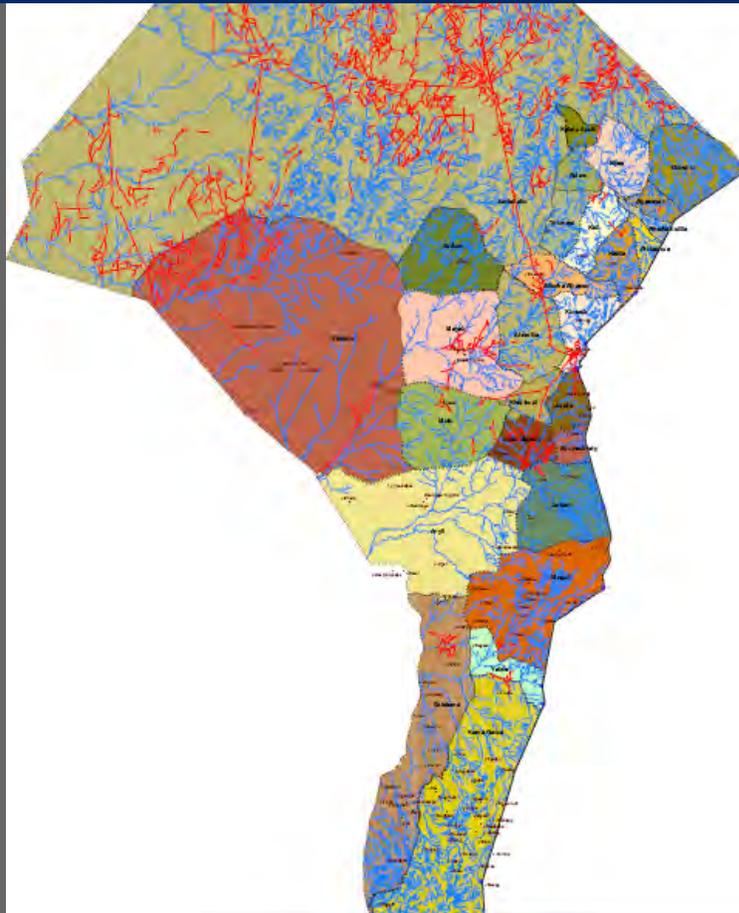




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# SUDAN CUSTOMARY LAND TENURE PROGRAM: SOUTHERN KORDOFAN AND BLUE NILE

ANNUAL PROGRESS REPORT FY 2007  
(OCTOBER 2006 – SEPTEMBER 2007)



**OCTOBER 2007**

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Map Source: Data Exchange Program for the Horn of Africa

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## **DISCLAIMER**

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.



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# ACRONYMS AND ABBREVIATIONS

BN	Blue Nile State
CLA	Community Land Area
CLC	Community Land Councils
CLSP	Customary Land Security Project
CPA	Comprehensive Peace Agreement
CTO	Cognizant Technical Officer
FACTS	Foreign Assistance Coordinating and Tracking System
FAO	Food and Agriculture Organization of the United Nations
FCT	Field Contract Types
GIS	Geographic Information Systems
GNU	Government of National Unity
GoS	Government of Sudan
GPS	Global Positioning Systems
IFAD	International Fund for Agricultural Development
INC	Interim National Constitution
IQC	Indefinite Quantity Contract
IR	Intermediate Result
NCP	National Congress Party
NDI	National Institute for Democracy
NIF	National Islamic Front
NLC	National Land Commission
OP	Operational Plan
OTI	Office of Transition Initiatives
PMP	Performance Monitoring Plan
SCLTP	Sudan Customary Land Tenure Program
SK	South Kordofan State
SLC	State Land Commission
SOW	Scope of Work
SPLM/A	Sudan Peoples Liberation Movement/Army
STTA	Short-Term Technical Assistance
TBD	To Be Decided
UMAP PASA	University of Michigan Assistance Program Participating Agency Services Agreement
UNDP	United Nations Development Program
UNMIS	United Nations Mission in Sudan
USAID	United States Agency for International Development
USG	United States Government

# 1.0 BACKGROUND

**TABLE 1. TASK ORDER SUMMARY INFORMATION**

Country	Title	Date Signed	Completion Date	Value
Sudan	Sudan Customary Land Tenure Project	5/18/2006	5/19/09	\$9,829,528

In May 2006, USAID engaged ARD, Inc. to deliver the Sudan Customary Land Tenure Program (SCLTP) by providing technical assistance and support in addressing customary land tenure and property rights in the two states, Blue Nile and Southern Kordofan, lying to the north of the border of the newly self-governing region of southern Sudan. This self-governing region was created by the Comprehensive Peace Agreement (CPA), signed in January 2005 by the Sudanese People's Liberation Movement/Army (SPLM/A) and Government of Sudan (GoS). This program is part of a broad portfolio of development and humanitarian assistance financed by the US government (USG) in Sudan and throughout the region.

The **goal** of the Sudan Customary Land Tenure Program is to contribute to peace building under the CPA, which ended decades of conflict between Khartoum and southern Sudan. The strategic **objective** of the program is enhanced tenure security for customary and other traditional land users so as to address one of the major causes of that tragic conflict.

The SCLTP consists of the two program components: 1) Community Demarcation of Customary Land and Capacity Building for Community Land Administration Institutions Supported, and 2) State-Level Support for Enhancement of Land Tenure Security. Each of the two components has a different set of identified priorities and activities; nevertheless, both are interconnected and interdependent in terms of achieving lasting results pending political and social stability.

Component 1 depends highly on community involvement and support; it includes 1) community mobilization and selection of boundary committees, 2) demarcation of community land area boundaries together with boundary committees, 3) community endorsement of land area boundaries through signing forms specifically developed for this purpose, and 4) establishment of community land councils to represent and advocate for their community's land rights.

Component 2 focuses on policy-related matters through close cooperation with national and state officials in developing legislation that restores customary land tenure security. It also focuses on offering technical support to existing government apparatus toward establishment of core technical bodies and government administration to manage land and secure property rights.

The SCLTP runs until May 2009. The three-year program anticipated **resulting** in greater community awareness of the options for strengthening customary land tenure, the establishment of some basic structures for local land administration (IR 1), including positive change in land policy and legislation and advocacy in support of state accommodation of customary land tenure (IR2).

# 2.0 INDICATORS

Two types of intersecting indicators have been elaborated for SCLTP: USAID Sudan Mission Operational Plan Indicators which are derived from Foreign Assistance Coordinating and Tracking System (FACTS) Indicators, and SCLTP Custom Indicators. Our Custom Indicators correspond to and complement our FACTS/OP/Standard Indicators.

## 2.1 USAID FOREIGN ASSISTANCE COORDINATING AND TRACKING SYSTEM /OP/STANDARD INDICATORS

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**Objective: Economic Growth**

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**Area: 4.5 Agriculture**

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**Element: 4.5.1 Agricultural Enabling Environment**

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SCLTP is funded out of the USAID Sudan Program Economic Growth pillar, is located in the Agriculture area (4.5) and lies in the Agriculture Enabling Environment element. Within that element, SCLTP has been allocated three Standard Indicators from the Mission's Operational Plan (OP).

1. Number of policy reforms analyzed with USG assistance,
2. Number of policy reforms presented for legislation/decreed as a result of USG assistance, and
3. Number of institutions/organizations making significant improvements based on recommendations made via USG-supported assessment.

The first two of these indicators is squarely focused on **Component 2, State-Level Support for Enhancement of Land Tenure Security**; the second relates to **Component 1, Community Demarcation of Customary Land and Capacity Building for Community Land Administration Institutions Supported**. The community-level work is intended to demonstrate the potential for harnessing community participation and cooperation to enhance land tenure security and to focus demand for the reforms flagged in the CPA to move toward the integration of customary land tenure into the state-sponsored land administration system.

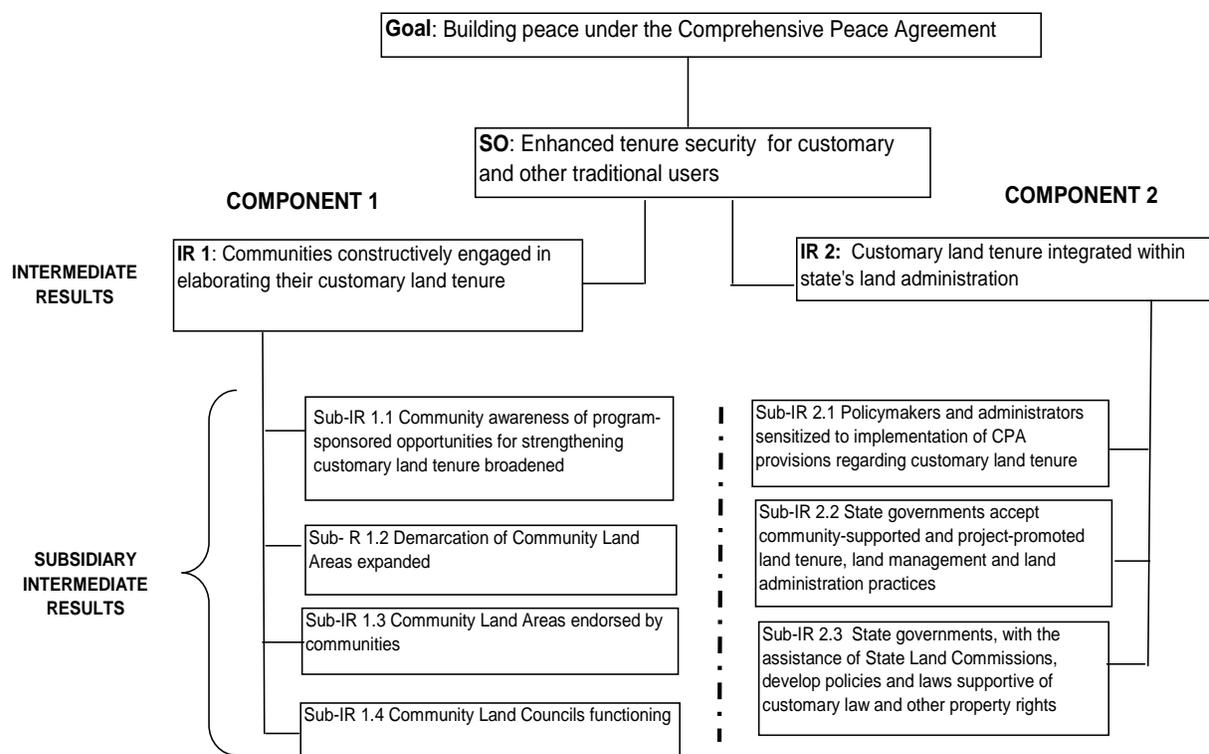
## 2.2 SCLTP COMBINED STANDARD/CUSTOM INDICATORS

By breaking down the main results prescribed in the Task Order (TO) Scope of Work (SOW) into Intermediate Results (IR) and assigning each IR with one or more indicators, as listed in the table provided in Appendix A taken from the SCLTP Performance Monitoring Plan (PMP), a richer measure of the program's impact can be presented. The table in the appendix also provides information on data sources, baseline conditions, expected targets, responsibility for collecting information, and IR-specific assumptions. Broader critical assumptions (at the SO level) that affect the program overall are given in the PMP.

# 3.0 PERFORMANCE

The SCLTP PMP is based on the following results framework.

**FIGURE 1. SCLTP RESULTS FRAMEWORK**



The reporting of results that follows is against the two levels of indicators discussed above.

## 3.1 RESULTS REPORTING

After indicators and targets were set for SCLTP in FY 2006, all of the FACTS/Standard/OP Indicators to be used by the SCLTP were reformulated by USAID for FY 2007 and beyond. Therefore, the original targets set were for different indicators. What are being reported here are actual results for FY 2007.

**TABLE 2. FY07 RESULTS REPORTED AGAINST FACT/OP/STANDARD INDICATORS**

OP Indicator Titles	Targets	Actual
1. Number of policy reforms analyzed with USG assistance	?	3
2. Number of policy reforms presented for legislation/decreed as a result of USG assistance	?	4
3. Number of institutions/organizations making significant improvements based on recommendations made via USG supported assessment	?	20

### **3.1.1 OP Indicator 1 Policies Analyzed**

Three formal analyses of critical policy issues were prepared by the SCLTP in FY 2007 using internationally recognized expert STTA:

1. Review of Customary Land Rights Protections in Southern Kordofan and Blue Nile States (STTA report),
2. Legal Opinion on Land Bill and State Land Commission Bill, and
3. Legal Analysis of the Model State Forestry and Renewable Bill with respect to Land Tenure.

These reports are being used internally to guide the planning of the program. Externally the reports are being used as advocacy tools; especially the opinion in relation to State Land Commissions.

### **3.1.2 OP Indicator 2 Policies Presented**

In FY 2007 the following laws were carved out of the Draft Blue Nile Land Act 2006 (draft by STTA engaged by CLSP) and redrafted with inputs from Blue Nile parliamentarians:

1. Draft Land (Customary Land Tenure) Law 2007,
2. Draft Land (Registerable Usufructs) Law 2007, and
3. Draft Blue Nile State Land (Dispute Settlement) Law 2007.

These bills are yet to be introduced into the Legislative Assembly due to the bottlenecks created by state legislators receiving more than 40 model laws from the Government of National Unity (GNU) and low capacity of the parliaments to debate and pass legislation.

In Southern Kordofan lobbying was conducted in support of the provisions in the State of Southern Kordofan Constitution dated November 2006 that supported accommodation of customary land tenure. Delays in passing the Southern Kordofan State Constitution prevented adapting the draft laws prepared for Blue Nile to fit the differing policy context and legal framework of Southern Kordofan. Similar institutional constraints as those faced in Blue Nile also limited policy work in Southern Kordofan.

### **3.1.3 OP Indicator 3 Institutions Improved**

'Institutions' in this context refers to 'communities' defined here as the descendents of original settlers (*autochthons*) and incomers (*tutorats*) sharing, pursuant to customary law, a common space ('Community Land Area') in Blue Nile and Southern Kordofan.

'Improvements' means moving along the development path set out in the Community Land Administration Institutional Development Matrix which forms part of the SCLTP PMP.

In FY 2007 the program worked with 20 communities to strengthen their land administration capacity by sensitizing them to the provisions of the CPA, the interim national constitution (INC) and state constitutions, providing technical assistance for them to demarcate their land or by facilitating community endorsement of demarcated boundaries.

Solely relying on this means of reporting would hide the impact of the program on the ground. Measuring community-level program impact should also indicate participation levels but more importantly the extent to which the program has been able to encourage communities themselves to commit to protecting their own land rights.

Measuring local-level program impact is the link between the two components. It is an important gauge of the extent to which the program is fostering demand for the state- and national-level reforms that will be needed for accommodation of customary land tenure. This reform agenda needs a strong and vocal constituency. This is demonstrated by the use of a combination of standard and custom indicators in the results report table shown below.

**TABLE 3. RESULTS REPORTED AGAINST CUSTOM/STANDARD INDICATORS**

INTERMEDIATE RESULT	INDICATORS	RESULTS	FY 2007		
			RESULT DATA DISAGGREGATED BY STATE		
				FY06	FY07
IR 1: Communities constructively engaged in elaborating their customary land tenures	<b>OP Indicator 3:</b> Number of institutions/organizations (communities) making significant improvements based on recommendations made via USG-supported assessment	Baseline: CLSP=0 FY 2006: 23 FY 2007: 20	IR 1.1 (2)		
			IR 1.2 (2)		
			IR 1.3 (1)		
			IR 1.4 (1)		
			Total	23	20*
			*The nine communities that received information in FY 2007 also had their land demarcated in the same year and therefore have not been counted twice		
Sub-IR 1.1 Community awareness of program-sponsored opportunities for strengthening customary land tenure increased	(1) # people participating in sensitization meetings	Baseline: CLSP 3,600* FY 2006: 2,390 FY 2007: 1,275	Blue Nile 5 CLAs x 150 people = 750 (Kern Kern, Kakadoc, Dokan, Nebalo, Khor Alhassan) Southern Kordofan 525 people in 7 CLAs (Otoro, Tira, Lira, Abol, Kawalib, Shawaya, Longan)		
	(2) # of community requests for program assistance	Baseline: CLSP=? FY 2006: 21 FY 2007: 9	Blue Nile = 5 Southern Kordofan = 4		
	(3) % increase in perception of improved land tenure security	Baseline: % perception of tenure security	n/a		
Sub-IR 1.2 Demarcation of Community Land Areas expanded	(1) # of people on Community Boundary Committees	Baseline: CLSP=120* FY 2006: 105 FY 2007: 60	Blue Nile 5 CLAs@5 people = 25 Southern Kordofan 7 CLAs @5people = 35		
	(2) # CLAs demarcated	Baseline: CLSP=24 FY 2006: 2 FY 2007: 16	Blue Nile = 12 CLAs Southern Kordofan = 4 CLAs		
	(3) km <sup>2</sup> area/km perimeter	Baseline: CLSP=? FY 2006: 160 km <sup>2</sup> FY 2007: 400 km <sup>2</sup> and 40 km	Blue Nile = 400 km <sup>2</sup> Southern Kordofan = 40 km		

INTERMEDIATE RESULT	INDICATORS	RESULTS	FY 2007 RESULT DATA DISAGGREGATED BY STATE
Sub-IR 1.3 Community Land Areas endorsed by communities	(1) # CLAs endorsed	Baseline: CLSP=0 FY 2006: 0 FY 2007: 4	Blue Nile = 4 Southern Kordofan = 0
	(2) km <sup>2</sup> area/km perimeter	Baseline: CLSP=0 FY 2006: 0 FY 2007: 347 km <sup>2</sup>	Blue Nile = 347 km <sup>2</sup> Southern Kordofan = 0
	(3) # people participating in endorsement meetings	Baseline: CLSP=0 FY 2006: 0 FY 2007: 1,190	Blue Nile = 1,190 people (contracts BN-T3-0001 to 0004) Southern Kordofan = 0
Sub-IR 1.4 Community Land Councils functional	(1)# CLC operational	Baseline: CLSP=0 FY 2006: 0 FY 2007: 0	
IR 2: Customary land tenure integrated into states land administration	<b>(1) OP Indicator 1:</b> Number of policy reforms analyzed with USG assistance <b>(2) OP Indicator 2:</b> Number of policy reforms presented for legislation/decrees as a result of USG assistance	Baseline: CLSP=1 FY 2006: 0 FY 2007: 20	(1) 4 (2) 3
IR 2.1 Policymakers and administrators sensitized to implementation of CPA provisions regarding customary land tenure	(1) # of officials and (2) agencies engaged by and with Program	Baseline: CLSP=? FY 2006: 5 FY 2007: 22	Blue Nile – Malak Agar Eyre (Governor), Abdelrahman Abu Median (Previous Governor); Issa Zaid (Previous Deputy Governor) Issa; Mohamed el Hassan Abdulrahman (Speaker of Parliament); Hasan Abbas (Deputy Speaker of Parliament); Abbas Mohamed (Chair of Legal Committee); Mohammed Elshemi Alfaki (MP and Omda); Ramadan Yassin (Previous Governor's Advisor on International NGOs); Steven Ahmed (Previous Governor's Land Advisor); Ahmed Kurmuno (Acting Governor in July 07); Mohamed Suleiman (Chief of Planning Section in Lands Dept); Mustafa Daud (Chief of Survey Section in Lands Dept); Juma Yousif (Agriculture Dept); Yousif Suleiman (Director of Forestry Dept); Mamoun Hamad Alamin (Previous Kurmuk

INTERMEDIATE RESULT	INDICATORS	RESULTS	FY 2007 RESULT DATA DISAGGREGATED BY STATE
			<p>County Commissioner); Abdel Malik Adam Hamden (Mek of Keyli); Yousif el Mek (Mek for all Funj); Abdeen (Omda).</p> <p>Southern Kordofan – Ishmail Khamis Jallab (Former Governor of Southern Kordofan); Sodi Ibrahim Shamela MLA (SPLM Leader of Caucus); Khamis Kocho (Minister of Agriculture); Isa Osman Sherif (Director General, Ministry of Rural Development and Water Resources); Neroun Philip (Minister of Rural Development and Water Resources);</p>
	(2) # workshops and trainings with participation of government officials /elected representatives	Baseline: 0 FY 2006: 0 FY 2007: 2	<ol style="list-style-type: none"> <li>1. Briefing for BN legislators held in Nairobi with STTA legal expert.</li> <li>2. CLA demarcation training for CA officials and contractors</li> </ol>
IR 2.2 State Land Commissions/governments develop policies and laws supportive of customary law and other property rights	<b>OP Indicator 1:</b> Number of policy reforms analyzed with USG assistance	Baseline: 0 FY 2006: 0 FY 2007: 4	<ol style="list-style-type: none"> <li>1. Draft Blue Nile Land (Customary Land Tenure) Law 2007;</li> <li>2. Draft Blue Nile Land (Registerable Usufructs) Law;</li> <li>3. Draft Blue Nile Land (Dispute Settlement) Act 2007;</li> <li>4. State of Southern Kordofan Interim Constitution, November 2006</li> </ol>
IR 2.3 State governments accept community supported and project promoted land tenure, land management and land administration practices	<b>OP Indicator 2:</b> Number of policy reforms presented for legislation/decrees as a result of USG assistance	Baseline: CLSP=? FY 2006: 0 FY 2007: 3	<ol style="list-style-type: none"> <li>1. Draft decree on Technical Committee for Land Policy (Regional)</li> <li>2. Draft decree on Technical Committee for Land Policy (Southern Kordofan)</li> </ol>

The significance of results reported in Table 3 is explained below.

### **3.1.4 IR 1: Communities Constructively Engaged in Elaborating their Customary Land Tenure**

The indicator chosen to demonstrate this Intermediate Result (IR), represents the culmination of a multiphase process, which to date has not been fully demonstrated in either state. However, progress is being made in both. In Blue Nile the number of Community Land Areas (CLAs) that have been demarcated has increased. More importantly, four of the CLA provisionally demarcated by Community Boundary Committees have been put before community meetings attended by representatives of adjacent communities and endorsed as defining the boundaries of the estates of the subject communities. Participation in these meetings was high, with strong representation by women. This stage of the community-based approach to land administration that the program is developing had never been demonstrated before by the program or the preceding pilot. Only after endorsement has been completed, can the project move onto the next phase of the process, formation of Community Land Councils (CLCs), who can represent the interests of community members seeking to have their land rights recognized by the state.

In Southern Kordofan, where no boundaries had ever been demarcated, four boundary segments were demarcated before the teams ran up against disagreements between neighboring communities, which halted work. The dispute resolution services of the program were then brought into play. Several of these disputes were resolved and demarcation will continue where sufficient consensus has been established to allow boundaries to be completed in FY 2008. The model used in Blue Nile for demarcation, using small clusters of villages referred to as *bomas*, evidently requires adaptation in Southern Kordofan, with alternative units of land (tribal ranges, clan domains, lineage estates, payam territories) all under active consideration as alternatives. The complexity of this issue and related political issues (Section 5), demand that the program proceed cautiously with demarcation in Southern Kordofan.

No CLC were set up in FY 2007 because preliminary phases of the program's technical guidelines, endorsement by communities of boundaries demarcation on their behalf by committees, had not been trialed in the Customary Land Security Project (CLSP) and four test endorsements by the program were yet to be evaluated.

### **3.1.5 IR 2: Customary Land Tenure Integrated within States' Land Administration**

The indicator for this IR, *# decrees proclaimed and bills introduced*, has produced a partial but encouraging result evidenced by two Southern Kordofan ministries (Rural Development and Agriculture) proposing draft decrees to establish a regional and state technical committee on land policy, on which the SCLTP personnel were nominated as members. As the state government has been effectively in suspension since May 2007, it has not been possible for these proposals to be converted into statute.

This partial result has come about after extensive lobbying of politicians, officials, and traditional authorities. The program has been able to significantly ratchet up its influence by establishing offices in both state capitals and having senior staff resident in both places.

There is clear evidence, however, that the SCLTP role is becoming accepted and its resources are starting to be utilized by state governments. SCLTP staff have been issued travel warrants by the governors of both states, no small thing in this region where the movement of the staff of other USAID development partners is heavily circumscribed. The offices of both governors (BN only recently) became more open to the assistance SCLTP offers in relation to this difficult and technical complex area of public policy.

However the institutional reforms required to fulfill the CPA and to provide the mechanism by which SCLTP-assisted community land administration can be made to work seems some way off. Due largely to the persistence from staff of other USAID-funded support for CPA implementation,<sup>1</sup> Technical Working Groups are quite likely to be formed when the state governments are installed. They will provide the necessary forum for the institutional horse trading that will be needed to establish a State Land Commission whose mandates will inevitably intrude into some of the most contested areas of bureaucratic power.

### **3.2 IMPACT OF HOST COUNTRY COMMITMENT ON SCLTP PERFORMANCE**

In FY 2007, both state governors' offices facilitated the work of SCLTP, taking the first steps to embrace reforms, by granting program staff freedom of movement in their states and by allocating office space for the program in Kadugli, Southern Kordofan (SK). The SK Ministry of Rural Development and the Ministry of Agriculture both proposed to make use of the program's expertise and resources by nominating the program for membership of a regional and state Technical Committee for Land Policy.

It would be misleading, however, to exaggerate the extent to which the program has been embraced by government in Sudan. The SCLTP's entrée into Sudan was the US brokering of the CPA. The cooperation with government which the program needs to be effective depends in large part, therefore, on the ongoing viability of that agreement. Unfortunately, the goal of the SCLTP—to contribute to the implementation of the CPA—has been frustrated by the gradual evaporation of the goodwill between the parties evidenced by the signing of the agreement in January 2006.

The series of disappointments, misunderstandings and failures since has been extensively commented on by both the parties themselves and by external actors, and have been thoroughly documented elsewhere. The lack of progress in implementing the promises made in the CPA about moving toward accommodating customary land tenure is a symptom of the breakdown of trust between the parties rather than one of its specific causes; efforts made by the SCLTP so far to facilitate this reform have not demonstrably contributed to the demise of the CPA.

This breakdown of trust on both sides has effectively stymied the capacity of the SCLTP to fully engage with both state and national government in the structured way envisaged by the TO SOW.

### **3.3 GENDER ISSUES**

Despite high attendances of women at recent endorsement meetings in Blue Nile, the program continues to struggle with the subtleties of gender relations implicit within the customary land tenure systems with which it is dealing.

By trying to find a basis for states to accommodate equitable as well as legal property rights and to recognize tenancy in common, i.e., property rights held by groups, SCLTP is also working toward having women's property rights, which in customary land tenures are often equitable rather than legal and held in common with their brothers and husbands rather than held unilaterally, accommodated and recognized as well.

We have recently trained our first women field contractors and hope to train more. Using women as field contractors should assist us to increase the participation of women and representation of women's interests in our community-based land administration approach.

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<sup>1</sup> The SCLTP's sister program is the **UMAP PASA**.

### **3.4 FAILED TARGETS AND PLANNED CORRECTIONS**

Because the program has only recently acquired a PMP and solid targets, no abject failures are being reported. The program has, however, experienced difficulties in achieving its intended impacts on community mobilization and policy influencing and institutional strengthening.

With regard to community-level activities, the program has gone through an intensive reorganization and restructuring of its operations in the last half of FY 2007, with all field work now more effectively managed out of new State Land Offices, and a new operations system in place based on capacity building of specialized local teams to whom the bulk of program's future field work will be subcontracted. The program has already begun clearing the backlog of demarcated but unendorsed CLA in Blue Nile and tackling obstacles to demarcation in Southern Kordofan using this new system.

The establishment of State Land Offices is also central to improving our policy assistance activities. Having land experts based in state capitals should dramatically improve both the frequency and intensity of contact with key players.

# 4.0 LESSONS LEARNED

## 4.1 MAKING THE SUM GREATER THAN THE PARTS

Mission-wide and cross-agency cooperation can significantly boost the contribution SCLTP can make and thus the value it returns. For example, cooperation, information sharing and joint strategizing with USAID-funded UMAP PASA staff during the reporting period has been a vital contributing factor to the modest successes achieved, especially their support for land reform institutions vital for rolling out the SCLTP's policy assistance capacity. Liaison with the Office of Transition Initiatives (OTI) and its contractor DAI has produced co-location arrangements in Kurmuk in Blue Nile that has benefited both programs. Similarly, opportunities for dialogue with USAID-funded projects operating under the Mission's Governance Pillar have seen SCLTP sharing office accommodation and information with PACT in Southern Kordofan.

To coordinate donors' support to customary land tenure, the SCLTP has also initiated discussion with SOS Sahel, the Food and Agriculture Organization (FAO), International Fund for Agricultural Development (IFAD), and the United Nations Development Program's (UNDP) Governance Program and the United Nations Mission in Sudan's (UNMIS) Rule of Law Program. The team's objectives have been to exchange information about activities in order to build the trust necessary to build linkages between demarcation of customary land by the SCLTP, and demarcation of stock routes by SOS Sahel, FAO and IFAD; build capacity of traditional leaders by the UNDP Governance Program; and to use the capacity created by training done by these agencies to enhance the SCLTP delivery of cost effect land administration in the two areas.

## 4.2 SCLTP IS PIONEERING A METHODOLOGY

Despite the CLSP piloting the initial stages (mobilization in Southern Kordofan and demarcation in Blue Nile) of the community-based land administration system which forms the basis for the program's design, most of the methodology being used by SCLTP is unique and experimental. This means that each time the program goes to the next level, from demarcation to endorsement, and from endorsement to formation of CLCs, new techniques have to be developed and new skills cultivated. This all takes time.

As an example, no Community Land Councils were set up in FY 2007 because preliminary phases of the program's technical guidelines—endorsement by communities of the boundaries demarcated on their behalf by Boundary Committees—had not been tested in the CLSP. The four test endorsements completed by the program in FY 2007 require close evaluation, reengineering of processes and retraining of contractors, before being adopted program-wide and scaled up.

## 4.3 INTERDEPENDENT, HIGH-RISK PROGRAM COMPONENTS COMPOUND EACH OTHER'S RISK FACTORS

Looking forward, when consultations start with communities who have these recently endorsed their CLA, the failure to secure any progress in developing an accommodating legal framework for customary land tenure will impede progress. As yet there are no suitable statutory vehicles for incorporating CLCs (such as proposed in the draft legislation prepared by the program). Likewise the stage following incorporation, registration, is similarly hampered by an inappropriate legislative framework (see Section 6.3 below).

The delays these blockages are likely to cause will reduce momentum going forward, which will slow down the rate at which political demand for reform accumulates.

#### **4.4 INSTITUTIONAL WEAKNESSES LIMIT THE USEFULNESS OF THE SCLTP-GENERATED POLICY INPUTS**

Without functioning state-level institutions, ministries or parliaments (and courts), the reforms required to accommodate customary land tenure cannot move forward. Land governance is a subset of, and not a substitute for good governance. More needs to be invested, over a longer time frame to equip vital state-level institutions to handle their responsibilities. Somehow this capacity building has to be done without compromising the ability of these institutions to provide at least minimum services.

The CPA vision of National and State Land Commissions, as fora for thrashing out the tradeoffs between the multitude of vested interests (customary land owners and users, investors, the various levels and layers of governance and institutions within each level and layer) that will be inevitably required to resolve historically vexatious land ownership issues in Sudan, has not materialized. The ploy of using the National Land Commissions as the too-hard-basket for the land (and natural resource) ownership questions, which threatened the success of the CPA negotiations, has not worked. Neither the CPA, nor the republican or state constitutions offer other specific guidance about how to develop a consensus about what constitutes legitimate grounds for claiming land rights. In the absence of progress, contention over land ownership will likely fester, eventually compelling the parties to either fashion an alternative road map or deal with the consequences of failure.

#### **4.5 THE SCLTP LACKS CHAMPIONS**

As a consequence of its origins (where it started, who it worked with), the program was initially identified with the SPLM. While SPLM support has been vital to the program's successes to date, this patronage has also created obstacles to expanding operations outside SPLM areas and with respect to cooperating with institutions not controlled by SPLM. At the national level, there have been no opportunities for engagement with National Congress Party (NCP) officials or national ministries. Attempts by the program to widen its support base have been resisted by its SPLM supporters, sometimes in the guise of restricting access to 'strangers' and other times in the name of 'security concerns.'

On the other hand, during the period SPLM controlled the governorship of Southern Kordofan (2005-2007), only limited commitment was demonstrated to implementing the reforms needed to begin accommodating customary land tenure; for example, little progress was made on forming Technical Working Groups and legislation prepared by the program was not taken into the Assembly. Likewise, when the SPLM more recently assumed the governorship of Blue Nile, the program had to struggle to even get approval for freedom of movement for its staff in that state and still has not been allocated government office space there. After assuming office, the new SPLM BN governor questioned USAID commitment to implementation of the CPA provisions relating to customary land tenure, without committing himself to providing any support to this process.

There has been little evidence thus far that traditional authorities are solidly behind the program. Given the externally advised, top-down negotiating process of the CPA, it cannot be assumed that traditional authorities were in support of the provisions relating to control over land ownership that were likely to impact their power bases. As has happened in a similar, World Bank-financed program in Ghana, if the ubiquitously powerful traditional authorities in the two areas perceive the democratizing of land administration being pioneered by the program as a threat rather than an augmentation of their customary privileges and responsibilities, their opposition could scuttle the program's future.

Greater effort has to be made to develop trust, win over elites and cultivate mass support if the program is going to survive, let alone succeed. The challenge is to find new friends without losing old friends.

## 5.0 OBSTACLES

Poor ongoing, and perhaps worsening, bilateral relations between the US and Sudan have negatively impacted ARD's capacity to deliver the results expected from the SCLTP. The program does benefit from generous exemptions to strict US legal sanctions against dealing with the Sudanese government (but not from designated individuals and entities) which apply to those US firms, such as ARD, who are contracted to deliver USG support for the implementation of the CPA. However, the ongoing failures of the Sudanese government to meet its international obligations with respect to Darfur, and the US pressure for them to do so, have made working in Sudan difficult. The absence (and unlikelihood of agreement in the near future) of any implementation mechanism for the Bilateral Agreement of 1958, the lack of effective channels of communication with NCP or National Islamic Front (NIF) officials, restrictions on the movement of US citizens and employees of US firms and ongoing trade sanctions limiting access from Sudan to US-made goods are challenges facing all US firms trying to do business in Sudan.

# 6.0 KEY ISSUES

## 6.1 FORMATION OF LAND COMMISSIONS

The principal political failure of CPA implementation directly affecting the program has been the stalling on the formation of the National Land Commission. Despite assistance and encouragement provided by technical experts supplied by multilateral agencies, the GNU has made no real progress toward establishing the primary vehicle for land reform proposed by the CPA. The NCP has also been insisting that State Land Commissions—proposed in the Protocol applying to Blue Nile and Southern Kordofan—cannot be established until after the National Land Commission has been constituted. Despite persistent advocacy by the SCLTP based on expert opinions commissioned by the program, which argues that the states could and should act unilaterally to establish their own State Land Commissions, regardless of whether the National Land Commission has been set up, the SPLM have also adopted this position.

While the SCLTP is resourced to provide the useful technical support for State Land Commissions, and other USG assistance has been earmarked to provide the necessary financial assistance for their establishment and capacity strengthening, overcoming the political obstacles to their establishment may come down to either party taking the initiative by using the powers available to them at the appropriate level. If one party takes the lead, the other is likely to follow suit simply because establishing a State Land Commission would give the initiator a significant edge in what is currently something of a stalemate and thereby enhancing the prestige of the initiator, something all the parties are in desperate need of at this point in time.

## 6.2 ROTATION OF STATE GOVERNMENTS

Unfortunately, during the latter half of FY 2007, the program has also been unable to meaningfully engage with government officials of existing institutions at the state level other than on a personal basis. The state governments of Blue Nile and Southern Kordofan effectively stopped functioning around April 2007. At that point, three years after the CPA was signed, the power sharing mechanisms in the agreement kicked in and whatever relationship of trust between the parties remained began to falter under this and other challenges. The agreed arrangements for the rotation of governorships in the two areas (Blue Nile and Southern Kordofan States) during the pre-election period were laid out in the Protocol between the GoS and the SPLM on the Resolution of Conflict in Southern Kordofan/Nuba Mountains and Blue Nile States, in Naivasha, Kenya on 26 May 2004 (hereafter the Protocol), Article 11.1.

Pursuant to the Protocol, this rotation should have occurred within three years. Depending on how the start date is calculated, this should have happened by 26 May 2007. In fact, the rotation of governors was not finalized until three months later. The effect of delaying the investiture of the new governors was to prolong the caretaker period of the outgoing administration during which time officials were understandably reluctant to deal with substantive policy issues, including those relating to accommodating customary land tenure. The long wait increased anxiety within the upper echelons of the civil service about who would retain their positions and who would not. Certainly the commissioners and ministers directly appointed by the outgoing governors knew that they served at their governor's pleasure, as the Protocol clearly states (Article 5.2).

The Governors' discretion in appointing the Council of Ministers is constrained by the dictates of power sharing. In the current pre-election period, the governor is required to appoint a Council of Ministers that reflects the formula for power sharing set out in the Protocol (Article 11.1.1). New Councils of Ministers

composed of the specified ratio of members with these party affiliations (45% SPLM, 55% NCP, excluding minor parties) have yet to be formed in either state, adding greatly to uncertainty among citizens and adding considerably to a sense of state paralysis in the two areas.

In general terms, the governors' other executive powers appear to be strictly concurrent (Article 5.3). These shared executive powers are not shared among equals (Article 5.4). The appointment of the Council of Ministers for each state by the new governors, pursuant to powers granted them by the Protocol, is therefore critical for exercising these concurrent powers. Failure to do so, four months after the milestone set down in the Protocol, could be seen as one more sign of deteriorating relations between the SPLM and NCP and the gradual unraveling of the CPA. Complaints have been made that both parties have been slow in bringing forward nominations for their respective quotas of ministers. Whatever the cause, the effects of these protracted delays are certain. Until new governments are formed, public services are unlikely to be effectively and accountably delivered; and reforms, such as the formalization of the Technical Committees on Land Policy proposed in Southern Kordofan, will be deferred.

For various reasons, including delays in both parties nominating candidates for new parliamentary positions, which are also being rotated, the legislature of Blue Nile is currently on a three month recess and that of South Kordofan has met infrequently during the reporting period.<sup>2</sup>

### 6.3 LEGAL FRAMEWORK FOR PROPERTY RIGHTS IN SUDAN

The following opinion from a leading international jurist engaged by the SCLTP to provide advice to state governments has profound implications, not just for Blue Nile and Southern Kordofan States, but for the whole of Sudan.<sup>3</sup>

*“Now even allowing for the fact that the factual and legal background to the current issue of customary land rights in Blue Nile State (and indeed in South Kordofan State and all of Southern Sudan) is different—there never was any British colonial annexation nor does the common law (or Roman-Dutch common law) apply as the residual law in Sudan—there are some fundamental points from the Mabo<sup>4</sup>, Wik<sup>5</sup> and Richtersveld<sup>6</sup> approach which may be applied to the situation in Blue Nile State as they undoubtedly accord with customary international law and some UN conventions on these issues. First, the original customary rights of the indigenous inhabitants of the State do not just disappear because no notice is taken of them by the government of the day. Second, they do not disappear because a law has been enacted which disregards them. They are only extinguished if a clear legal or factual act has been taken by the government which demonstrates beyond any doubt that other rights in the land have superseded them. Third, the state's acquisition of a radical title to land does not extinguish customary title; that acquisition is acquisition by virtue of sovereignty not by virtue of property.*

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<sup>2</sup> The recent withdrawal by SPLM of its ministers and advisers from the Government of National Unity (12 October 2007) suggests that the new state government will not be formed any time soon.

<sup>3</sup> Patrick McAuslan “High Theory Low Practice: Where's the Social Justice?”, paper presented at Human Rights And Global Justice Conference, 29 – 31 March 2006, Centre for Human Rights in Practice, University of Warwick. McAuslan is Professor of Law at Birbeck College, University of London.

<sup>4</sup> (1992) 175 C.L.R. 1.

<sup>5</sup> (1996) 141 ALR 129.

<sup>6</sup> [2003] (6) BCLR 583 (SCA).

*So the Unregistered Land Act 1970 did not extinguish customary rights in the land; it merely provides that all unregistered land shall be deemed to be the property of the government, i.e. the government was assuming the radical title to the land which would enable it to allocate the land to whom it willed. Nor did the Civil Transactions Act 1984 (CTA) or its amendment in 1990 extinguish customary rights. The CTA indeed strengthens the argument being put forward here for it expressly states that on or after 6 April 1970 – the date of the enactment of the Unregistered Land Act – “all real property registered as freehold... shall be deemed ownership of the usufruct” and “any ownership acquired in accordance with the provisions of this Act shall be deemed ownership of the usufruct” (section 559). Chapter 7 of the CTA make it clear that grants of land for agricultural purposes – the key legal basis for the development of large scale mechanised farming – are only grants of usufructs. Usufructs are less than ownership. Thus applying the principles of Mabo and Wik, the underlying customary rights in the land allocated for agricultural usufructs remain in existence, never having been specifically and explicitly extinguished. The amendment to the CTA merely prevented actions in the courts challenging the Government’s (deemed) ownership of land so has no bearing on the issue here.*

*The legal position then in my judgement is that there are two sets of conflicting rights in those areas of land in Blue Nile State allocated by the Government of the Sudan (GoS) for mechanised farming: the underlying customary rights and the superimposed statutory usufructuary rights.”*

# APPENDIX A: SCLTP PMP INDICATORS AND TARGETS

## Abbreviations/Acronyms in Table:

CLA	Community Land Area	GIS	Geographic Information System	Q	Quarter
CLC	Community Land Council	GNU	Government of National Unity	SLA	State Land Advisor
COP	Chief of Party	GPS	Global Positioning System	SLC	State Land Commission
CPA	Comprehensive Peace Agreement	INC	Interim National Constitution	SPLM	Sudan Peoples Liberation Movement
FC	Field Contractor	LTPR	Land Tenure & Property Rights	TBD	To Be Determined
FPC	Field Program Coordinator	PC	Program Coordinator	ToR	Terms of Reference
FY	Fiscal Year (USA)	PIE	Public Information and Education	TWG	Technical Working Group

**TABLE A-1. SCLTP PMP INDICATORS, DATA SOURCES, TARGETS AND ASSUMPTIONS**

INTERMEDIATE RESULT	INDICATORS	MEANS OF DATA COLLECTION/ VERIFICATION	BASELINE, <sup>7</sup> TARGETS/TIMING	ASSUMPTIONS
IR 1: Communities constructively engaged in elaborating their customary land tenures	<b>OP Indicator 3:</b> Number of institutions/organizations (communities) making significant improvements based on recommendations made via USG supported assessment	Community Land Administration Institutional Development Matrix	Baseline: 0 FY 06: 2 FY 07: 20 FY 08: 35 FY 09: 45	1. State/local governments allow communities to mobilize, demarcate their boundaries and associate to pursue their land rights claims
Sub-IR 1.1: Community awareness of program-sponsored opportunities for strengthening customary land tenure increased	(1) # people participating in sensitization meetings	Program records (disaggregated)	Baseline: CLSP 3,600* FY 06: 2,390 FY 07: 1,275 FY 08: 3,750 FY 09: 3,750	1. State governments support sensitization program 2. Traditional/community leaders support sensitization program

<sup>7</sup> 1 June 2006.

INTERMEDIATE RESULT	INDICATORS	MEANS OF DATA COLLECTION/ VERIFICATION	BASELINE, <sup>7</sup> TARGETS/TIMING	ASSUMPTIONS
	(2) # of community requests for program assistance	Program records (requests from communities, invitation letters)	Baseline: CLSP=? FY 06: 21 FY 07: 9 FY 08: 25 FY 09: 25	
	(3) % increase in perception of improved land tenure security	National Democratic Institute survey (if questions added); ARD survey comparing perceptions in program demarcated areas with those outside current operational area	Baseline: % perception of tenure security outside program area 25% higher perception in demarcated area (Survey Q4/08)	1. National Democratic Institute able/willing to add questions 2. Special survey allowed by state government
Sub-IR 1.2: Demarcation of Community Land Areas expanded	(1) # of people on Community Boundary Committees	Program records (minutes, community mobilization forms)	Baseline: 120* FY 06: 105 FY 07: 60 FY 08: 125 FY 09: 125	1. Positive community view of demarcation spreads to neighbors 2. State and local governments support demarcation program in all localities 3. Wet seasons not unduly long 4. Communities reach boundary agreements 5. Support from traditional/ authorities for demarcation
	(2) # CLAs demarcated	# completed CLA Boundary Books	Baseline: CLSP=24 FY 06: 2 FY 07: 16 FY 08: 25 FY 09: 25	
	(3) km <sup>2</sup> area/km perimeter	Program GPS/GIS records, polygons	Baseline: CLSP=? FY 06: 160 km <sup>2</sup> FY 07: 400 km <sup>2</sup> and 40 km FY 08: 2,000 km FY 09: 1,500 km	
Sub-IR 1.3: Community Land Areas endorsed by communities	(1) # CLAs endorsed	Program records (data collection sheets)	Baseline: CLSP=0 FY 06: 0 FY 07: 4 FY 08: 25 FY 09: 25	As above plus 6. Zero to few new disputes occur between demarcation and endorsement

INTERMEDIATE RESULT	INDICATORS	MEANS OF DATA COLLECTION/ VERIFICATION	BASELINE, <sup>7</sup> TARGETS/TIMING	ASSUMPTIONS
	(2) km <sup>2</sup> area/km perimeter	Program GPS/GIS records, polygons.	CLSP=0 FY 06: 0 FY 07: 347 km <sup>2</sup> FY 08: 2,000 FY 09: 2,000	
	(3) # people participating in endorsement meetings	Analysis of attendance forms (disaggregated). Composition of people endorsing representative.	Baseline: CLSP=0 FY 06: 0 FY 07: 1,190 FY 08: 3,700 FY 09: 3,700	
Sub-IR 1.4: Community Land Councils functional	(1)# CLC operational	Program and government records	Baseline: CLSP=0 FY 06: 0 FY 07: 4 FY 08: 10 FY 09: 20	1. State government willing to hear /accept CLC incorporation, submissions, representations and claims
IR 2: Customary land tenure integrated into states land administration	<b>OP Indicator 1:</b> Number of policy reforms analyzed with USG assistance <b>+OP Indicator 2:</b> Number of policy reforms presented for legislation/decreed as a result of USG assistance	Program and government records	Baseline: 0 FY 06: 0 FY 07: 2 FY 08: 6 FY 09: 7	1. National Land Commission operational. 2. National government accepts/allows states to develop land policy 3. USAID supports full engagement with GNU at national level.
IR 2.1 Policymakers and administrators sensitized to implementation of CPA provisions regarding customary land tenure	(1) # of officials and (2) agencies engaged by and with Program	Program records	Baseline: CLSP=? FY 06: 5 FY 07: 15 FY 08: 15 FY 09: 15	INC and CPA operational and customary land tenure is given priority attention by the states

INTERMEDIATE RESULT	INDICATORS	MEANS OF DATA COLLECTION/ VERIFICATION	BASELINE, <sup>7</sup> TARGETS/TIMING	ASSUMPTIONS
	(2) # workshops and trainings with participation of government officials /elected representatives	Program records (Requests for SCLTP support e.g. meetings, workshops, analyses), STTA Reports/opinions  State government records (Technical Work Group meeting minutes, ToR reports)	Baseline: CLSP=? FY 06: 0 FY 07: 2 FY 08: 6 FY 09: 5	
IR 2.2 State Land Commissions/ governments develop policies and laws supportive of customary law and other property rights	<b>OP Indicator 1:</b> Number of policy reforms analyzed with USG assistance	STTA reports	Baseline: CLSP=? FY 06: 0 FY 07: 3 FY 08: 6 FY 09: 6	1. State governments are functional 2. Sufficient internal capacity/ political will for debate and advocacy in state governments
IR 2.3 State governments accept community supported and project promoted land tenure, land management and land administration practices	<b>OP Indicator 2:</b> Number of policy reforms presented for legislation/decree as a result of USG assistance	Draft decrees  Draft laws	Baseline: 0 FY 06: 0 FY 07: 4 FY 08: 5 FY 09: 4	1. Bipartisan support in states for program approach to customary land tenure such that appropriate policies and legislation are developed

\*ESTIMATES FOR THESE CLSP OUTPUTS ARE BASED ON SCLTP AVERAGES FOR THE PURPOSE OF ESTABLISHING WORKABLE BASELINES

# APPENDIX B: Q4 FY 2007 ACTIVITIES/TARGETS/OUTPUTS

**TABLE B-1. COMPONENT 1: COMMUNITY DEMARCATION OF CUSTOMARY LAND**

## BLUE NILE STATE

ACTIVITY	WORK PLAN TARGETS	OUTPUTS TO DATE	INDICATORS
1.1 Completing boundary demarcations	Existing Global Positioning Systems/Geographic Information Systems (GPS/GIS) data (12 months) uploaded and 30 maps for endorsement meetings	Backlog of GPS data downloaded, stored and processed into polygons Hardware and software for ongoing processing of new GPS data secured	55 preliminary CLA boundaries plotted and mapped (See Appendix A)
1.2 Building support for CLA boundary endorsement and establishment of CLC	Schedule of CLA endorsement meetings; identification of acceptable outcomes	Traditional authorities consultation tool designed and successfully trialed Schedule being revised	Tool
1.3 Endorsement of demarcated community land areas	30 CLA boundaries endorsed	4 demarcated CLAs endorsed	4 signed Form 3 indicating community endorsement as per guidelines
1.4 Constituting community institutions to hold title to community land areas	3 CLC formed	Planned for next reporting period	N/A
1.5 Expansion of SCLTP into new county/locality	Expansion of SCLTP to new locality	Planned for next reporting period	N/A

**TABLE B-2. COMPONENT 1: COMMUNITY DEMARCATION OF CUSTOMARY LAND**

**SOUTHERN KORDOFAN**

ACTIVITY	WORK PLAN TARGETS	OUTPUTS TO DATE	INDICATORS
1.6 Gather and consolidate data on community land area agreements and boundaries	12 CLAs demarcated and mapped	2 sketch maps have been produced No new data has been collected	Inventory showing GPS units held by County Land Offices Sketch maps
1.7 Build up county- level support for SCLTP	Agreement over new communities to be sensitized Parties in dispute over boundaries agree to SCLTP mediation	Requests received for SCLTP services from two peri urban communities	Minutes of meetings held, attendance record
1.8 Resolve disputes over the boundaries of community land areas	Agreements reached over 5 community land boundaries Process for forming CLCs identified	CLTP mediated two meetings for disputes resolution	Minutes of meeting, lists of participants
1.9 Community sensitization about SCLTP	Invitations to work in 3 new communities and 3 new boundary committees formed		Minutes of meeting, lists of participants
1.10 Constituting community institutions to hold title to community land areas	Representative bodies of landowners formed and strategies for capacity building developed	Planned for next reporting period	N/A
1.11 Establish County/Locality Land Office Lagawa	Coordinated county/locality-level program work plan	Planned for next reporting period	N/A

**TABLE B-3. COMPONENT 2: STATE-LEVEL SUPPORT FOR ENHANCEMENT OF LAND TENURE SECURITY**

ACTIVITY	WORK PLAN TARGETS	OUTPUTS TO DATE	INDICATORS
2.1 Establishment of national and State Land Commissions	Formation of a NLC that supports customary land tenure and constitution of state land commissions with same mandate roadmap for strengthening customary tenure	Proposal for the establishment of a Technical Committee for Land Policy for Southern Kordofan prepared for consideration by Cabinet. When formed. SCLTP will be represented on the Committee	Memorandum

2.2 Government engagement in the expansion and consolidation of the SCLTP	Agreements on consolidation for Kurmuk County/Locality Agreements about expansion into new county/locality	Agreement reached with Commissioners for Rashad, Kadugli and Dilling Counties on the need to consolidate activities in the areas where the CLTP has mobilized communities.	MOU
2.3 Support for state parliamentarians, executive and judiciary	Increased capacity and engagement in policy formulation	Progress constrained by delays in formation of new State governments	N/A
2.4 Liaison with National Land Commission and CRC through international partners	Selection of NLC members for TAG	Deferred to the next quarter	N/A
2.5 Network with national and state-level partners	Coordinated approach for supporting customary land tenure Formal coordination mechanism for ODA support for customary land tenure Working arrangements with Mercy Corps, NDI, and OTI	Joint membership of Technical Land Policy Committees in Southern Kordofan  Information sharing protocols established with UNMIS Rule of Law Program	Correspondence



# APPENDIX C: SCLTP MANAGEMENT, PERSONNEL, PARTNERS, AND LOE

## C.1: PROGRAM PERSONNEL

**TABLE C-1. PROGRAM LONG-TERM PERSONNEL AS AT END FY 2007**

No	Name	Position	Date of Hire	Date of Termination
1	Shaun Williams	Chief of Party	Apr 5, 2007	May 19, 2009
2	Hadley Jenner	State Land Adviser-BN	Sep 6, 2006	Sep 7, 2007
3	Charles Chavunduka	State Land Adviser-SK	Apr 5, 2007	May 19, 2009
4	Ines Krauth	Program Coordinator	Sep 6, 2006	May 19, 2009
5	Alfred Kenyi	Field Program Coordinator-SK	Apr 16, 2007	May 19, 2009
6	Randa Osman	Finance Officer	Jun 18, 2007	May 14, 2008
7	Amel Mubarak	Administrator	Jul 8, 2007	Jun 14, 2008
8	Nazar Eltayeb	Logistics Officer	Aug 17, 2007	Aug 2, 2008
10	Mohamed Abdelrahim	State Land Office Administrator-BN	Aug 1, 2007	Jul 17, 2008
11	Monier Elias	Field Program Coordinator-BN	Sep 5, 2007	Aug 21, 2008
12	Ibrahim Yassin	Facilitator-BN	Jul 1, 2007	Jun 16, 2008
13	Sabah Abdulaziz	County Land Office Administrator-Kurmuk	Jul 1, 2007	Jun 16, 2008
14	Anthony Trilli	State Land Office Administrator-SK	Jul 19, 2007	Jul 3, 2008
15	Mahana Bashier	Facilitator-SK	May 16, 2006	May 15, 2007
16	Abdulmajeed Hassan	County Land Office Administrator-Kauda	Jul 19, 2007	Jul 3, 2008
17	Fadlelah Kuku	County Land Office Administrator-Lagawa (now Jullud)	Jul 1, 2007	Jun 16, 2008

## C.2: SHORT-TERM TECHNICAL ASSISTANCE

International technical assistance was extensively deployed in the reporting period. A GIS expert was bought in to beef up the technical capacity of our field teams. An internationally renowned expert was retained to work with parliamentarians and draft laws. An ARD in-house land lawyer was bought in to analyze the legal framework for property rights in Sudan and both states. An ARD senior associate was engaged to review the organizational structure of the program. The PMP for the project was developed by the Senior Technical Advisor working with the program team. Regional technical assistance was engaged to help the program establish its in-country office network and set up administrative systems.

**TABLE C-2. STTA FY 2007**

	Q1			Q2			Q3			Q4			LOE days
	1	2	3	1	2	3	1	2	3	1	2	3	
GIS (Nick Thomas)	■												25
Legal analysis (Nigel Thompson)	■	■											25
Program Strategy/ Management (Ian Deshmukh)		■	■										24
Legal drafting (Patrick McAuslan)			■										15
Organizational review (Mike Roth)					■	■							24
PMP (Ian Deshmukh)												■	22
Administrative systems & training (Phoebe Kalazane)				■	■					■	■		63
<b>Total work days commissioned</b>													<b>198</b>

## C.3: PROGRAM MANAGEMENT

At start up in June 2006, the SCLTP faced a number of problems, some of which were the same as those faced at the outset by all complex international development programs, and were therefore foreseeable, but some of which were unique to this program and therefore more challenging. The latter mostly relate to the political context discussed above. Rather than merely elaborating the more mundane problems by way of making excuses for what has been a less than hoped for performance as measured against what with hindsight may not have been very realistic expectations, the remainder of this report attempts to highlight the program's responses to date in meeting those challenges.

### **PROBLEM: STARTING UP IN KENYA NOT SUDAN**

The program team was assembled within the prescribed time frame, with the first COP taking up his post in July. An interim program office was initially established in Nairobi from where it was expected that the program's base could be swiftly shifted to Khartoum. As it turned out, it took more than a year to affect that transition. All the key staff worked out of Nairobi until then, while

the field staff who were inherited from the program's predecessor pilot, CLSP, were already deployed and operational in remote areas of southern Blue Nile and central Southern Kordofan. Field activities, implemented by the Sudanese field teams continued on the same basis as they had been operating under the pilot, including sensitization and organization of communities for customary boundary agreements between neighboring communities, and identification and demarcation of boundaries. Effective management of field operations by the new management team, though, was constrained by poor communication links to field sites, reticence of senior staff about traveling to Khartoum and an awkward lack of legal status in Kenya.

Logistics of movement were difficult for much of the first quarter of FY07, with increasingly stringent conditions regarding Sudanese visas, and restrictions on movement of US citizens, in particular. Once key staff were properly orientated and their reluctance to travel was overcome, key personnel made short trips from Nairobi into Sudan to meet Sudan officials and potential development partners, and started to exert supervisory control over their far more experienced field teams. Repeated trips in and out of Kenya caused by protracted delays in moving to Khartoum accentuated the program's anomalous legal status in Kenya which resulted in time-consuming work to overcome problems with immigration, taxation, local hire of Kenyan staff, banking and communication services.

### **OBSTACLES TO INCORPORATION OF ARD IN SUDAN**

During a meeting with the USAID Mission Director in February 2007, ARD was strongly advised to proceed earnestly with registration and to establish a presence in Khartoum as well as the two state capitals. Registration was seen as crucial to implementation of the program as it was a necessary precedent to enter into local staff contracts, and undertake procurement, banking and other "normal" procedures. After engaging a local lawyer, ARD applied for registration under Sudanese company law.

While in Khartoum, options for formal registration of ARD were investigated. Registration under Sudanese company law appeared to be the only legally viable option, but no USAID contractor has done this, using the 1958 Bilateral Agreement to obtain tax and duty exemptions, in more than a decade, and no mechanism exists for routine implementation of the Bilateral Agreement. Achieving registration was seen as crucial to SCLTP implementation.

### **SOLUTION: RELOCATING THE PROGRAM TO SUDAN**

In anticipation of relocation to Sudan by the end of May, two SCLTP staff and a short-term consultant traveled to Khartoum with the objective of obtaining information on administrative and logistical requirements for setting up offices and residential accommodation in Khartoum, Kadugli and Damazin. A change of COP and a new management structure for the program and other organizational changes planned in the second quarter of FY 2007 (implemented in the third quarter) produced the desired result. The program office in Nairobi was shut down and the program management team relocated to Khartoum as required by the Task Order SOW. Company registration of ARD, Inc. Sudan was finalized. Sudanese administrative staff were recruited and a local bank account set up. Leases over a new office and staff accommodation in Khartoum were secured.

State Land Advisers were deployed to their posts during this quarter. Their previously transient presence in their respective state capitals had seriously inhibited cultivation of the political capital needed to effect public policy changes to accommodate customary land tenure. Once in post, immediate improvements in both their local status and their relations with authorities became evident. Concrete progress in relation to the program's capacity to influence policy related to land

issues is being frustrated by ongoing uncertainty about how the rotation of governors in the two states prescribed in the CPA would be settled.

The program developed a work plan for the two quarters (July–December 2007), and requested a budget realignment and proposed technical modifications to the SOW in the Task Order during this quarter. All have now been approved.

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### **PROBLEM: ONEROUS SUDAN EMPLOYMENT LAWS**

SCLTP took over all field staff previously employed under informal arrangements by the precursor CLSP project. All the contracts for field staff, who were temporarily hired on short-term consulting contracts, expired during February, and then could only be renewed as long-term employment contracts. As SCLTP moved its operations to Sudan, management had to face the challenges of the peculiarities of Sudanese labor laws which were overprotective of workers and involved time-consuming engagement by management with exceedingly bureaucratic procedures. There was pressure from CLTP field staff for renegotiation/formalization of their contracts in accordance with Sudanese labor law, which would have entitled them to benefits the program would have been unable to pay.

### **SOLUTION: SUBCONTRACTING FIELD WORK**

To respond to this challenge, the new in-country management team decided that field staff inherited from the CLTP were to be transformed into field contract teams. The technical guidelines which formed part of the RFP were broken down into several Field Contract Types (FCT). This reorganization allows for both better monitoring of field work costs, and more importantly, gives program management a better way of monitoring program performance with respect to Component 1 deliverables. Using this schema as a diagnostic tool, it was possible to redirect effort in Blue Nile away from continuing with more demarcations of Community Land Area Boundaries (Field Contract Type 2) toward endorsement of already demarcated boundaries (Field Contract Type 3). As a direct result, four endorsement contracts were agreed in June, and incorporation of Community Land Councils (Field Contract Type 4), which will eventually become the title holders as trustees for demarcated and registered Community Land Areas, can be tested in these area in Q1 FY 2008. In Southern Kordofan, field work effort was redirected toward trying to resolve disputes about sections of Community Land Area Boundaries (Field Contract Type 5) so that demarcations began earlier in FY 2007 can be completed in FY 2008.

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### **PROBLEM: DISPERSED DISCONNECTED PROGRAM OFFICE NETWORK**

Because of obstacles to registration in Sudan, the program was forced to remain based in Nairobi where a temporary office remained operational from the pilot era, with limited support staff until the beginning of Q4 FY 2007. Key staff shuttled (with difficulty and consequently infrequently) between Kenya and Sudan, trying to manage from afar remote field offices in Kurmuk and Kauda inherited from the CLSP pilot project.

### **SOLUTION: TIGHTENING AND REGULARIZING PROJECT ADMINISTRATION AND REPORTING AT BOTH KHARTOUM AND STATE LEVELS**

All the program administrative staff for Khartoum, state and county/locality offices have been in place since the beginning of Q4. All have received program-specific administrative training since joining their team and all administrative systems are now up and running.

A six month (June-December 2007) program-wide work plan was prepared in Q3 and consequently approved by USAID. A Q4 report against that work plan is attached to this report. State operations have been running on monthly work plan/reporting cycles throughout Q4. Weekly cross-program staff meetings and summaries were incorporated into weekly highlight reports to the CTO. With the completion of this annual report, the program is now fully up to date and compliant with its reporting obligations.

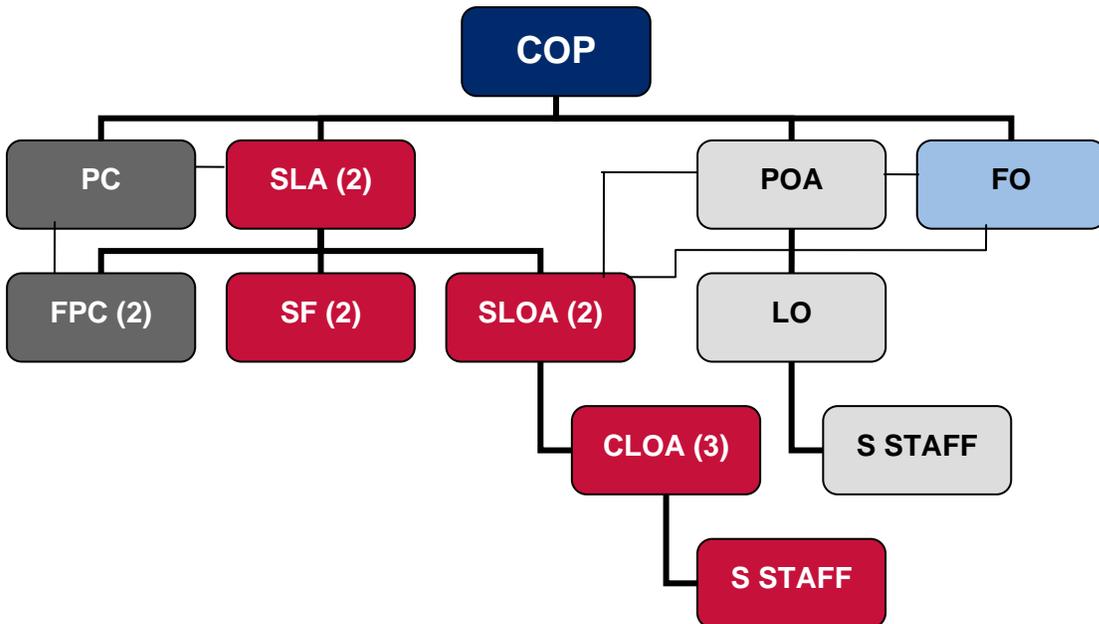
A PMP was drafted at the end of Q4 for USAID approval. The PMP combines the USAID Sudan Mission OP, Economic Growth pillar Agriculture Enabling result indicators and targets which were negotiated with the CTO in Q1 with the TO SOW results framework, and our own set of custom indicators specifically designed to highlight the program’s impact. This report uses this framework as a basis for describing the year’s successes and failures. Future impact reporting will be against the targets in the PMP.

### C.4: PROGRAM TEAM

The ARD home office support team for the program has been unchanged: Ian Deshmukh is the ARD Senior Technical Advisor/Manager; and Roxana Blanco, the ARD Project Manager.

The in-country program team has been restructured to operationalize the establishment of a new program office in Khartoum, new State Land Offices in Damazin, Kadugli and a new County Land Office in Jullud, Southern Kordofan.

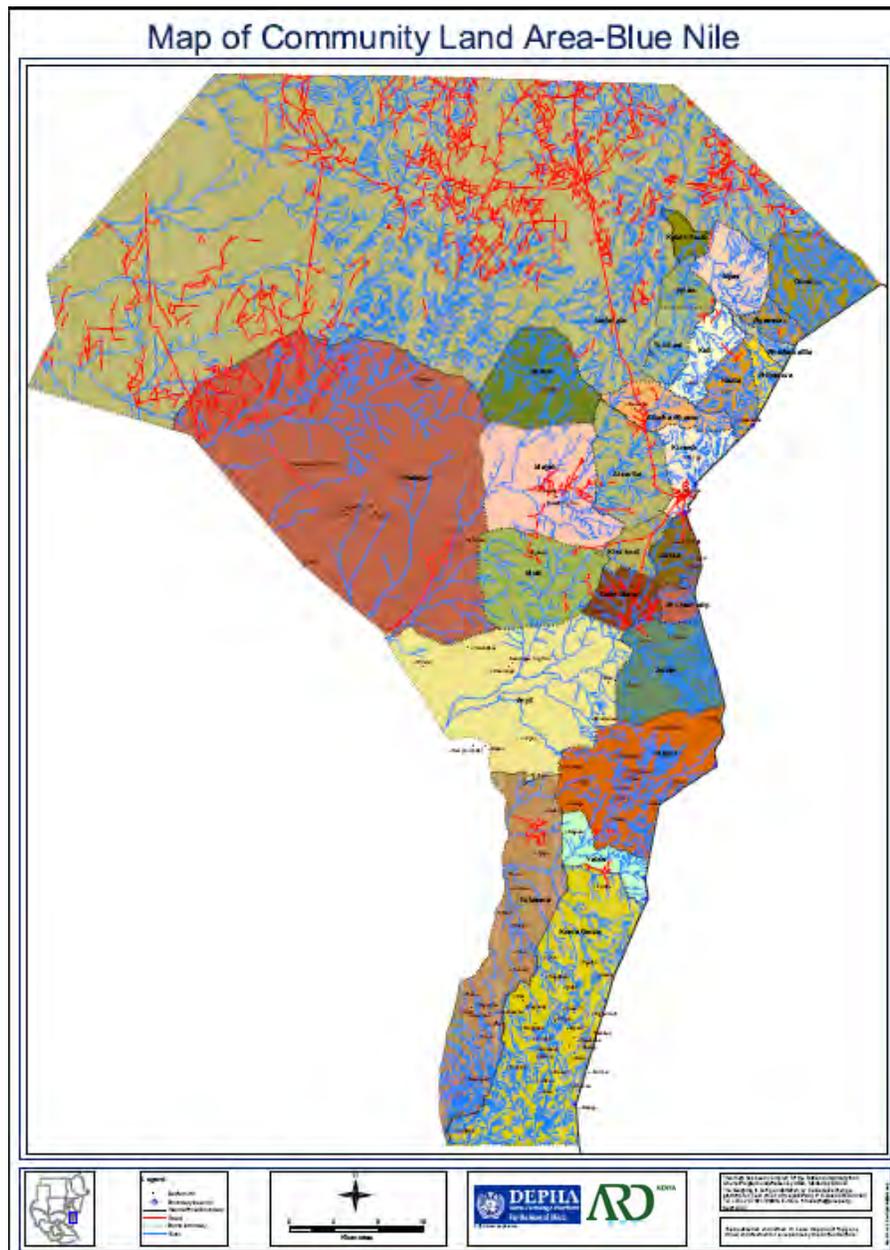
**FIGURE C.1. IN-COUNTRY PROGRAM TEAM STRUCTURE**



- COP – supervises SLA, PC, POA, FO
- SLA – supervises FPC and SLOA and SF in state administration
- PC – links with SLA, FPC (PMP Program)
- SLOA – supervises CLOA and is linked to POA and FO on program administration
- LO – is supervised by POA but does not link directly to state-level administration



# APPENDIX D: DEMARCATED COMMUNITY LAND AREAS, KURMUK COUNTY, BLUE NILE STATE





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