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CUSTOMARY LAND TENURE PROGRAM

PROGRESS REPORT – FISCAL YEAR 2009 QUARTER I (OCTOBER I – DECEMBER 31 2008)



JANUARY 2008

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USAID Sudan Customary Land Tenure Program (CLTP)
Task Order under the Decentralization and Democratic Local Governance IQC
Contract No. DFD-I-00-05-00121-00

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Cover photo: Blue Nile Traditional Leaders Conference, Damazin 3-4 December 2008; photographer
Matrix

SUDAN CUSTOMARY LAND TENURE PROGRAM (SCLTP)

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DISCLAIMER

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ACRONYMS AND ABBREVIATIONS

BN	Blue Nile State
CLA	Community Land Area
CLC	Community Land Councils
CLOA	County/Locality Land Office Administrator
CLO	County/Locality Land Office
CLTP	Customary Land Tenure Program
CPA	Comprehensive Peace Agreement
FACT	Foreign Assistance Common Targets
FSCT	Field Sub Contract Types
GIS	Geographic Information Systems
GNU	Government of National Unity
GPS	Geospatial Positioning Systems
INC	Interim National Constitution
IQC	Indefinite Quantity Contract
LOE	Level of Effort
MOU	Memorandum of Understanding
NLC	National Land Commission
PMP	Program Management Plan
NCP	National Peoples Congress
SLC	State Land Commission
SPLM	Sudan Peoples Liberation Movement
STTS	Short Term Technical Assistance
TBD	To Be Decided
UNDP	United Nations Development Program
USAID	United States Agency for International Development

I.0 BACKGROUND

USAID SUDAN CUSTOMARY LAND TENURE PROGRAM

Contract No. DFD-I-00-05-00121-00, Task Order No. 02

Period of Performance: 5/18/06 – 5/19/09

Contracting Officer: Patrick Kollars

CTO: Mary Hobbs

Accumulated Obligated Amount: \$6,500,000

The objective of the USAID Sudan Customary Land Tenure Program (CLTP) is to contribute technical assistance and material support for the implementation of the Comprehensive Peace Agreement (CPA) with respect to the strengthening of customary land tenure in the Protocol Areas, adjacent to but north of South Sudan.

This program operates within legal framework provided by the CPA, the Interim National Constitution (INC), and the state constitutions of both Blue Nile and Southern Kordofan, under which Land Commissions, at the national level as well as in the two states are to be established to address land policy. Moreover, the USAID Sudan CLTP will provide assistance to governments of the two states to prepare draft legislation to "...develop and amend the relevant laws to incorporate customary laws and practices, local heritage and international trends and practices." (Wealth-Sharing Agreement, paragraph 2.5), and to implement any new laws for administering property rights assented to by the legislature.

The USAID Sudan CLTP has two components- **Component 1; Community Demarcation of Customary Land and Capacity Building for Community Land Administration Institutions Supported;** and **Component 2; State-Level Support for Enhancement of Land Tenure Security.**

Under the first component, the program will work with communities to record their customary land ownership boundaries, as a step toward giving their lands the same protection as privately held lands elsewhere in Sudan. Second, the USAID SCLTP will provide support and technical assistance for land policy and law reform at the state level. This latter component will involve close coordination with state authorities to form the State Land Commission identified in the CPA.

There have been four modifications of the Task Order since it became effective.¹ The CLTP Work Plan 2008-9, which was approved by USAID on 12 May 2008, is the basis for another proposal from ARD: an amendment to the SOW to reflect the direction to discontinue operations in Southern Kordofan and another budget realignment to reflect the total amount so far obligated, as the new ceiling.²

¹ Task Order Modification (1) (4/04/07), changes in key personnel; TO Modification (2) 9/21/07, changes to SOW - allowing program to work with State Land Commissions when established to conduct a baseline study of land records- , Deliverables and Reporting Sections; TO Modification (3) 9/14/07, budget realignment and allowing TAX/VAT costs under the contract; TO Modification (4) 9/13/07, obligation of additional \$3.5 million to contract.

² TO Mod 5 proposal, MAARD generated for signature 24 June 2008, under consideration at the time of writing.

2.0 SUMMARY OF ACHIEVEMENTS

2.1 HIGHLIGHTS

2.1.1 Field Work

- The program broke out of its historical confinement within Kurmuk Locality by extending its provision of services to two new, non SPLM controlled areas, Roseires and Bau Localities.

2.1.2 Policy Work

- Traditional Leaders throughout Blue Nile were successfully mobilized to lobby BN State Government to speed up its recognition and accommodation of customary land tenure.

2.2 RESULTS

Data presented in the tables below are quantitative information on CLTP achievements to date. Each table is followed by a narrative explanation of how the results were derived.

2.2.1 FACT Indicators

The first table (Table 1) includes quantitative data about the program performance against USAID Operational Plan Indicators, broken down by fiscal years. Even though SCLTP has an obligation of reporting against the OP targets annually, presentation of results at the end of this quarter may be helpful.

Table 1: Breakdown of USAID Operational Plan (OP) Indicators:

USAID OP INDICATORS	FY07		FY08		FY09	
	Targeted	Actual	Targeted	Actual	Target	Actual Q1
OP Indicator 1						
Number of policy reforms analyzed with USG assistance	3	3	5	4	3	1
OP Indicator 2						

Number of policy reforms presented for legislation/ decree as a result of USG assistance	4	4	3	0	2	1
OP Indicator 3						
Number of institutions/organizations making significant improvements based on recommendations made via USG supported assessment	20	20	35	27	35	8

With 60% of the FY09 operational window for the program (five months October 2008-February 2009) now over, and just two more months left until program completion, the program is basically on track to deliver its FY09 FACTS targets. The discussion paper written for the program by a former Chief Justice of the Republic of Sudan, arguing that customary land tenure could be accommodated and recorded under existing Federal laws has been delivered to the Blue Nile Traditional leaders and the Blue Nile State Government.

A proposal to establish by regulation an Inter-ministry Technical Advisory Committee on Land Administration has been drafted with the program's assistance and is currently awaiting tabling in the Council of Ministers by the Minister for Agriculture and the Minister of Urban Planning.

During the reporting period we experienced some delays in establishing more Community Land Councils and in building the capacity of more of those that have already been formed. These delays are as a result of the program attempting to retrain members of the Blue Nile Paralegal Association (established under the UNDP Rule of Law Program) to act as sub contractors to deliver capacity strengthening. This task has now been completed and as a result we expect to be able to scale up this work in the coming month so as to be able to achieve the OP 3 Indicator target set for FY09.

2.2.2 PMP Indicators

The second table (Table 2) represents the SCLTP output performance in the first quarter of fiscal year 2009 against performance targets laid out in the SCLTP Performance Management Plan.³

Table 2: Report against Performance Monitoring Plan targets

PMP INDICATORS	FY09 Targets	Q1 Results
IR 1: Communities constructively engaged in elaborating their customary land tenures		
Sub-IR 1.1 Community awareness of program sponsored opportunities for strengthening customary land tenure increased		
# people participating in sensitization meetings	1,338	1,991
# of community requests for program assistance	11	0

³ The 2006-2008 PMP Results has been provided to USAID in the CLTP 2008 Annual Report

PMP INDICATORS	FY09 Targets	Q1 Results
% increase in perception of improved land tenure security	0%	0
Sub-IR 1.2 Demarcation of Community Land Areas expanded		
# of people on Community Boundary Committees	57	58
# CLAs demarcated	4	2
Boundaries (km)	379	180
Sub-IR 1.3 Community Land Area boundaries endorsed by communities		
# CLAs endorsed	12	3
Area (km ²)	1,704	324
# people participating in endorsement meetings	3,086	778
Sub-IR 1.4 Community Land Councils functional		
# of CLCs operational	14	8
IR 2: Customary land tenure integrated into state' land administration		
Sub-IR 2.1 Decision makers sensitized to implementation of CPA provisions regarding customary land tenure		
# of officials engaged by the program	3	9
# ministries/organizations working with the program	4	4
Sub-IR 2.2 Policies/laws supportive of customary land tenure developed		
# workshops with participation of government officials /elected representatives	0	3
# trainings	1	2
# of green papers circulated	2	1
Sub-IR 2.3 Competency of state level agencies for accommodation of customary land tenure enhanced		
# of white papers published	1	1
# of laws drafted	0	0

Reporting against these custom PMP Indicators give a much more nuanced measure of how the program has been performing. As can be seen from Table 2 above, we have beaten some targets but have struggled to meet others.

The aggregate sensitization meeting attendance figure for the reporting period has already exceeded the target set for FY09 in the PMP. The total is made up of 33 participants reported in October; 917 participants attending the 3 workshops and trainings reported in November and December and also includes participants in community sensitization meetings held in mid to end December: in Kadalo 831 participants in all (Mukla 135, Abu Gedaff 215, Amari 127, Eljazeera 354): in Bau (Fadamia and Jecho Omdias) 210 participants.

The number of Boundary Committee members reported, made up of 40 members in the Kadalo communities in Roseires Locality and 18 members in Bau Locality (8 for Fadamia and 10 for Jego Omdias), also puts us in front of our FY09 target.

We have not fared as well with respect to new CLA demarcations. The two demarcations reported are from Abego and Abegona in Kurmuk Locality. As a consequence both the length of boundaries reported of CLA demarcated, Abego CLA 146 km; Abegona CLA 35 km and the areas, Abego, 193 km², Abegona 67 km², Al Hemora, 64 km² are lower than we would had hoped to achieve.

Both the CLA demarcated during this quarter (Abego and Abegona), and another demarcated in an earlier reporting period (Al Hemora CLA), were also endorsed during the same reporting period, demonstrating that we have cleared finally the backlog of CLA demarcated during FY07 and 08.

We are also lagging behind our targets with respect to making new CLCs operational. The reported figure relates to 5 capacity building meetings held in October and 3 CLCs formed in Abego, Abegona and Al Hemora in November and December in Kurmuk Locality.

The results are similarly mixed for Component 2 of the program.

The number of new officials reengaged by the program, 5 in Bau Locality in October, 4 in Roseires shows that program continues to reach out to key local government actors. Similarly, outreach to partner organizations, Norwegian Relief Council, UNDP established Blue Nile Paralegal Association, MercyCops, Malik Agar Cultural Centre, continues although, as yet with little tangible benefit to the program.

In an effort to expand the support base for the program, more workshops have been conducted that were targeted in the PMP. The Blue Nile Traditional Leaders Conference was a highlight of the reporting period. Almost all the Blue Nile Traditional Leaders, from Nazirs to Shieks, attended the two day event and were exposed to the clear message that they have to push their State and Locality Administrations to continue recording of their customary land tenure after the program closes down. Two additional workshops held for key local government officials and Traditional Leaders in Bau and Roseires Localities were used to explain program methodology and to obtain access to new areas, outside Kurmuk Locality where the program had been previously solely focused.

The 2 trainings reported are made up of 1 course conducted for new field sub contractors on demarcation and another 1 for Blue Nile Paralegal Association members who are to be contracted to conduct CLC capacity building.

Discussion paper "Role of Customary Law in the Law of Sudan: Example of Land Law Highlighting the Issue of Legal Personality" was presented and distributed to academics and senior jurists at a seminar at University of Khartoum and to State government officials and local leaders at the Blue Nile Traditional Leaders Conference.

Program advisers supported a drafting group of senior officials to draw up a proposal to establish an Inter-ministerial Technical Advisory Committee on Land Administration, the fate of which is discussed below.

3.0 CRITICAL ISSUES

3.1 STATE AND LOCAL GOVERNMENT COMMITMENT

Throughout the reporting, the unelected SPLM-NCP controlled Blue Nile State Government continued to exhibit at best ambivalence and at worst hostility to the program. No progress has been made on getting any of the Ministers to take the proposal developed by their senior staff to establish an Technical Advisory Committee on Land Administration up to the Council of Ministers for assent. Despite pressing the program to arrange a forum for dialogue with the State Government, and agreeing to both co-host and deliver the opening address, the Governor left Damazin three hours before the Blue Nile Traditional Leaders Conference opened without apology or explanation. His delegated representative was inadequately briefed and the other two, low ranking government representatives continuously interrupted the conference agenda with empty interventions.

Unelected Locality Administrations' commitment to the program has also been found wanting throughout the reporting period. The Kurmuk Locality Commissioner, who is reported to be rarely at his post, has failed to take any concrete steps to protect the program's office in his compound from repeated break-ins (see below). Program Advisers were not able to arrange a single meeting with Kurmuk Locality Commissioner in 2008 to discuss this and other issues related to the program in his Locality. Negotiating the program's expansion into Bau took six months of concerted lobbying, despite which the Commissioner continues to create obstacles to program's sub contractors being able to deliver program services. Roseires Locality Administration has been the most supportive, particularly in relation to the program working in the far west of the Locality, in Kadalo communities, far from the highly sensitive and contended Hamag' estates, which surround the Roseires Dam.

3.2 SECURITY CONCERNS

The security concerns continued to negatively affect the program's work throughout the reporting period. The situation in Khartoum has been tense while the International Criminal Court deliberates on whether to issue warrants for the arrest of the President of Sudan on charges relating to genocide in Dafur. Obtaining visas and travel warrants for program staff and HO STTA has been made increasingly more difficult in the last quarter by an unannounced tightening of administrative procedures relating to US citizens in particular but also for foreign nationals in general, in anticipation that warrant will be issued.

Ongoing clashes in Bau Locality between SPLM and NCP supporters has compromised the consensus building required to demarcate customary land tenure. General lawlessness in Kurmuk township has seen the program office within the Locality Administration Compound broken into twice with considerable loss of program assets.

3.3 ROSEIRES DAM WALL HEIGHTENING

Two million feddan of land, downstream from the Roseires Dam will be allocated to investors once the dam wall has been raised by ten meters. The size of the dam behind the wall will be increased ten times its current size. Any development in Blue Nile is widely supported. The dam heightening project is being fast tracked by the Dam Implementation Unit attached to the Office of the President. While the CLTP's demarcation and adjudication methodology is widely understood and supported within key State government ministries and by the traditional leadership in Blue Nile, there are no signs that the DIU has

any intention of using it to acquire the land required for this project. Nor does the Blue Nile State government or the traditional leaders appear to have any inclination or to be in any position to insist the CLTP methodology be adopted for this purpose. Consequently, depending on how land for the dam heightening is acquired, the project has a high potential of further undermining private property held under both statutory and customary law in Blue Nile State, the consequences of which could see a return to the preconditions for renewed civil war.

3.4 US SANCTIONS

Sudan is subject to a rigorous program of unilateral US sanctions. The Department of Commerce, Bureau of Industry and Security (BIS) oversees an export control program pursuant to the Export Administration Regulations (EAR) and the Department of Treasury, Office of Foreign Assets Control (OFAC) oversees both a) a comprehensive embargo on Sudan (to which the program is exempt on the basis of its objective of implementation of the Comprehensive Peace Agreement and the relevant USAID OFAC License⁴; and b) an embargo against certain persons and organizations, with which the program is obliged to comply.

While both the contractor and the client were fully aware of the existence of these constraints when the contract was let, their full implications for the program were not. Some recent amendments to the original sanctions framework has made it somewhat easier for the program to operate in Sudan, by allowing us to legally buy electricity from the National Electricity Commission, which is still on the Specially Designated Nationals (SDN) list. However, in addition to the obvious problems these sanctions are now causing for the program's close-out⁵, an additional difficulty has emerged in the reporting period which will impact the sustainability post completion of the program's methodology for recording of customary land tenure. We have so far been unable to locate any easy-to-use, unembargoed software which we can import into Sudan (and that could be updated on-line) which we will be able to leave with government counterparts, allowing them to update the cadastral data collected by the program with data they collect themselves after the program has been terminated. Investigations into viable alternative are ongoing but preliminary expert opinion suggests that we may not be successful.

⁴ OFAC License No SU-19191-US Department of Treasury

⁵ These problems are largely result of a poorly managed handover of assets from the preceding pilot, the importation of which into Sudan was not first cleared with BIS.

4.0 STAFFING, SHORT-TERM TECHNICAL ASSISTANCE

4.1 STAFFING

A schedule of current staff is provided as Attachment A. One staff member was let go in the reporting period as part of our preparations for close-out.

4.2 STTA

Significant levels of STTA were deployed in the reporting period with good results. The former Chief Justice’s presentation at the Blue Nile Traditional Leaders Conference, which was successfully organized by a local Blue Nile sub contractor, was well received. The Internal Audit STTA uncovered no evidence of unreported malfeasance in the program’s finances. The report from the Lessons Learnt STTA mission is under production with additional material being collected by program staff to supplement the program’s document review undertaken by the consultant. The final report will be submitted to USAID as part of the Close-out.

Table 3: STTA Deployed in the Reporting Period

Short Term Technical Advisors	Q1/M1/OCT			Q1/M2/NOV			Q1/M3/DEC			LOE (days)
Obied Haj Ali-Presenter Blue Nile Traditional Leaders Conference -										5
Matrix Group-Facilitation for the Blue Nile Traditional Leaders Conference										7
Elfatih Yousif-Master of Ceremony - Facilitation for the Blue Nile Traditional Leaders Conference										4
Talal Hassan – Network Administrator										1
Carry Conway –Internal Audit-Temporary replacement for FO										30
Safia Aggarwal–Lessons Learnt										15
Total work days commissioned										62

5.0 REPORTING AND PLANNING

5.1 REPORTING

5.1.1 Performance

Weekly Progress Reports: Weekly updates have been regularly provided to the CTO during the reporting period.

Quarterly Progress Report: The last CLTP Quarterly Progress Report (FY08 Q4) was incorporated into the FY08 Annual Progress Report which was submitted to USAID on October 15 2008

Program Management Plan: The current (revised) PMP was submitted to USAID in support of TO Mod 5 proposal.

5.1.2 Financial

The average rate of monthly expenditure during the reporting period was \$146,136 compared with average of \$190,843 for the duration of the program.

The program has been running for 30 months or 94% of the program's estimated duration of 32 months⁶. Program expenditure to date has been 91% of total amount obligated to date (\$6.5 million)

A complete financial report is to be found in Table 4 below.

5.1.2 Planning

A balance of the life of the program CLTP Work Plan 2008-9 was approved by USAID on 15 May 2008.

A draft narrative SCLTP Close-out and Demobilization Plan was discussed with USAID on 11 December 2008. Several issues, compliance with EAR and related sanctions; finalization of the inventory and the disposition plan, have been referred back to USAID Sudan Legal Officer and ARD HO for further clarification prior to the close-out plan being finalized.

⁶ TO Mod 5 refers

Table 5: Budget Compared to Actual Expenditure for Period June 2006 to December 2008

1/8/2009

ARD Inc.

Sudan Customary Land Tenure Program (CLTP) Budget vs. Expenditure for period June 2006 to Feb 2009
 Contract No.DFD-I-00-05-00121-00
 Task Order: DFD-I-02-05-00121-00

Start Date: 1 June 2006
Estimated Completion Date: 28 February 2009

Program duration in months 33
 December 2008 is month 31

Line Item:	Budget	Cumulative expenditure Sept 08	Oct 08 expenditure	Nov 08 expenditure	Dec 08 expenditure	Cumulative expenditure Dec 08	Balance	% expended	Monthly Burn Rate
LABOR	\$2,779,778	\$2,341,089	\$67,432	\$69,231	\$86,858	\$2,564,610	\$215,168	92%	\$82,729
SUBCONTRACTOR TRAVEL & TRANSPORTATION	\$9,350	\$9,350	\$-	\$-	\$-	\$9,350	\$-	100%	\$302
EQUIPMENT	\$902,316	\$837,237	\$2,318	\$2,186	\$21,136	\$862,878	\$39,438	96%	\$27,835
ALLOWANCES OTHER DIRECT COSTS	\$543,800	\$549,565	\$947	\$13	\$43	\$550,568	\$(6,768)	101%	\$17,760
ACTIVITY COSTS G&A @12.82% (on non-labor)	\$692,171	\$583,321	\$14,725	\$14,997	\$14,977	\$628,020	\$64,151	91%	\$20,259
MHO @1.50% Indirect Rate Adjustment	\$842,827	\$649,341	\$13,749	\$18,939	\$18,275	\$700,304	\$142,523	83%	\$22,590
	\$375,951	\$224,277	\$2,516	\$4,871	\$60,876	\$292,540	\$83,411	78%	\$9,437
	\$338,610	\$294,113	\$4,270	\$5,255	\$14,777	\$318,416	\$20,195	94%	\$10,271
	\$15,197	\$12,703	\$14	\$0	\$1	\$12,718	\$2,479	84%	\$410
	\$-	\$-	\$-	\$-	\$-	\$(23,276)	\$23,276	0%	\$(751)
GRAND TOTAL	\$6,500,000	\$5,500,996	\$105,973	\$115,492	\$216,943	\$5,916,128	\$583,872	91%	\$190,843

Monthly average Oct08-Dec08 \$146,136

\$23,276 INDIRECT RATE ADJUSTMENTS - FY06, FY07

ATTACHMENT A: PROJECT PERSONNEL

ARD Key Personnel List

Name	Position	Entry	End of contract	Notification date
Shaun R. Williams	Chief of Party	April 05, 2007	Feb 28,09	Jan 25,09
Charles Chavunduka	State Advisor	April 05, 2007	Feb 28,09	Jan 25,09
Adarkwah Y. Antwi	State Land Advisor – Blue Nile	Nov 05, 2007	Jan 31,09	Dec 25,09

ARD Local Personnel List

Name	Position	Entry	End of contract	Notification date
Randa Osman	Finance Officer	Jun 18,07	Feb 28.09	Jan 25,09
Amel Mubarak	Program Administrator	Jul 08,07	Feb 28.09	Jan 25,09
Nazar Eltayeb	Logistics Officer	Aug 17,07	Feb 28.09	Jan 25,09
Mohamed Abdelrahim	BN Program Office Administrator	Aug 01,07	Feb 28.09	Jan 25,09
Monier Elias	Field Program Coordinator-BN	Sep 05,07	Feb 28.09	Jan 25,09
Zina Asesay	Cleaner -Khartoum	Aug 01,07	Feb 28.09	Jan 25,09
Mohsin Hanafi	Driver - Khartoum	Nov 04,07	Feb 28.09	Jan 25,09
Madeena Mohamed Ahmed	Damazin Facilitator	Sep 16,08	Feb 28.09	Jan 25,09
Mayen Kaul Mayen	Damazin Program Office Administrator	Sep 05,08	Feb 28.09	Jan 25,09
Peter Manyjal Rada	BN Facilitator	Jun 01,08	Feb 28.09	Jan 25,09
Samuel Tongidyang Erestous	Messenger /Day Guard	April 1,08	Feb 28.09	Jan 25,09

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