

# **LAWS OF SOUTHERNSUDAN**

## **THE LAND ACT, 2009**

In accordance with the provisions of Article 59(2) (b) read together with Article 85(1) of the Interim Constitution of Southern Sudan, 2005 the Southern Sudan Legislative Assembly, with the assent of the President of the Government of Southern Sudan, hereby enacts the following:

### **CHAPTER I**

#### **PRELIMINARY PROVISIONS**

#### **Section 1. Title and Commencement**

This Act may be cited as "The Land Act, 2009" and shall come into force as from the date of its signature by the President.

#### **Section 2. Repeal and Saving**

Upon the effective date of this Act, any national law addressing issues under this Act shall cease to operate in Southern Sudan *provided that* all proceedings, orders and regulations taken or made thereunder, except to the extent they are repealed by or are otherwise inconsistent with the provisions of this Act, shall remain in force or effect, until they are repealed or amended in accordance with the provisions of this Act.

#### **Section 3. Purpose**

This Act shall regulate land tenure and protect rights in land in Southern Sudan while creating an enabling environment for economic development in the land and natural resources sectors.

#### **Section 4. Interpretations**

In this Act, unless the context otherwise requires the following words and expressions shall have the meanings assigned to them:-

**"Act of God"** means an event caused by nature, and not by any person;

**"Alienation"** means the transfer of ownership or other rights from a natural or judicial person to another.

**"Allocation of land"** means the process by which a right to hold and use land is provided for by government or customary institutions to an individual, group or corporate body.

**"Boma"** means the lowest administrative unit in the local government structure in Southern Sudan.

<b>“Bona fide occupant”</b>	means any person who in good faith occupies or infringes the land rights of others, unless such ignorance results from a grave mistake on his/ her part.
<b>“Cadastral registration”</b>	means a form of registration of right that accurately describes a land parcel in an identifiable map.
<b>“Citizenship”</b>	means citizenship as defined in Article 48 (1) of the Interim Constitution of Southern Sudan, 2005.
<b>“Commission”</b>	means the Southern Sudan Land Commission as established by Article 181 of the Interim Constitution of Southern Sudan.
<b>“Commissioner”</b>	means the most senior executive official in a County.
<b>“Communal grazing land”</b>	means an area of grazing land which is directly owned in undivided shares by all members of a community.
<b>“Community tenure system”</b>	means unwritten land ownership practices in certain communities in which land is owned or controlled by a family, clan or a designated community leader.
<b>“Compensation”</b>	means remuneration in consideration for a wrong done or right removed, according to the market value of the property when this remuneration is recognized and done in accordance with the law.
<b>“Compensation committee”</b>	means a duly constituted committee that is charged with the function of looking into issues of compensation related to the expropriation process done in accordance with the Law.
<b>“Concerned Ministry”</b>	means the ministry managing and administering land in the Government of Southern Sudan or the State.
<b>“Constitution”</b>	means the Interim Constitution of Southern Sudan, 2005.(ICSS);
<b>“Council”</b>	means the Land Council at the Payam administrative level.
<b>“County”</b>	means the administrative unit between the State and the Payam as described in the Interim Constitution of Southern Sudan.

<b>‘County Land Authority’</b>	means the body administering and managing land at the County level.
<b>“Customary land rights”</b>	means rights on land conferred by or derived from customs or customary law and/or practices.
<b>“Customary law”</b>	means the conventions and rules which a particular community observes, developed over time and usually uncodified.
<b>“Derivative right”</b>	means a right to occupy and use land derived out of a right of ownership including a lease, a sublease, a usufructuary rights and any interest analogous to these rights.
<b>“Easement”</b>	means a legal or equitable right acquired by the owner of one piece of land to use or refrain from using, or prevent the use of land by another person for a special purpose.
<b>“Encumbrance”</b>	means a liability to which a lease or ownership is subject and that includes a sublease, mortgage, easement, restrictive agreement and a profit.
<b>“Eviction”</b>	means expulsion or removal of any unlawful occupant from occupation of a building or structure, or land on which such building or structure is erected.
<b>“Freehold”</b>	means a form of land ownership held in perpetuity with the rights to transfer and dispose of such land.
<b>“Foreign company”</b>	means a company as defined by the Southern Sudan Investment law.
<b>“Government”</b>	means the Government of Southern Sudan, the State or Local Government, established in accordance with the provisions of the Interim Constitution of Southern Sudan.
<b>“Improvements”</b>	means anything resulting from expenditure of capital or labor and that, includes carrying out of any building, engineering or other operations in, on, over or under land, or the making of any material change in the use of any building or land and charges for services provided and any other expenses incurred in the development of land.
<b>“Investment Authority”</b>	means the authority established by the Southern Sudan Investment Promotion law;

<b>“Land”</b>	means all land-based natural resources, including urban land, rural land, forest land, pastureland, swampland, floodplains, flora, and local fishing grounds, and lands under which subterranean resources exist, but not those subterranean resources themselves.
<b>“Lease”</b>	means an agreement between the owner of land and another party by which the owner transfers possession and occupancy of such land to another party in consideration for rent but not ownership.
<b>“Lessee”</b>	means the proprietor of a lease or the successor in interest.
<b>“Lessor”</b>	means any person who has granted a lease or the successors in interest.
<b>“Local Community”</b>	means a group of families or individuals, living in a circumscribed territorial area at the level of a locality, which aims at safeguarding their common interests through the protection of areas of habitation, agriculture, whether cultivated or fallow, forests, sites of cultural importance, pastures, and area of expansion.
<b>“Mediation”</b>	means a process for resolving disputes where two or more parties to a dispute over land meet and attempt to settle a matter with the assistance of a mediator.
<b>“Mortgage”</b>	means an interest in a right of ownership or a lease securing the payment of money or worth of money or the fulfilment of a condition including a sub-mortgage and the instrument creating the mortgage.
<b>“Natural resources”</b>	means land-based resources, including ecosystems, fauna, wildlife, flora, forests, plantations, water and subterranean resources.
<b>“Order”</b>	means a statement made by a competent court or authority requiring from someone to do or to refrain from doing any action in compliance with the law.
<b>“Ownership”</b>	means the right within the limits provided by law to possess occupy and use land in perpetuity; the right thereon can be inherited by devise or intestacy, and is subject to lease, sale, mortgage, or other transfers and transmissions within the limits of the law.

<b>"Pastoral land"</b>	means the land used by livestock for grazing, pasture and watering, including routes provided for their mobility and space ancillary to the activities.
<b>"Parcel"</b>	means an area of land or plot delineated by a survey plan prepared by or under the direction of the Department of Survey.
<b>"Payam"</b>	means the intermediate administrative unit between the County and the Boma.
<b>"Periodic tenancy"</b>	means a tenancy from year to year, half year to half year, quarterly, month to month, and week to week.
<b>"Public land"</b>	means any land owned or/and held by the Government of Southern Sudan, State or Local Government.
<b>"Public authority"</b>	means Government of Southern Sudan, State Government, municipality, or other public bodies as may be prescribed by law.
<b>"Register"</b>	means the official repository of records pertaining to interests in land.
<b>"Registration"</b>	means a procedure describing a parcel of land and identifying its current owner and the form of ownership and other registerable rights in land under this Act or other law dealing with registration.
<b>"Resettlement"</b>	means the act of settling again in a place in accordance with the provisions of this Act and the law.
<b>"Reintegration"</b>	means the re-entry of formerly internally displaced persons into the social, economic, cultural and political fabric of their original community..
<b>"Rights in land"</b>	means rights to own land or limited to occupancy and use of land or right to use the land under certain conditions.
<b>"Southern Sudan"</b>	means the territory that constituted the three former provinces of Bahr el Ghazal, Equatoria, and Upper Nile in their boundaries as they stood on January 1, 1956.

<b>“Subterranean resource”</b>	means any substance, whether in solid, liquid or gaseous form, occurring naturally in, under or on the earth or in or under water and which was formed by or subjected to a geological process, and includes sand, gold, diamond, uranium, stone, rock, gravel, clay, soil and any mineral occurring in residue stockpiles or in residue deposits, including water taken from land or lake for the extraction of any mineral from such water, petroleum, and peat.
<b>“Survey”</b>	means identification and measurement of the location and boundaries of a parcel so that they can be re-established should uncertainty concerning them arise.
<b>“Systematic registration”</b>	means the registration without request that is systematically undertaken by the land administration in a particular area.
<b>“Tenure system”</b>	means the way in which ownership of land or rights to land are organized through a system that may be determined by statute, agreed precedent or by customary practices.
<b>“The Court”</b>	means the Supreme Court, Court of Appeal, High Court, County Court, Payam Court and any other court established by law.
<b>“Title deed”</b>	means a certificate of ownership issued on the basis of details in a register describing the parcel and the owner, and that may only be given for ownership interests, not leasehold or other non-ownership interests.
<b>“Traditional Authority”</b>	means a body of traditional community with administrative jurisdiction within which customary powers are exercised by traditional leaders on behalf of the Community as stipulated in Article 174 of the Interim Constitution of Southern Sudan.
<b>“Transmission”</b>	means the passage of land or a charge from one person to another by inheritance or operation of law.
<b>“Unlawful occupant”</b>	means any person who occupies land belonging to another person without title or permission from the initial owner or holder of the land.

## **Section 5. Objectives**

In the application of this Act, the following objectives shall be observed and pursued:-

- a) Resolving land disputes, taking due consideration of the customary practices and interest of the people of Southern Sudan;
- b) Ensuring equal rights to acquire or own land for the people of Southern Sudan, legal entities, communities, State Governments and Government of Southern Sudan as regulated by law;
- c) Recognizing customary law and practices related to land owned by communities as part of the normative system of land regulation as long as they are consistent with the provisions of the Interim Constitution of Southern Sudan 2005, this Act and other laws;
- d) Establishing a land administrative system efficient and close to issues related to land based on participation of different communities and individuals in Southern Sudan;
- e) Promoting a land regime favorable to investment opportunities and the development of Southern Sudan as an incentive for investment and economic growth;
- f) Facilitating the reintegration and resettlement of Internally Displaced Persons, Returnees and other categories of persons whose rights to land were or are affected by the civil war;
- g) Promoting a land management system to protect and preserve the environment and ecology for the sustainable development of Southern Sudan; and
- h) Guaranteeing a fair and prompt compensation to any person whose right of occupancy, ownership or recognized long standing occupancy of customary use of land is revoked or otherwise interfered with by the Government under this Act or any other law.

## **CHAPTER II LAND OWNERSHIP**

## **Section 6. General Principles**

- (1) The regulation of land tenure, usage and exercise of rights thereon shall be a concurrent competence, exercised at the appropriate level of government in Southern Sudan.
- (2) Rights in the land owned by the Government of Southern Sudan shall be exercised through the appropriate or designated level of government in Southern Sudan, which shall recognize customary land rights under customary land law
- (3) All levels of government in Southern Sudan shall institute a process to progressively develop and amend the relevant laws to incorporate customary laws, practices, local heritage and international trends and practices.
- (4) All lands traditionally and historically held or used by local communities or their members shall be defined, held, managed and protected by law in Southern Sudan.

- (5) Customary seasonal access rights to land shall be respected, provided that these access rights shall be regulated by respective states taking into account the need to protect agricultural production, community peace and harmony, and without unduly interfering with or degrading the primary ownership interest in the land, in accordance with customary law.
- (6) Without prejudice to the provisions of Article 180 (7) of the ICSS and the provisions of this Act, subterranean natural resources shall be owned, regulated and managed by the Government of Southern Sudan.
- (7) Communities and persons enjoying rights in land shall be consulted and their views duly taken into account in decisions to develop subterranean natural resources in the area in which they have rights; they shall share in the benefits of that development.

## **Section 7. Ownership and Tenure System**

- (1) All land in Southern Sudan is owned by the people of Southern Sudan and its usage shall be regulated by the Government.
- (2) Land may be acquired, held and transacted through the following tenure systems:-
  - a) Customary;
  - b) Freehold; and
  - c) Leasehold.

## **Section 8. Protection of Land Rights**

- (1) Every person shall have the right to acquire or own property as regulated by law and as stipulated in Article 32 (1) of the Constitution.
- (2) Pursuant to Article 32 (2) of the Constitution, no right in land shall be expropriated or confiscated save by law in the public interest and in consideration for a prompt and fair compensation.
- (3) Rights in land under customary tenure shall be an assured security of occupancy irrespective of whether or not their interest is held individually or in association with others.
- (4) Any person or group of persons holding a customary land right before the commencement of this Act shall continue to hold the same.
- (5) Customary land shall be demarcated and registered in accordance with the provisions of this Act and any other law.
- (6) Customary land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights acquired through statutory allocation, registration or transaction.
- (7) Without prejudice to the provisions of section 43 of this Act, any attributions on land conferred upon any State by this Act shall be exercised for the common

benefit of all people in Southern Sudan in accordance with the provisions of this Act and any other Law.

### **CHAPTER III** **LAND CLASSIFICATION**

#### **Section 9. Classification of Land:**

All land in Southern Sudan shall be classified as public, community or private land.

#### **Section 10. Public Land**

- (1) Public land is land owned collectively by all people of Southern Sudan and held in trust by the appropriate level of government.
- (2) Public land includes:
  - a) land lawfully held, used or occupied by any government ministry, department or agency or local authority, except where such land is occupied under a private lease;
  - b) land transferred to the Government of Southern Sudan, State Government or local government by way of reversion or surrender;
  - c) land in respect of which no private ownership including customary ownership may be established by any legal process;
  - d) land in respect of which no heir may be identified by any legal process;
  - e) all roads, railways airports, and thoroughfare as specified by law;
  - f) all rivers, lakes, canals, haffirs, wetlands and other areas of water:-
    - i. for which no customary or other ownership may be established; or
    - ii. which has been voluntarily surrendered for public benefit as:-
      - a. land which has been compulsorily acquired for special protection, benefit or use of the community;
      - b. land for investment; or
      - c. land as agreed by any international treaty;
  - (iii) The above category shall not include any pool, stream, swamp or secondary river that is traditionally owned and managed by a community and which has agreed to abide by and be held legally accountable for its environmental use.
  - g) all forest and wildlife areas which are formally gazetted as national reserves or parks for ecological or tourist purposes for the common good of all people in

Southern Sudan in accordance with the Wildlife Conservation and National Parks law.

- h) land which has been formally and willingly surrendered by a community within the area of its jurisdiction as land available for the provision of public services to serve itself or other communities as appropriate, but does not include land provisionally set aside by a community for other purposes;
- i) all land not classified as private or customary under the Constitution and other laws; and
- j) any other land declared to be a public land by law.

## **Section 11. Community Land**

- (1) Community land shall be held by communities identified on the basis of ethnicity, residence or interest.
- (2) For the purpose of sub-section (1) above, “community land” includes:
  - (a) land lawfully registered in the name of group representatives under section 57 of this Act or any other law for the time being in force;
  - (b) land lawfully held, managed or used by specific community as community forests, cultivation, grazing areas, shrines and any other purposes recognized by Law;
  - (c) land lawfully transferred to a specific community by any process of law; and
  - (d) any other land declared to be community land by law.

## **Section 12. Private Land**

Private land includes:-

- (1) any registered land held by any person under a freehold tenure; or
- (2) land held by any person under leasehold tenure; or
- (3) any other land that may be declared private land by law.

## **CHAPTER IV RIGHTS TO LAND**

## **Section 13. Rights of Citizens to Land**

- (1) Right to land shall not be denied by the Government of Southern Sudan, State Government or community on the basis of sex, ethnicity or religion.

- (2) Every person shall have access to land for housing, cultivation, pasture, grazing, or fishing as shared resources as shall be regulated by this Act, rules and regulations.
- (3) Any person may have access to land for investment purposes under this Act and the Investment law.
- (4) Women shall have the right to own and inherit land together with any surviving legal heir or heirs of the deceased as stipulated in Article 20(5) of the Constitution.

#### **Section 14. Rights of Non-Citizens to Land**

Subject to the provisions of section 16 of this Act, individual or collective foreign entities may acquire leasehold or other interest in Land for a specified period and not freehold in land in Southern Sudan, for residential or investment purposes or for any other reasons in conformity with the interest of the people of Southern Sudan and in accordance with the provisions of the Investment law or any other Law.

### **CHAPTER V CUSTOMARY RIGHTS TO LAND**

#### **Section 15. Allocation of Customary Rights to Land**

- (1) Notwithstanding the provisions of section 26 of this Act, Traditional Authority within a specific community may allocate customary land rights for residential, agricultural, forestry, and grazing purposes.
- (2) Subject to consultation with other members of the community, the Traditional Authority shall determine the size and the boundaries of the portion of land in respect of which the right is allocated in accordance with the customary law and practices.
- (3) Prior to allocation of a customary land right, the Traditional Authority which allocated the land shall forthwith notify the County Land Authority or the Payam Land Council or any other relevant land administration thereof, and furnish the relevant information pertaining to the allocation for records.
- (4) The procedures described in sub-section (3) above may not prevent the persons transacting from undertaking the registration procedure in the prescribed form for acquiring the piece of land upon agreement between the new holder and the members of the community therein.
- (5) Any allocation of a piece of land beyond 250 feddans for commercial, agricultural, forestry, ranch, poultry or farming purposes shall be approved by

the Concerned Ministry in the State after transmission by the County Land Authority or the Payam Land Council.

(6) Pursuant to the provisions of sub-section (5) above, any allocation shall be based on a land ceiling that shall be prescribed by regulations.

(7) If the size of the land is over 250 feddans, the Concerned Ministry in the State or its duly designated representatives shall verify the following:-

- (a) the purpose for which land is to be used and its compliance with rules and regulations in the State;
- (b) compatibility of such an activity with the land use system in the area;
- (c) consensus on the allocation between members of the community;
- (d) allocation does not exceed such a size that the Minister finds against principles of equity and fairness; and
- (e) the social and environmental impact that activity may cause.

(8) Except to the extent of the provisions of section 14 of this Act and subject to the conditions of allocation agreed upon, and unless the right is relinquished by the holder, a customary land right allocated under this Act may endure for the natural life of the person to whom it is allocated. Such a right may be inherited, subject to encumbrances but can not be alienated.

(9) Without prejudice to the provisions of this section and section 27 of this Act, any person may have access to customary land under usufruct or sharecropping contract as regulated in Chapter VI of this Act.

## **Section 16. Cancellation of Customary Rights to Land**

(1) Traditional Authority may on behalf of the community, in accordance with customary law and practices, cancel a customary land right allocated if:

- a) the holder of the right fails to observe any condition or restriction attached to the right under customary law and practices, this Act and regulations;
- b) the land is being used predominantly for a purpose not sanctioned under customary law and practices; or
- c) On any other ground as may be prescribed by customary practices , this Act or any other law.

(2) Any cancellation of a customary land right by Traditional Authority shall be notified to the appropriate level of land administration.

(3) Subject to the provisions of section 56 of this Act, the registration office shall be notified of the cancellation referred to in sub-section (2) above if the land was duly registered in the prescribed form.

## **CHAPTER VI** **DERIVATIVE RIGHTS TO LAND**

### **Section 17. General Principles**

- (1) A Derivative right to land shall confer the right of occupancy or usage upon a person or community and shall be registered by the Land administration.
- (2) Derivative rights to land shall include lease, sub-lease, usufruct, easement and any interest analogous to these rights.

### **Section 18. Lease**

- (1) Any person owning land in Southern Sudan may lease this right to another person or persons for a fixed period of time in accordance with the provisions of this Act.
- (2) The contract of lease shall not be more than 99 years.
- (3) Unless otherwise provided for in this Act or any other law, the provisions of subsection (1) above, shall apply to all leases including those governed by customary law and any other law.

### **Section 19. Long Term Lease**

- (1) A long term lease is a lease for more than one year and such a lease shall be in a written form.
- (2) A long term lease shall not exceed 99 years, and any lease for more than 99 years shall be considered a lease for 99 years within the meaning of this section.

### **Section 20. Short term lease**

- (1) A short term lease is a lease for one year or less and includes a tenancy for a year renewable every year.
- (2) Such a lease may be oral or written.
- (3) Where the short term lease is oral, the validity for such lease shall require witnesses on both sides in accordance with the provisions of the Evidence Act, 2006.

## **Section 21. Sub-Lease**

- (1) Subject to any provision affecting rights on lease, the holder of a registered lease may, according to the terms of the contract of lease sub-lease her or his right for any period that is equal to or less than the remainder of the period of the lease.
- (2) The provisions of this Act affecting leases, lessors and lessees shall apply to sub-lease sub-lessors and sub-lessees with such adaptation as are necessary for application.
- (3) If a lease is terminated by the operation of law or by any other reason stipulated in the contract of lease, such termination shall end the sub-lease.

## **Section 22. The Duties of Lessor**

- (1) The Lessor shall refrain from any conduct contrary to the lease agreement that may interfere or suspend the enjoyment of the lease.
- (2) The lessor shall ensure that the leased land does not contain any latent defect that renders it unfit for its normal use.
- (3) Land leased under a long term lease may be subject to development and alteration, *provided that* such activities shall not destroy or fundamentally alter the original nature of the land, except as specifically determined in the lease agreement.

## **Section 23. The Rights and Duties of Lessee**

- (1) The lessee shall inspect the leased land and improvement made therein if any, before taking possession and failure to do so shall be presumed that the conditions stipulated in the lease are complied with.
- (2) The lessee shall be responsible for the normal maintenance of the ownership and shall deliver it back without fundamental alteration, including the cost of damages resulting from abnormal use, except as otherwise provided by the lease.
- (3) Where the lessee intends to carry out any activity different from the one planned in the lease agreement, the same shall consult the lessor and if necessary they shall review the agreement accordingly.

## **Section 24. Breach of Lease Agreement**

- (1) A lessor may terminate a lease for failure to pay rent due under the lease agreement.
- (2) A lessor or a lessee may terminate the lease for failure to comply with the conditions of the lease contract.

(3) Failure to reach a consensus over the termination of a lease for the reasons mentioned in subsection (1) above, the parties may refer the dispute for mediation in accordance with the provisions of section 91 of this Act.

## **Section 25. Notice of Intention to Terminate Lease for Non Payment of Rent**

(1) Where a lessee is in arrears for more than ninety calendar days without a reason for which late payment is allowed under the lease, the lessor may serve a notice of intention to terminate the lease.

(2) A notice served on a lessee under this section shall adequately specify the following:-

- a) the nature and extent of the breach complained of;
- b) the amount which shall be paid as remedy for the breach;
- c) the period shall not be more than thirty calendar days from the date of the service of the notice within which the lessee shall remedy the breach; and
- d) if the breach is not remedied the lessor may apply to the court for termination of the lease.

## **Section 26. Termination of Lease for Other Reasons**

(1) Where a lessee or lessor is in breach of an agreement or conditions in the lease, either party may serve a notice of intention to terminate the lease.

(2) A notice served under sub-section (1) above, shall adequately inform the recipient of the following:-

- a) the nature and extent of the breach; and
- b) whether the breach is capable of being remedied.

(3) If either party considers that the breach is capable of being remedied, the notice shall also specify:

- a) the action which must be taken or desist from, in order to remedy the breach; and/or
- b) the amount of compensation, if any, which the aggrieved party shall be paid to remedy the breach and to reimburse reasonable expenses incurred in connection with the breach.

(4) In case either party fails to remedy the breach as demanded, the aggrieved party may apply to the court for termination of the lease.

(5) Upon termination of the lease, the lessor or the successor thereof shall acquire the full ownership of any construction.

(6) Without prejudice to the provisions of sub-section (5) above, the lessee and the lessor may agree on a compensation system for any improvement and permanent

investment on the land upon termination of the lease contract as stipulated in the initial contract.

## **Section 27. Lease on Customary Land Rights**

- (1) Subject to consensus between members of the community, Traditional Authority may recommend the grant to a person or company, whether national or foreigner, a right of leasehold in respect of a portion of community land to the appropriate land administration.
- (2) A Land size of not more than 250 feddans shall be granted by the Traditional Authority in consultation with the County Land Authority and the Payam Land Council.
- (3) Without prejudice to the rights of the community to land, the Concerned Ministry in the State shall in consultation with the Investment Authority approve the lease contract granted by the Traditional Authority if the leasehold contract is for more than 250 feddans.
- (4) Pursuant to the provisions of subsection (3) above, the concerned Ministry shall ensure that:
  - a) the activity planned complies with the rules governing land use and environmental regulations;
  - b) the conditions and term of the lease contract are in compliance with the provisions of this Act and other laws;
  - c) that the members of the community are duly consulted;
  - d) the size of land being leased is in accordance with the law and regulations; and
  - e) the project for which the land has been leased contributes to the social and economic development of the community, the County or/and the State.
- (5) A right of leasehold may be granted for such period not exceeding 99 years, as the Community and the grantee of the right may agree upon.
- (6) Subject to the provisions of section 56 of this Act, the leasehold contract between community and the grantee shall be notified to the County Land Authority or Payam Land Council and registered in the prescribed form by the appropriate registration office.
- (7) Upon completion of the leasehold contract, and in the absence of renewal, the leased land shall revert back to the community.

(8) The compensation in case of termination of a lease, shall be in accordance with the provisions of the lease contract, and where such terms were not set, shall be in accordance with the provisions of this Act, rules and regulations.

## **Section 28. Easements**

(1) For the purpose of this section an easement is a burden on land, referred to as servient or lower land belonging to a person for the use and benefit of another land, referred to as the dominant or upper land, belonging to another person.

(2) Subject to the provisions of this Act and any other law applicable to the use of land, the rights capable of being created by an easement are:

- (a) the right to do something over, under or upon the servient land;
- (b) the right that something should not be so done;
- (c) the right to require the occupier of a servient land to do something over, under or upon that land; and
- (d) the right to graze stock on the servient land.

## **Section 29. Easement by Contract**

(1) An owner of land may establish under contract any easement as long as that complies with public order, and in favor of the owners or occupiers of other land.

(2) The use and the scope of the easement shall be regulated by the contract.

(3) An owner who establishes an easement on his or her land shall be deemed to have consented to everything that is necessary for such an easement.

(4) An easement by contract may be oral or written.

(5) If the easement is written, it shall be registered in accordance with the provisions of section 56 of this Act

## **Section 30. Termination of Easement**

An easement may be terminated under the following:

- (1) by act of God;
- (2) when the dominant and servient lands become owned by the same person;
- (3) by the total destruction of the land on which the easement was created; or
- (4) by the termination of the agreement of easement; or
- (5) any other manner provided in the contract.

### **31. Usufruct**

- (1) Usufruct refers to the use and enjoyment by a person of the land as an owner by law or by agreement for a period which shall not be longer than the life of the usufructuary.
- (2) The usufructuary shall have all the easements and rights granted by the owner.
- (3) Without prejudice to the provisions of sub-section (2) above, the usufructuary shall not have the right to dispose of the ownership.

### **Section 32. Contract of Usufruct**

- (1) A usufruct contract may be in written or oral form as stipulated in section 38 of this Act.
- (2) Where there is no provision in the contract on time restriction, the usufruct shall be deemed to last for the life time of the usufructuary.

### **Section 33. Rights of the usufructuary**

- (1) The usufructuary shall have the right to enjoy all the fruits, either natural or civil, generated by the land in respect of which he or she has the usufruct.
- (2) Any natural fruit attached to the land at the time the usufruct begins shall be to the benefit of the usufructuary.
- (3) Any natural fruit attached to the land at the end of the usufruct shall be to the benefit of the owner without mutual compensation for ploughing, harrowing and harvesting of the seeds.
- (4) If there is a tenant farmer or sharecropper at the commencement or at the end of the usufruct, he or she shall not lose his or her shares of the fruits which he or she is entitled to receive.
- (5) The usufructuary may enjoy the usufruct personally, lease it out, sharecrop it and may assign the right for valuable consideration or gratuitously to another.
- (6) In case of lease or sharecropping agreement, the agreement shall not exceed a period of three years. In case of renewal of a lease with a tenant farmer or a sharecropper, the new contract shall be terminated at least one year before the expiration of the usufruct.

### **Section 34. Termination of the Usufruct**

The usufruct may be terminated through the following:

- (1) upon the expiration of the time limit or time specified in the contract;
- (2) by agreement that the usufructuary waives his or her right;
- (3) by act of God; or
- (4) by a decision of the Court upon the complaint of the bare owner where the usufructuary abuses his or her rights of enjoyment.

### **Section 35. Rights to Land Used as Surety**

An owner of land may use it as surety to secure the payment of a debt by way of mortgage.

### **Section 36. Mortgage**

- (1) An owner of land may by an instrument in the prescribed form, mortgage his or her registered title to secure the payment of an existing, a future, a contingent debt or other money or worth of money.
- (2) This section shall apply to all mortgages and interest in land including mortgages related to customary land coming into effect after the commencement of this Act.
- (3) A mortgage shall have effect as a security and shall only operate as a security interest in the land from the borrower to the lender.

### **Section 37. Community Mortgage**

A Community, whose land is registered in accordance with the provisions of section 57 of this Act, may acquire perpetual succession regardless of change of its membership and may also acquire and hold rights and incur obligation and ownership encumbered by mortgage as regulated by law.

### **Section 38. Mortgage Contract**

- (1) The mortgage contract shall be registered in the Land registry in accordance with the provisions of section 56 of this Act.
- (2) The mortgage contract shall clearly specify the state of ownership, its nature, the easements or charges determined by any relevant regulations and its value.

### **Section 39. Evidence of Rights to Land**

- (1) The rules governing evidence related to land shall be applicable to both the right of ownership and derivative rights.
- (2) Right of ownership and all derivative rights to land shall be proven by a *prima facie* legal title in accordance with the provisions of this Act.

- (3) Right of ownership and derivative rights to land may be proven by any other practices recognized by communities in Southern Sudan in conformity to equity, ethics and public order.

## **Section 40. Termination of the Right of Ownership**

The ownership over land may be terminated by any of the following:

- (1) voluntary renunciation of ownership of the right to land; in this case the land reverts to the Government of Southern Sudan;
- (2) foreclosure of the land at the demand of a creditor;
- (3) land expropriated by Government for public use as mentioned in section 73 of this Act; and
- (4) the right of the Government of Southern Sudan of escheat in case of failure of heirs.

## **CHAPTER VII**

### **LAND ADMINISTRATION AND MANAGEMENT**

## **Section 41. General Principles**

- (1) The regulation of land tenure, usage and exercise of rights over land thereon shall be exercised at the appropriate level of Government in Southern Sudan as stipulated by Article 180(1) of the Constitution.
- (2) The land administration shall be based on the principles of decentralization, participation and transparency for the benefit of all the people of Southern Sudan.
- (3) Prior to any decision related to their lands whether in urban or rural area the land administration shall consult with the communities concerned.
- (4) Without prejudice to the rights of the Government of Southern Sudan on Land, each State Government shall be charged with the management and administration of land within its jurisdiction for the benefit of the people of Southern Sudan in accordance with Schedule (C) of the Constitution and this Act.
- (5) Land in Southern Sudan shall be managed in a uniform and coordinated manner in which the State Government assigns the management responsibilities to Concerned Ministry at the State level, the County Land Authority and the Payam Land Council.

## **Section 42. Government of Southern Sudan Relation to Land**

Without prejudice to the provisions of Schedule (B) of the Constitution, the attributions of the Government of Southern Sudan in relation to land shall be as follows:-

- (1) Land and Natural resources regulation by enacting policy and legislations;
- (2) Intervention in Town and rural planning;
- (3) Development of a master and physical plan for the capital city, define and demarcate its territory;
- (4) Solving disputes arising from the management of interstate waters within Southern Sudan;
- (5) Management of Government of Southern Sudan Lands;
- (6) Resettlement, Rehabilitation and reconstruction;
- (7) Management and exploitation of subterranean resources in coordination with the States including right to prospect and remove any mineral resources as regulated by law;
- (8) Manage and protect historical sites of common interest for Southern Sudan;
- (9) Develop a real property tax system;
- (10) Keep and manage the Land cadastre and registration system in Southern Sudan;
- (11) Undertake systematic registration operation upon request of the State or on its own motion;
- (12) Control and restoration of the environment; and
- (13) Any other function it deems appropriate or as may be conferred upon it by any other law.

## **Section 43. State Government Relation to Land**

Without prejudice to the provisions of Schedule (C) of the Constitution, the attributions of a State Government in Southern Sudan in relation to land shall be as follows:

- (1) Management of State Land and natural resources;
- (2) Management, lease and utilization of State Land;
- (3) Development, conservation and management of state natural resources and forestry resources;
- (4) Quarrying regulation;
- (5) Town and rural planning;
- (6) State cultural and heritage sites;
- (7) State irrigation and embankments;
- (8) Resettlement, rehabilitation and reconstruction;
- (9) Regulation of land tenure, usage and exercise of rights in land;
- (10) Management of the survey office;
- (11) Delimitation of boundaries between community lands;
- (12) Contiguous registration within the state;
- (13) Land zoning and gazetting;
- (14) Land quality evaluation;
- (15) Oversee and coordinate different levels of land administration and management in the State;

- (16) Development and implementation of State physical planning; and;
- (17) Any other function that may be conferred upon it by law.

## **Section 44. The County Land Authority**

There shall be established at the County Level a body to be known as “the County Land Authority” that shall consist of such persons appointed by the Governor in accordance with provisions of section 45 below and the recommendation of the Concerned County Commissioner in the State as the case may be.

## **Section 45. Composition of the County Land Authority**

- (1) the County Land Authority shall consist of the following persons:
  - (a) The Commissioner as Chairperson;
  - (b) One representative from each town and municipal council recommended by the County Commissioner;
  - (c) Representative from the Concerned Ministry to Land appointed by the Minister;
  - (d) Representative of traditional authority in the county recommended by the authority;
  - (e) Representative of Civil Society Group to be appointed by the group; and .
  - (f) one woman representative recommended by County Women Association.
- (2) The tenure of the members of the County Land Authority shall be four (4) years subject to renewal for one additional term.
- (3) At least one of the members of the County Land Authority shall have qualifications and experience on matters pertaining to land.
- (4) The structure and organization of the County Land Authority shall be specified by a State law and regulations.

## **Section 46. Attribution of the County Land Authority**

The County Land Authority shall have the following attributions:

- (1) Hold and allocate public lands vested in it with the approval of the Concerned State Ministry in the State subject to town and municipal planning in the County;
- (2) Make recommendations to the Concerned State Ministry on gazetted land planning;
- (3) Advise the Concerned State Ministry on any matter connected with the resettlement of persons in the County;
- (4) Facilitate the registration and transfer of interest in land;
- (5) Support and assist any cadastral operation and survey in its jurisdiction;
- (6) Assist the Traditional authorities on the exercise of their attributions, and liaise between them and the State Ministry Concerned;

- (7) Advise the local community on issues related to land tenure, usage, and exercise over land rights;
- (8) Chair the consultation process between community and State Government if required;
- (9) Liaise with the Southern Sudan Land Commission;
- (10) Any other function or duty prescribed by this Act, and any other law, rules and regulations.

#### **Section 47. Appeal**

- (1) Any person who is aggrieved by a decision of the County Land Authority may appeal to the Concerned Ministry in the State within a period of one year from the date he or she became aware of such decision.
- (2) The aggrieved party shall have the right to institute court proceedings after dismissal of the appeal by the Concerned Ministry mentioned in sub-section (1) above.

#### **Section 48. The Payam Land Council**

There shall be established at the Payam level a Payam Land Council that shall be responsible for the management and administration of land in the different Bomas composing the Payam.

#### **Section 49. Composition of the Payam Land Council**

- (1) The Payam Land Council shall be composed of the following:
  - a) Payam Administrator as Chairperson
  - b) The Executive Chief of each Boma within the Payam;
  - c) A Representative of Farmers and Herders Association;
  - d) One representative of the Civil Society Group; and
  - e) one woman representative recommended by the Payam women Association and again insert section 49(1) (f) to read:
  - f) such other members as the concerned County Commissioner deems appropriate.

(2) The members of the Council shall be nominated by the concerned Ministry of the State upon recommendation of the Concerned Commissioner after consultation with the Traditional Authority in the Payam.

(3) The tenure of the members of the Council shall be four (4) years renewable for one additional term.

(4) The structure and organization of the Council shall be specified by a State Legislation..

## **Section 50. Functions of the Payam Land Council**

The functions of the Payam Land Council shall be as follows:

- (1) Allocation of public land vested in it with the approval of the Concerned Commissioner;
- (2) Land planning and demarcation;
- (3) Support the registration and transfer of interests in land;
- (4) Protection of customary land rights of communities;
- (5) Assisting Traditional Authorities and Leaders in the management of the community's lands;
- (6) Protection of communal grazing land, forest, wetlands and water resources;
- (7) Dispute resolution through arbitration and mediation on issues related to land;
- (8) Protection of environment;
- (9) Maintenance of standard sanitation and hygiene;
- (10) Liaising with the County Land Authority
- (11) Perform any other function or duty prescribed in any other law or regulations.

## **Section 51. Appeal**

- (1) Any person who is aggrieved by a decision of the Payam Land Council may appeal to the County Land Authority, within a period of one year from the date upon which he or she became aware of such decision.
- (2) The aggrieved party may institute court proceedings, after dismissal of the appeal by the concerned state Ministry, as mentioned in sub-section (1) above.

## **Section 52. Southern Sudan Land Commission**

Without prejudice to the jurisdiction of the Courts, the Southern Sudan Land Commission shall exercise the functions and duties as stipulated in Article 181(1) of ICSS, 2005.

## **CHAPTR VIII REGISTRATION OF LAND RIGHTS**

## **Section 53. General Principles**

- (1) Subject to the principles laid down in this Act, the registration and recording of land shall be regulated by law.
- (2) Land collectively or individually owned in Southern Sudan shall be registered and given a title in accordance with this Act.

(3) Land owned by different levels of government in Southern Sudan shall be registered.

(4) All land in Southern Sudan not registered before the coming into operation of this Act shall be registered in accordance with the provisions of this Act and regulations.

#### **Section 54. Land Registry**

(1) The Land Registry shall be established within the Ministry of Housing, Physical Planning and Environment in the Government of Southern Sudan and shall be decentralized throughout Southern Sudan.

(2) At the State Level, the Concerned Ministry shall keep the Land registry in coordination with the Ministry of Housing, Physical Planning and Environment in the Government of Southern Sudan.

(3) Registration offices shall be established at each level of land administration in Southern Sudan.

#### **Section 55. Initial Registration**

(1) Initial registration shall consist of the opening of a folio in respect of the parcel to be registered and the entry therein:

- a) the name of any person entitled to be registered as owner of the parcel;
- b) the particulars of the plan of the parcel to be identified on the registry map; and
- c) the particulars of all interest as prescribed in the land.

(2) Initial land registration shall be implemented through systematic land registration or/and upon request.

(3) The Concerned Ministry in the State may by order declare any area to be a systematic registration area from such date as may be specified in that order and may at any time by a subsequent order vary the limits of any such area.

(4) Subject to section 42 of this Act, any systematic registration referred to sub-section (3) above shall be carried out by the Ministry of Housing, Physical Planning and Environment of the Government of Southern Sudan upon request of the Concerned Ministry in the State or on its own motion.

## **Section 56. Registration of Encumbrances and Transfers**

- (1) An owner of land, by an instrument in the prescribed form, may transfer his or her land, lease or charge to any person.
- (2) The transfer shall be completed by registration of the transferee as owner of the land, lease or charge.
- (3) A lease for a specified period exceeding two years or a lease which contains an option whereby the lessee may require the lessor to grant him or her a further term which together with the original term, exceeds two years, shall be registered in the prescribed form.
- (4) A transfer of land ownership or any charge through inheritance shall be made in writing and registered in the closest registration office.

## **Section 57. Certificate of Title**

- (1) The registration office shall, if requested by any owner of land registered under this Act or the holder of a lease of such land, issue to him or her a certificate of title or a certificate of lease, as the case may be, in the prescribed form showing all entries in the Register affecting that land or lease subsisting at the date of issuance of the certificate.
- (2) A certificate issued under this section shall be evidence of the matters shown therein as at the date of issuance of such certificate.
- (3) A certificate of title issued under subsection (2) above, shall contain:
  - a) a unique parcel reference number and location of the parcel;
  - b) reference to the parent folio in the register;
  - c) the date of issuance;
  - d) the name of the person to be registered and the nature of the interest in or the extent of the title to land to which the certificate relates;
  - e) a schedule of and the order of priority of all current encumbrances, charges, restrictions, conditions and other interests whether benefiting or burdening the land to which the certificate of title relates; and
  - f) any other relevant and necessary information.

## **Section 58. Community Land Registration**

- (1) Upon demarcation, the title relating to community land or other deeds registered in respect of such land shall be endorsed by the registration office in the prescribed form.

- (2) Community land may be registered in the name of the following:
- a) a community;
  - b) a clan or a family in accordance with the customary practices applicable;
  - c) a community association in accordance with the document constituting the association; or
  - d) a traditional leader in trust for the community and with the consent of the members of the community.
- (3) Individual members of a specific community may be entitled to request individual registration after the particular plot of land has been partitioned from the relevant community.
- (4) Such partition referred to in subsection (3) above, shall be operated in respect to custom and practices of the community.

## **Section 59. Community Land Enquiry**

- (1) Prior to registration of community land rights, the representatives of the Land Registration Office may conduct an enquiry.
- (2) The matters enquired into shall be recorded and preserved in the registration office as evidence of the intention of the parties in the process of registration.
- (3) The land enquiry shall include but not limited to the following:
- (a) the nature and extent of competing rights, interests, and tenure of land;
  - (b) the option available for legally secured rights;
  - (c) the provision of access to land on equitable basis;
  - (d) special planning, land use management and land development plan;
  - (e) demarcation of land and easement over the community land;
  - (f) the purpose for which the community purports to use the land in question; and
  - (g) any other reason prescribed by this Act or regulations.

## **Section 60. Effect of Registration**

The registration of any person or any community, as owner, with title over land shall vest in that person or community the ownership of that land or piece of land together with all rights and privileges belonging or appurtenant thereto, free from any other interests and claims but subject to:-

- (1) leases, charges and other encumbrances, and to the conditions and restrictions, if any, shown in the register; and
- (2) such liabilities, rights and interests as affected by the same and are declared by easements under section 28 of this Act, unless the contrary is expressed in the register;
  - a) *Provided that:* nothing in this section shall be taken to relieve any owner from any duty or obligation to which he or she is subject to as a trustee; and
  - b) the registration of any person or community as owners under this Act shall not confer upon that person or Community any exclusive right to any subterranean

resource in accordance with the Constitution and the law.

## **CHAPTER IX** **ACQUISITION OF LAND FOR INVESTMENT PURPOSES**

### **Section 61. General Principles**

- (1) Any citizen and non-citizen may have access to land in Southern Sudan for investment purposes in accordance with the provisions of this Act or any other law.
- (2) In accordance with the provisions of the Investment Act, 2008, land may be delineated into zones within every State in Southern Sudan based on a comprehensive Land Use Plan, which shall be vested in the Southern Sudan Investment Authority in order to encourage private investment.
- (3) Pursuant to the provisions of sub-section (2) above, the Government of Southern Sudan and any State Government may adopt a land zoning system in consultation with the community concerned in Southern Sudan in compliance with the existing Land Use Plan.

### **Section 62. Prerequisite for access to land**

Any person or company applying for a plot of land for investment purposes shall provide the following information:

- (1) general nature of activities;
- (2) duration of the period of investment;
- (3) Certificate of investment;
- (4) nationality of the investor;
- (5) geographical area of interest;
- (6) financial Guarantees; and
- (7) environmental guarantees.

### **Section 63. Community Interest**

- (1) The activity to be carried out by the investor shall reflect an important interest for the community or people living in the locality.
- (2) It shall contribute economically and socially to the development of the local community.
- (3) The Concerned Ministries in the Government of Southern Sudan and the State and the Investment Authority shall consult with the Community concerned on any decision related to the land that the investor intends to acquire and the view of the Community shall duly be taken into consideration.

## **Section 64. Compensation for the Community**

Notwithstanding the provisions of section 72 of this Act, any community or persons affected by such activities in the area of investment shall be compensated in accordance with the provisions of section 75 of this Act and Article 180(7) of the Constitution.

## **Section 65. Termination of Activities**

- (1) The Governor of a State may after consultation with the Investment Authority; the relevant Ministry in the Government of Southern Sudan and the local community concerned and in accordance with the provisions of the Investment Promotion Act, 2009, terminate any economic activities over land for the following reasons:
  - a) non-respect of the Plan of investment ; or/and
  - b) violation of laws and regulations related to land and investment which negatively affect the objective of the investment.
- (2) Where such a violation causes losses of income or property to individuals or to the entire community, compensation shall be paid.
- (3) Any investor who is not satisfied with the decision taken in accordance with the provisions of sub-section (1) above, may appeal against such a decision before a competent Court.

## **CHAPTER X**

### **PASTORAL LANDS**

## **Section 66. Protection of Pastoral Lands**

- (1) Without prejudice to the provisions of section 61 of this Act, pastoral lands in Southern Sudan shall be delineated and protected by the appropriate level of land administration and management based on a comprehensive land use planning system.
- (2) Customs and practices related to land used by pastoral communities shall be taken into consideration as long as they comply with the provisions of this Act and any other applicable law.

## **Section 67. Communal Grazing Land**

Subject to the provisions of section 61 of this Act, no person shall without permission:

- (1) obstruct the approaches to any water point in the communal grazing land or to

- other appurtenances installed or constructed at such a watering place; or
- (2) carry out any activity on the communal grazing land which may prevent or restrict the residents of the traditional communities concerned from exercising their grazing rights; and
- (3) any other measure that the community land users find appropriate to take in order to protect such an area.

## **Section 68. Penalties**

Any person who contravenes the provisions of section 67 above shall on conviction be guilty of an offense and shall be liable to imprisonment for a term not exceeding two years or with fine or both.

# **CHAPTER XI**

## **LAND USE, SOCIAL AND ENVIRONMENTAL PRESERVATION**

## **Section 69. Protection of Land**

Individuals, communities and organizations shall protect land in order to keep it in a productive condition in which problems such as land degradation will be adequately managed in accordance with the provisions of Article 44 of the Constitution.

## **Section 70. Environmental, Economic and Social Impact Assessment**

- (1) Any allocation of land for investment purposes shall be subject to a social, economic and environmental impact assessment to ensure that the social, economic and environmental implications of the activities on the land are taken into account before any decision is made thereon.
- (2) The process shall involve an analysis of the possible effects on the environment, biodiversities, people and assets.
- (3) A social, economic and environmental impact assessment shall be undertaken by both public and private sectors prior to any activities that may have impact on the environment and the people as determined by law, this Act or any other law or regulations.

## **Section 71. Environmental Restoration**

- (1) The Government of Southern Sudan, State Government, Local Community, any individual or organization shall restore the land which has been degraded due to economic activities or misuse.
- (2) Where the misuse of land endangers the population or nature, the authority concerned may requisite the rights of occupancy of people living in the area after

consultation and subject to relocation and/or compensation as mentioned in section 75 of this Act.

## **Section 72. Resettlement Plan**

(1) The Government of Southern Sudan, State Government or private company shall proceed with a resettlement plan for the communities affected by an expropriation plan described in Chapter XII of this Act or by any investment activity.

(2) Internally displaced persons shall be consulted and shall have opportunities to participate in planning and implementing resettlement programs.

(3) In addition to the provisions of section 75 of this Act, the Government of Southern Sudan, State Government and private companies shall assist internally displaced persons and returnees in their efforts to improve their livelihood.

## **CHAPTER XII EXPROPRIATION OF LAND FOR PUBLIC INTERESTS**

### **Section 73. Reasons for Expropriation of Land for Public Interests**

(1) The Government of Southern Sudan, State Governments and any other Public Authority may expropriate land for public purposes subject to compensation and upon agreement as prescribed by this Act or any other law.

(2) Without prejudice to the provisions of Schedule (B) of the Constitution, the Ministry of Housing, Land and Public Utilities in consultation with the duly constituted committee as provided for in section 76 of this Act, shall carry out any expropriation plan initiated by the Government of Southern Sudan in coordination with the State Government.

(3) Without prejudice to the provisions of Schedule (C) of the Constitution, the Concerned Ministry in the State shall in consultation with the duly constituted committee as provided for in section 76 of this Act carry out any expropriation plan initiated by the State Government.

(4) Subject to the provisions of sub-section (3) above, municipality and town council as the case may be, shall coordinate with the Concerned Ministry in the State where an expropriation is required for the conduct of their activities within their jurisdiction.

(5) For the purpose of this section, public interest includes but not limited to:

- a) exclusive for government or general public use;
- b) planning of any new Government area or the extension or improvement of any existing Government premises;
- c) sanitary improvements and urban development;
- d) social housing, resettlement and reintegration;

- e) control over land contiguous to any port, airstrip or airport;
- f) control over land required for defense purposes;
- g) control over land whose values enhanced by the construction of any railway, road, or public works about to be undertaken or provided by the Government; and
- h) any other activity with a public purpose undertaken by the government as specified by any other law.

## **Section 74. Procedure for Expropriation**

- (1) The procedure for expropriation shall be based on a consultative process with the communities or individuals concerned prior to conception of the plan of expropriation.
- (2) A public hearing may be carried out before expropriation for public purposes for large scale development.
- (3) The history of the acquisition of the ownership shall be considered, whether community, individual or private.
- (4) The plan of expropriation shall lay out:
  - a) a description of the land to be expropriated;
  - b) the nature of the interest intended to be expropriated and whether the interest is intended to be subject to any existing interest in the land;
  - c) an indication of the public purposes for which the interest is required; and
  - d) a statement of the reasons of expropriation by the Public Authority as provided for in this section.
- (5) Subject to the provisions of sub-section (1) above , any concerned Minister ascribed in section 73 of this Act shall serve a notice containing the information referred to sub-section (4) above on the owner of the land likely to be expropriated and on the owner of any land that may be affected by the expropriation plan.
- (6) Such a notice shall also be made available to the public and published in the newspapers and any other media which can inform people about the expropriation plan.

## **Section 75. Compensation**

- (1) The compensation shall be just, equitable, and shall take into account the following factors:
  - a) the purpose for which the land is being utilized;
  - b) the land market value; and
  - c) the value of the investment in it by those affected and their interest.
- (2) The compensation shall be in cash or in kind or both according to the agreement.

(3) Where any land expropriated for public purpose is necessary to remove any person therefrom in customary occupation, compensation shall be paid as may be agreed upon.

(4) Where any land expropriated for public purpose is the subject of a lease under this Act, compensation shall be paid to the lessee as may be agreed upon.

(5) No transfer of ownership or rights over land shall be made until the type, amount, method and timing of the payment of compensation has been agreed upon with those affected.

(6) Subject to the provisions of sub-section (1) herein, if no agreement is reached in the compensation modalities, the case may be determined by the Southern Sudan Land Commission ascribed in section 52 of this Act.

(7) Where payment of compensation is not made within sixty days of transfer of the property, the affected persons shall, in addition, receive interest on the sum due at commercial rates, recoverable until such compensation is fully paid.

## **Section 76. Compensation Committee**

The amount of compensation shall be determined by a Committee where the expropriation is effected and this shall be composed of:

- (1) representative of the Concerned Ministries in the Government of Southern Sudan;
- (2) representative of the Investment Authority;
- (3) representative of the Concerned Ministries at the State Level;
- (4) the concerned County Commissioner;
- (5) representatives of the community concerned or affected; and
- (6) representative of the County Land Authority or Payam Land Council, as the case may be.

## **Section 77. Court Proceedings**

Any person affected by the plan of expropriation, without consequent compensation, may resort to court proceedings for compensation and any other consequence deriving from the expropriation.

## **CHAPTER XIII** **LAND RIGHTS RESTITUTION AND COMPENSATION**

### **Section 78. General Principles**

- (1) A person may be entitled to restitution of a right in land if he or she lost her or his right after an involuntary displacement as a result of the civil war starting from May 16, 1983.
- (2) The restitution may be done regardless of whether the right in land referred to was taken over by an individual or the government.
- (3) In addition to the primary owner of the land, subsidiary parties such as family members at the time of the displacement, spouses and legal heirs and any other person having interest in the land, shall have their rights recognized in restitution.
- (4) Any claimant shall have the right to submit a request to regain the rights in this section within 3 years from the date of commencement of this Act.
- (5) Claims shall be addressed on a case by case basis following the principle set out in sub-section (1) above.

### **Section 79. Filing of Claims**

- (1) Traditional procedures and customary law and practices within communities dealing with restitution claims are legally recognized as long as they comply with equity, natural justice, morality and public order.
- (2) Traditional authority and any designated community representative may receive land restitution claims from members of the community or people from outside of the community.
- (3) Without prejudice to the attribution of the courts and subsection(2 ) above, any person who is of opinion that he or she is entitled to claim restitution of a right in land may file such claim to the Southern Sudan Land Commission ascribed in section 52 of this Act.
- (4) The claim shall include, on the form prescribed by the Commission, the description of the land in question and any improvement carried out, and the nature of the right being claimed.
- (5) The Commission shall establish branch offices in the States of Southern Sudan.

(6) The Commission may, through a member or members of the Commission or any other person duly authorized thereto, carry out the following activities:-

- (a) conduct an investigation
- (b) demand from any person including any government department such particulars, documents and information as may be necessary for carrying out any investigation;
- (c) by notice in writing, addressed and delivered to any person, directing such person, in relation to an investigation, to appear before a member of the Commission and to produce all documents or objects in the possession or custody or under the control of such person and which are relevant to that investigation.

(7) Subject to the provisions of Article 181 of the Constitution, the parties to the land restitution claim shall be bound by the decision of the Commission on the basis of mutual consent and upon registration of the award in a court of law.

(8) The Commission shall apply the law of the locality where the restitution claim takes place, whether customary or statutory law agreed upon by the parties.

(9) Where an agreement is not reached between parties to a restitution claim before the Commission, the parties may refer the matter therein to a court of law.

## **Section 80. Compensation**

(1) If the party claiming restitution to his or her right could not be restituted for some obvious reasons as the Commission finds appropriate, he or she may request the Commission or the court, as the case may be, to be awarded compensation instead.

(2) The compensation may either be in cash, or in kind, or both as the party to the dispute and the Commission deem appropriate.

## **Section 81. Evidence**

(1) Subject to the provisions of section 39 of this Act, in the proceedings of restitution claims, priority shall be given to written evidence in order to prove the rights of any claimant in land.

(2) Notwithstanding the provisions of sub-section (1) above, oral evidence such as testimony and any other forms of evidence conforming to public order may be used to prove ownership or other rights in land.

## **Section 82. Statute of Limitation**

(1) Any person who in good faith occupied a land belonging to another person or group of persons may not be deprived of the right therein without compensation.

- (2) Without prejudice to the provisions of sub-section (1) above, claims based on good faith shall be addressed on a case by case basis.
- (3) Where restitution is requested in sub-section (1) above, the defendant and the plaintiff may agree upon a full compensation for any improvement done or building erected thereon based on the market value.
- (4) Any person who unlawfully occupies a piece of land for 30 years without interruption in an urban area, from May 16,1983 shall be granted legal title or rights thereon.
- (5) Where the land is used for public purposes, restitution action may not be applicable.
- (6) Subject to the provisions of sub-section (5) above, the claimant shall be entitled to compensation in accordance with the provisions of section 75 of this Act.

### **Section 83. Mitigation Measures**

The Government of Southern Sudan or a State Government may acquire land for people who lost their right in land because of an acquisitive prescription action or for any other reasons as effects of the civil war.

## **CHAPTER XIV UNAUTHORIZED OCCUPANCY**

### **Section 84. Unlawful Occupancy**

- (1) Proceedings for eviction may be instituted against any person who unlawfully occupied a piece of land in contravention of the provisions of this Act or any other law.
- (2) For the purpose of this section, any person who settles or occupies a land without a customary or legal title or without the express consent of the owner or person legally in charge of the said land before the commencement of this Act, shall be considered an unlawful occupant.
- (3) Any public authority or person who owns or holds land may institute proceedings for the eviction of an unlawful occupant.
- (4) An unlawful occupant as defined in subsection (2) shall be evicted from land by a court order.
- (5) Without prejudice to the provisions of sub-sections (2) and (3) above, any person who unlawfully occupies a piece of land after the enactment of this Act shall be given an unconditional notice of seven days to vacate the land so illegally occupied.

## **Section 85. Notice of Eviction**

- (1) Any public authority, owner or person having right of ownership over land who intends to evict an unlawful occupier shall give him or her not less than one calendar month written notice of the intention to file an order of eviction.
- (2) The notice shall determine a suitable date, time and circumstances on which such occupant shall vacate the land.
- (3) The notice referred to in subsection (1) herein, shall contain the grounds on which such intended eviction is based.

## **Section 86. Eviction Order**

- (1) The court may grant an order of eviction if it deems it just and equitable to do so after considering all the relevant circumstances.
- (2) The order of eviction shall determine:
  - a) a just and equitable date on which the unlawful occupier shall vacate the land; and
  - b) the date on which an eviction order may be executed if the unlawful occupant did not vacate the land on the date contemplated in paragraph (a) above.
- (3) The court may permit the unlawful occupant to:-
  - a) demolish such structures and improvements as were erected and to remove any materials salvaged or recovered therefrom; and
  - b) tend a crop to which he or she is entitled until it is ripe and thereafter reap and harvest it.
- (4) Any order of eviction shall be executed in the presence of a duly authorized law enforcement officer.

## **Section 87. Alternative Resettlement**

Where the eviction is initiated by a public authority against an unlawful occupant ascribed in section 84 (2) of this Act, minimum standard alternative resettlement conditions may be provided by the authorities.

## **Section 88. Appeal**

- (1) Any person, or persons, or community that is aggrieved by the decision of the court of first instance shall have the right to appeal to a higher court as prescribed by law.
- (2) The court shall have jurisdiction to hear any appeal against such decision or order before execution.

## **Section 89. Bona fide Occupancy**

- (1) Notwithstanding the provisions of section 90 below, a person may not be considered an unlawful occupant if that person in good faith occupied or infringed the rights of others, unless such an act is due to a mistake that no reasonable person would have made.
- (2) Without prejudice to the provisions of sub-section (1) above, claims based on good faith shall be addressed on a case by case basis.
- (3) Subject to the provisions of subsection (1) above, the occupier in good faith may be compensated by the person evicting for any improvement and enhancement brought into the value of the land prior to eviction.

## **Section 90. Irregular Allocation**

- (1) Any allocation of land that is initially available for allocation but in circumstances where the administrative procedures were not observed, shall be considered an irregular allocation under this Act.
- (2) An irregular allocation of land may be nullified by a court upon request of a public authority or a private individual with an interest, provided that the application is made within one year after the applicant knew or should have known of the irregular nature of the allocation.
- (3) Any attempt to allocate land that is not available for allocation or allocating it in contravention of the regulations shall be considered an abuse of office under this Act and shall be punished by law.

## **CHAPTER XV LAND DISPUTES SETTLEMENT**

## **Section 91. Disputes Resolution Mechanisms**

- (1) In resolving disputes related to land, priority shall be given to:

- a) alternative dispute resolution which includes dispute resolution processes and mechanisms that fall outside the government judicial process; and
  - b) traditional dispute resolution mechanisms.
- (2) Customary law and practice of the locality shall apply to resolve disputes related to land.

## **Section 92. Mediation**

- (1) Where a dispute related to land occurs, the parties may agree to use mediation to resolve the dispute.
- (2) The mediator shall be designated upon request by the parties from amongst members of the County Land Authority, the Payam Land Council or Traditional Authority depending on the area where the conflict occurs.
- (3) The mediation shall take place in a private or in informal settings where the parties participate in the negotiation and design of the format of the settlement agreement.

## **Section 93. Functions of the Mediator**

- (1) The mediator shall have the power to bring together persons to a dispute and settle the dispute through the following functions:
  - (a) convene meetings for hearing of disputes from parties and keep record of the minutes;
  - (b) establish ground rules for the conduct of the parties;
  - (c) structure and manage the negotiation process and help clarify facts and issues; and
  - (d) help the parties to generate options to resolve their dispute.
- (2) The mediator shall ensure that the discussion remains focused, organized and dignified.
- (3) The mediator shall not have the power to make decisions about the case or impose a resolution.

## **Section 94. Rights of Parties to Arbitration**

- (1) Parties to a dispute may apply for arbitration to the County Land Authority, the Payam Land Council or Traditional Authority depending on the area where the conflict occurred.
- (2) An Arbitration committee shall be appointed and given powers to arbitrate without prejudice to the provisions of the Civil Procedure Act, 2007.

## **Section 95. Powers of the Arbitration Committee**

The arbitration committee shall have power to:

- (1) summon witnesses;
- (2) take evidence upon oath or affirmation; and
- (3) require the production of any documents deemed necessary for the arbitration.

## **Section 96. Awards**

- (1) The parties shall be bound by the award delivered by the arbitration committee subject to their mutual consent.
- (2) The parties may appeal against the decision of the Committee referred to in section 95 above, before the Commission.

## **Section 97. Fees**

- (1) The Commission and the appropriate land authority in the locality shall institute a fair and reasonable fee system after consultation with the Minister of Finance and Economic Planning of the Government or the State, as the case may be.
- (2) Where the arbitration process incurred some expenses, the parties shall proportionally pay the expenses related to the resolution of the dispute.

## **Section 98. Litigation**

- (1) Parties to a land dispute may institute court proceedings in accordance with provisions of Article 24 of the Constitution.
- (2) Rules and principles of litigation shall be regulated in accordance with the provisions of the Civil Procedure Act, 2007.

## **Section 99. Land Court Proceedings**

- (1) Subject to the provisions of Article 127(e) of the Constitution, there shall be established a Land Division in the High Court in every State consisting of a Judge and two assessors.
- (2) One assessor shall be representative of the Traditional authority and possessing a good knowledge of customary law and practices related to land.
- (3) The High Court shall have the following functions:
  - (a) Land dispute resolution;
  - (b) Registration of Awards;
  - (c) Litigation related to expropriation for public purposes and compensation; and
  - (d) any other attribution conferred upon it by this Act or any other law or regulations.

- (4) Parties to a conflict related to land may petition the High Court to resolve the issue in question and may peruse their appeal, if any, to the higher Courts.
- (5) Any person who contravenes the provisions of this Act shall be punished as prescribed by law.

## **CHAPTER XVI** **MISCELLANEOUS PROVISIONS**

### **Section 100. Fees**

The Southern Sudan Land Commission shall determine the fees and charges in consultation with the Minister of Finance and Economic Planning and the Ministries concerned in the State.

### **Section 101. Rules and Regulations**

The Southern Sudan Land Commission shall issue rules and regulations for efficient and effective implementation of the provisions of this Act.