The Copyright and Neighbouring Rights Protection Act 1996*

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Part I
Preliminary Provisions

Title and Commencement

1. This Act may be cited as the Copyright and Neighbouring Rights Protection Act Added by 1996 and it shall come into force upon signature.

Repeal and Saving

2. The Copyright Protection Act 1974 is hereby repealed but all regulations, orders and rules made under it shall remain in force until amended or repealed in accordance with the provisions of this Act.

Interpretation

3. In this Act, unless the context requires otherwise:

"Adaptation" means such acts as conversion of a novel into a dramatic work and vice versa; in relation to computer programs it means making of a version whether or not in the language, code or notation distinct from the original version.

"Broadcasting organization" means the legal entity which takes the initiative, organizes, finances and effects the act of broadcasting.

"Broadcast" means transmission by wireless means of sounds or images or both.

"Computer program" means a set of instructions expressed in any language, code or notation, with or without related information, intended to cause the device having an information processing capacity to indicate, perform or achieve a particular function, task or result.

"Data bank" means an electronic body of data processed and systematized with the aid of a computer for storage and retrieval purposes.

"Fixation" means the embodiment of sounds, images or both in material form sufficiently stable or permanent to permit them to be perceived, reproduced or otherwise communicated during a period of more than transitory duration.

"Sound recording" means any exclusively aural fixation of sounds of a performance or other sounds in a material carrier such as tape, disc, etc.

"Copyright" means all or any of the rights mentioned in section 8 of the Act and includes other similar rights.

"Neighbouring rights" means rights of performers, producers and broadcasting organizations (radio and television).

"Performer" means actor, singer, musician, dancer or any other person who acts, sings, delivers, declaims, recites, plays or otherwise performs literary or artistic works, including puppet show, variety and circus artists.

"Rules" means the copyright registration rules issued by the Minister in accordance with the provisions of this Act.

"Cable" means a material carrier of sounds or images or both such as coaxial cable, optical fiber or similar carrier.

"Registrar" means any person appointed by the Minister to supervise over the register of works and contracts for transfer of rights and the execution of such duties as may be assigned to him by the Minister in accordance with the provisions of this Act.

"Producer" means the person or legal entity who has taken the initiative to organize and finance production of an audiovisual work or sound recording.

"The Minister" means the Minister of Culture and Information.

"Author" means any physical person who created the work and under whose name the work has been published by any means known or to be invented in future unless there is proof to the contrary.

"Work" means any work whether literary, theatrical, musical, singing, any portrait or decoration, sculpture, design drawing, engraving, picture, recorded tape, phonogram, song or cinema film which has not been published before and which has been registered in accordance with provisions of this Act.

"Communication to the public" means the operation by which sounds or images or both are transmitted by wire or other material carrier for reception by the public.

"Publication" means lawful reproduction of a work or of an audiovisual or sound recording in any material form and distribution of copies thereof to the general public by sale or otherwise.

"Official documents" means the official documents issued by the State or its institution, corporation or unit and which, by virtue of their specialization, are issued for publication to the public, including laws, Presidential or administrative orders, international agreements and judicial judgments, but not including military documents, secret agreements and deliberations of secret sessions in courts or legislative bodies.

"Corporation" means the National Corporation for Culture and Arts.

Application of the Act

4.—(1) Subject to the provisions of Part IV, the protection prescribed by this Act shall extend to:

(a) works of Sudanese authors or of aliens which are published or otherwise made available to the public for first time in the Sudan;

(b) works of Sudanese nationals which are published or made available to the public in a foreign country;

(c) unpublished works of Sudanese authors or aliens domiciled in the Sudan;

(d) joint works if at least one of the co-authors is a Sudanese national;

(e) Sudanese performers and their performances effected, recorded, broadcast or communicated to the public in the Sudan or a foreign country;

(f) Sudanese producers of audiovisual and sound recordings first published in the Sudan;

(g) Sudanese broadcasting organizations having their headquarters on the territory of the Sudan and broadcasting with the aid of transmitters located on the territory of the Sudan.

(h) works performances, audiovisual and sound recordings, and broadcasts which are created or made available to the public;

(i) works which are created or made available to the public.

(2) The Director of the Corporation may by order made by him after consultation with the Registrar extend the protection prescribed by this Act to such works, performances, audiovisual and sound recordings, and broadcasts of foreign authors and other beneficiaries which are published or made available to the public in a foreign country on the basis of reciprocal treatment or by virtue of international instruments to which the Sudan may become a party.

Part II
Scope of Copyright Protection

Works Covered by the Protection

5.—(1) Subject to the provisions of Part IV of this Act, the protection prescribed by this Act shall without fulfillment of any formality apply to any original intellectual work in the field of literature, science and arts whatever the manner of expression, value or object of such work is and such works shall in particular include:

(a) written works such as books, magazines, periodicals, articles and works of like nature;

(b) works of fine arts whether sculpture, drawing, painting, decoration, works of applied art, works of artistic craftsmanship and works of like nature;

(c) dramatic and dramatic-musical works, musical works with or without lyrics, musical and dancing plays, and shows which are performed by movements or steps;

(d) audiovisual works;

(e) photographic works;

(f) works of architecture;

(g) computer programs;

(h) electronic data banks;

(i) all kinds of maps and sketches relative to geography, topography or science;

(j) other works known or unknown.

(2) Without prejudice to the protection of the original works, the protection granted under this Act shall also extend to derivative works, such as:

(a) translations, adaptations, arrangements and transformations of original works;

(b) collections of protected works or of non-protected materials, provided that by reason of the selection and arrangement of their content they constitute the result of original intellectual effort.

Works Not Covered by the Protection

6. The protection prescribed by this Act shall not extend to:

(a) works which have fallen into the public domain;

(b) official documents;

(c) daily news or occurrences of like nature published in newspapers, magazines or other periodicals or broadcast by radio or television;

(d) ideas, methods, state emblems and symbols.

7. National folklore of the Sudanese community is deemed to be the property of the State.

(2) The State represented by the Ministry of Culture and Information, shall endeavor to protect works of folklore by all legal ways and means, and shall exercise the rights of an author in cases of mutilation, transformation and commercial exploitation.

The Copyright

8. The author of work shall have the following moral and economic rights:

(1) The moral rights:

(a) to disclose the work to the public;

(b) to claim authorship of his work and attribution of his name each time the work is used;

(c) to publish or otherwise make available his work to the public under his true name, pseudonym or anonymously;

(d) to object to any distortion or mutilation of his work or its derivative;

(e) to withdraw the work from circulation if it does not anymore reflect or correspond to his intellectual concepts, provided that he indemnifies the parties concerned for any damage caused by this act.

(2) The economic rights or the rights to authorize:

(a) publication and reproduction of his work by any means, known or to be developed, and its distribution to the public by sale, lease or lending on a commercial basis;

(b) public performance of the work;

(c) broadcasting of the work, including through the communication and direct broadcasting satellites;

(d) communication of the work to the public by wire including cable, optical fiber and other material carriers;

(e) translation of the work into other languages;

(f) adaptation, arrangement or transformation of the work;

(g) exhibition or display of the work in public, and authorizing any other acts of commercial exploitation of the work by existing means to be developed.

Part III
Ownership of Copyright

9. The rights prescribed in section 8 of this Act shall be vested, in the first instance, in the physical person or persons who created the work.

Author's Name

10. Where a work does not carry the name of an author or carries an unknown pseudonym or is published anonymously, the publisher shall be deemed the owner of economic rights of the author for the purposes of exercising these rights until the author reveals his identity.

Joint Works

11.—(1) Where several persons participate in the creation of a work and it is impossible to distinguish the contribution of anyone of them, all such persons shall be

considered equally joint owners of such work and no one of such persons shall exercise copyright prescribed by this Act unless there is a written agreement to the contrary.

(2) Where several persons participate in the creation of a work so that the contribution of each of them in the whole work is distinguishable, each of such persons shall have the right to exploit the part created by him, provided that the exploitation of such part shall not prejudice the exploitation of the whole work, and any anyone of such persons may exercise the copyright prescribed by this Act, without prejudice to the rights of the other partner or partners in the profits.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, where one of the co-authors refuses to complete his part in the joint work, this shall not preclude other co-authors from exploiting the part made by him without prejudice to the rights accruing to the co-author consequent to his participation in the creation of such work.

(4) The physical person or legal entity who has taken the initiative and financial responsibility for the creation of a collective work, such as encyclopedia, dictionary and the like, shall own the economic rights in such work.

Cinematograhic and Analogous Work

12.—(1) In the case of cinematographer or other audiovisual work, the moral rights mentioned in section 8(1) shall belong jointly to the creators of such works: the director, the author of the scenario, the author of the musical work and of the artistic work specially created for such work.

(2) The maker or the producer of a cinematographic or other audiovisual work shall be obliged to conclude, prior to the making of the work, contracts in writing with all the persons whose works are to be used in the making of audiovisual work. Unless stipulated otherwise in the contract, the economic rights of the author shall be considered as transferred to the maker or producer of the work. However, the author of the musical work shall retain the right to authorize its public performance, broadcasting and communication to the public.

(3) The authors of a cinematographic or other audiovisual work shall be free, after expiry of a term to be stipulated in the contract with the maker or the producer of the work, to dispose of their respective contributions.

Duration of Author's Protection

13.—(1) The protection of moral rights mentioned in section 8(1) shall be during the life of the author.

(2) The protection of economic rights in a work shall last during the author's life and 50 years after his death.

(3) The term of protection shall last 25 years from the date of publication of the following works:

(a) photographic pictures and cinematographic films and other audiovisual works;

(b) works which are published for the first time after the author's death; where the work consists of several parts or volumes so that each part or volume shall be published separately or at different dates, each part or volume shall be considered to be an independent work for the purpose of calculating the term of protection;

(c) works published under unknown pseudonym or anonymously; the term shall start to run from the date of first publication regardless of any re-publication unless the author has made substantial alterations on his work so that it may be regarded as a new work.

(4) In relation to a joint work the period shall start to run from the date of death of the last surviving author.

Restrictions on Copyright

14.—(1) Notwithstanding the provisions of section 8(2) newspapers, magazines, periodicals, radio and television may:

(a) publish a quotation, summary or brief announcement from a work for the purposes of analysis, study, culture or information;

(b) reproduce essays or lectures or speeches concerning political, economic, scientific, religious or social discussions which were the focus of public opinion at the time such discussions were made;

(c) publish or convey any photograph taken on the occasion of a public event or a photograph concerning an official or famous person; in all such cases the title of the work reproduced and the name of its author shall be mentioned.

(2) Musical bands belonging to the People's Armed Forces, the Police, the People's Local Government Councils and school theatres may play, act perform or exhibit any work after the publication thereof, provided that no money consideration shall be made therefrom.

(3) In connection with publication of school textbooks or books prepared for educational purposes or books of history, literature or art, it shall be allowed:

(a) to make short quotations from works already published;

(b) to reproduce any published drawing, photograph, design, inscription or map provided that such reproduction is restricted to what is necessary for the purpose of illustrating the written text;

(c) In cases *(a)* and *(b)*, the title of the work reproduced and the name of its author shall be mentioned.

(4) It shall be allowed to reproduce, translate or adapt a published work for personal and private use but this shall not apply to computer programs, data banks and scores of a musical work.

(5) Public libraries and archives services shall be authorized to reproduce a published work for their internal purposes such as restoration of damaged copies or replacement of lost copies or of a manuscript and the same shall apply to inter-library or inter-archive exchange.

(6) Educational institutions shall be authorized to reproduce short works, articles or short part of a published work as well as to incorporate them in the school broadcasts or sound recordings for the non-commercial purpose of illustrating in the teaching process.

(7) Private commercial research institutions shall be authorized to reproduce scientific articles, short scientific works or short parts thereof exclusively for internal purposes to satisfy the requirements of persons studying or carrying out research work.

(8) It shall be permissible to reproduce a published work for the purpose of judicial proceedings to the extent justified by this purpose.

(9) Broadcasting organizations shall be authorized to make with the aid of their own equipment ephemeral recordings of works for their broadcasting purposes; such recordings shall be destroyed within six months after their making but a copy of such recordings may be kept in official archives for documentary purposes.

(10) The persons who legally acquire a copy of a computer program or of an electronic data bank shall be authorized to adapt them for the purposes for which these works have been acquired as well as to make back-up copies thereof exclusively for the purpose of safeguarding the acquired originals.

Part IV
Transfer of Ownership of Copyright

Transfer of Moral and Financial Rights

15.—(1) Moral and financial rights of an author are imprescriptible.

(2) The author may transfer to any person all or any of his moral and economic rights, provided that such transfer shall not be valid unless it is made in writing and signed by the owner of the rights or his agent and is registered in the Registrar's Office; such transfer shall contain expressly and with all the necessary details the right transferred, the period and place of its exploitation, the amount of the author's remuneration and such other conditions as may be necessary for the better execution of copyright ownership.

Use of Copyright

16.—(1) The users shall be obliged to exploit the work in full conformity with the terms and conditions laid down in the contract of transfer of copyright. The author shall refrain from doing any act which is likely to hinder the use of the right transferred; nevertheless the author may, with the consent of the person to whom the right has been transferred, stop his work from been circulated or make any alteration, deletion or addition

therein. In the event of disagreement between the parties, the author shall be obliged to pay fair compensation to the other party as the court may decide.

(2) Transfer of author's economic rights in future works is null and void.

(3) Author's authorization to use his work may be granted on exclusive or non-exclusive basis.

(4) Transfer of an exclusive right to a user entitles him to use the work to the exclusion of all persons, including the author himself, and to grant non-exclusive rights to other persons.

(5) Transfer of a non-exclusive right to a user shall entitle him to use the work concurrently with the author in the manner mentioned in the contract.

Publishing Contract

17.—(1) A publishing contract is a written agreement between the author and a publisher with regard to publication of a given work and its distribution to the public upon payment of a remuneration to the author.

(2) A publishing contract shall specify, in addition to other conditions, the conditions specified in the rules.

Public Performance Contract

18.—(1) By virtue of a public performance contract, the author transfers to a natural person or legal entity the right to perform his work in public against remuneration.

(2) A publishing contract shall specify, in addition to other conditions, the conditions specified in the rules.

Vesting of Ownership of Copyright on Author's Death

19.—(1) On the death of the author his right, except to a share in a work, shall vest in his heirs unless the author named other persons or organizations for this purpose in his will.

(2) Author's economic rights shall be owned by his heirs and such other persons as may be mentioned in the author's will, provided that:

(a) where the author has entered into a written contract with a third party in relation to the use of his work, such contract shall be executed in accordance with the provisions contained therein;

(b) where the deceased author in his will, prohibits publication or fixes a date thereof, such will shall be executed to that extent.

(3) In the case of a joint work, where one of the co-author's dies leaving no heirs his share shall vest in the State unless there is a written agreement to the contrary.

(4) Transfer of the material object of a work shall not imply transfer of economic rights to the owner or such object unless stipulated otherwise in the contract for the transfer of the object.

Order of Publication and Falling of Works into the Public Domain

20.—(1) Where the heirs of the author or other persons mentioned in his will fail to exercise the rights vesting in them under section 19 of this Act and the Minister is of the opinion that public interest requires the publication of the work, he may request the heirs by registered letter to publish such work and if the heirs or other persons mentioned in the will fail to publish such work within one year from the date of such request, the Minister may order that such work be published, provided that he shall pay a compensation to the heirs of the author or other persons mentioned in the will.

(2) Without prejudice to the provisions of section 19(3) of this Act, where the author dies intestate or leaves no heir the Minister may order that the work shall be in public domain.

(3) After expiry of the term of protection in section 13 of this Act the works shall fall into the public domain and may be freely used.

Invalidity of Acts of Third Party for Lack of Consent

21. Except where it is expressly provided for in sections 14, 15, 19 and 20 of this Act, all acts done by third parties in relation to copyright shall be null and void for lack of consent of the owner of copyright.

Part V
Registration of Works and Contracts

Registrar's Office

22.—(1) For the purpose of this Act, there shall be established an office in the Corporation known as Registrar's Office which shall be headed by a Registrar; such office shall have a common seal.

(2) The powers and functions of the Registrar and the manner of administration of the Registrar's Office and the affairs thereof shall be specified by the rules.

(3) Any certificate of registration and all other official documents issued by the Registrar shall be authentic as regards the correctness of the contents thereof unless the contrary is proved before the Registrar.

Procedure for Registration of Works and Contract

23.—(1) Application for registration of works in the Registrar's office shall be optional. It shall serve as a *prime facie* proof of creations and authorship of the work in case of conflict or legal proceedings.

(2) Application for registration of contracts of transfer of author's economic rights to a user shall be obligatory. It shall be a *prime facie* proof of the lawfulness of exploitation of a work in case of conflict or legal proceedings.

Application for Registration

24. Application for registration of a work and contract shall be addressed to the Registrar at the head of the Corporation and such application shall contain the following:

(a) the registration application form according to the model specified by the rules;

(b) the full name and address of applicant and, where the applicant's address is outside the Sudan, the name and address of his agent in the Sudan;

(c) a duplicate, a photographic copy or a true copy of the work or contract;

(d) a statement ascribing the work to the applicant and such statement shall be according to the model specified in the rules;

(e) the date of making or publication of the work or of making the contract;

(f) any other details or statement as may be specified by the rules.

General Register

25.—(1) For the purpose of this Act, the Registrar shall establish a general register which shall contain the following:

(a) registration of a work and any contract relating to it;

(b) works and contracts that shall be distinguished by number according to the order of registration and classification;

(c) a separate file for each application of a work or contract in addition to a duplicate, true or photographic copy of the work or contract, the name and address of the author or his agent and the user in the Sudan;

(d) the period of protection prescribed and the date on which such period starts to run and the date of expiry thereof (if possible);

(e) any correspondence, contract or judicial decision concerning a work;

(f) any other information relating to the work.

Part VI
Protection of Neighbouring Rights of Performers

26. Performers shall have the following moral and economic rights:

(1) Moral Rights:

(a) to be named each time their performances are used, except in cases where this is impracticable;

(b) to object to any distortion, mutilation or other derogatory action in relation to their performances;

(2) Economic rights or the rights to authorize:

(a) the first broadcasting of their performances except for cases mentioned in section 33 or re-broadcasting;

(b) the communication to the public of their performances by wire or other material carrier, except where it is made from a fixation of the performance or from a broadcast of their performance, and the fixation of their unfixed performance.

Reproduction and Fixation of a Performance

27. There shall be a reproduction or fixation of a performance in the following cases:

(a) where the performance was initially fixed without the consent of performers;

(b) where the reproduction is made for purposes different from those for which the performers gave their authorization;

(c) where the performance was initially fixed in accordance with the provisions of section 33 but the remuneration is paid for different purposes;

(d) where the performance is by broadcast but the communication to the public is on the basis of its fixation;

(e) where the performers have the right of remuneration for sound and audiovisual recording because it was made for commercial purposes.

Remuneration

28. Performers and producers of the recordings shall be paid equitable remuneration as agreed between the parties concerned.

Authorization by Group Performers

29. In the case of group performers the authorization shall be granted by the head of the group or other representative duly authorized by the performers and the authorization shall be in writing and signed by the parties concerned.

Definition of Authorization

30.—(1) In the absence of any agreement to the contrary or of special circumstances of employment from which the contrary could be inferred:

(a) the authorization to broadcast shall not imply an authorization to allow other broadcasting organizations to broadcast the performance;

(b) the authorization to broadcast shall not imply an authorization to reproduce the fixation;

(c) the authorization to broadcast and fix the performance shall not imply an authorization to reproduce the fixation;

(d) the authorization to fix the performance and to reproduce the fixation shall not imply an authorization to broadcast the performance from the fixation or any reproduction of such fixation.

(2) Nothing in this section shall be construed to deprive performers of the right to agree by contract on terms more favourable to them in respect of any use of their performance.

Rights of the Producer of Sound and Audiovisual Recordings

31.—(1) A producer of sound or audiovisual recordings shall have the right to authorize other persons:

(a) to directly or indirectly reproduce their recordings;

(b) to import such recordings for the purposes of distribution;

(c) to distribute their recordings to the public.

(2) A producer of sound or audiovisual recording shall have the right to equitable remuneration.

Rights of Broadcasting Organization

32. A broadcasting organization shall have the right to authorize:

(a) the rebroadcasting of its broadcast;

(b) the fixation of its broadcast;

(c) the reproduction of the fixation of each broadcast where the fixation from which the reproduction is made was effected without its authorization or was made in accordance with section 33 of the Act but the reproduction is made for different purposes.

Exceptions

33.—(1) Sections 26, 31 and 32 shall not apply where the act referred to is made for:

(a) personal or private use;

(b) the reporting of current events, provided that no more than short excerpts of the performance of a sound or audiovisual recording or of a broadcast are used;

(c) use solely for the purpose of teaching or scientific research;

(d) such other purpose constituting a restriction in respect of a copyright under section 14.

(2) The requirements for authorization in sections 26, 31 and 32 for making a fixation of a performance and broadcast and for reproducing sound and audiovisual recordings published for commercial purposes, shall not apply where the fixation or reproduction is made by a broadcasting organization by means of its own facilities and for its own broadcast, provided that:

(a) in respect of each broadcast or fixation or reproduction, the broadcasting organization has the right to broadcast the particular performance;

(b) in respect of each broadcast or a fixation of a broadcast or any reproduction made under this subsection, such fixations or reproductions shall be destroyed but a single copy may be preserved exclusively for documentary purposes.

Part VII
Infringement of Copyright and Legal Consequences Thereof

The Offense of Copyright Infringement

34. Subject to the provisions of section 14, a person shall be deemed to have committed the offense of copyright infringement if he knowingly and without permission of the owner of such right:

(a) performs any of the acts mentioned in section 8 of this Act with regard to the whole or a substantial part of the work;

(b) extracts, imitates, sells, hires, distributes, imports for commercial purposes or exports any work in respect of which copyright has been infringed.

Competent Court

35.—(1) An action for damages by reason of wilful or unintentional infringement of copyright shall be instituted in the court of first instance on an application by the copyright owner or his agent.

(2) The owner of copyright or his agent may apply to the court to obtain an injunction to stop the infringing act in respect of a work, or the attachment of duplicates or photographic copies extracted therefrom, or the calculation of the revenue resulting from the infringing acts and depositing such revenue in treasury of the court, or any other injunction as such owner may think necessary for the protection of his rights until the case is finally decided.

(3) The owner of copyright or his agent may apply to the court to obtain an order allowing him to inspect an alleged infringer's premises and to seize, copy or photocopy any material relating to the alleged infringement and to require the alleged infringer to disclose the names and addresses of his suppliers and customers and the premises where the alleged infringing materials are stocked.

(4) Any person against whom an injunction has been issued in accordance with subsection 2 of this section may appeal against such injunction to a competent court within ten days from the date of the issuing of such injunction and the decision of the court confirming, canceling or altering such injunction shall be final.

Penalties

36.—(1) Whoever commits the offense of copyright infringement shall be punished with a fine as determined by the court or imprisonment not exceeding three years or both.

(2) The Court may order:

(a) the confiscation or destruction of all copies of such work if it is of the opinion that such copies were the result of copyright infringement and also of all the materials devised for or used in the commission of such offense; the delivery of such materials to the owner of copyright, or the destruction or disposal of such materials in any other way as the court may think reasonable;

(b) in the case of recidivism, the doubling of the amount of fine or the term of imprisonment;

(c) the publication of the judgment of the court in one or more daily newspapers at the expense of the defendant.

Application of Penalties to Neighbouring Rights

37. The penalties prescribed in section 36 of this Act shall apply, *mutatis mutandis*, to infringement of neighbouring rights.

Civil Damages for Copyright Infringement

38. The copyright owner shall be entitled to request in a claim all the rights relating to financial compensation and such compensation shall include loss of earnings and prejudice to the reputation of the copyright owner.

Part VIII
Final Provisions

Duration of Neighbouring Rights Protection

39. The protection prescribed by this Part shall last:

(1) in respect of a performances, 50 years computed from the first of January of the year following the year in which the performance took place;

(2) in respect of producers of sound and audiovisual recordings, 50 years computed from the first of January of the year following the year in which the broadcast took place;

(3) in respect of broadcasting organizations, 50 years computed from the first of January of the year following the year in which the broadcast took place.

Joint Works

40. Rights in works by joint authors or performers shall be governed by orders to be issued by the Minister.

Power to Make Rules and Orders

41.—(1) The Minister may make rules and orders for the implementation of the provisions of this Act.

(2) Without prejudice to the generality of the foregoing, such rules shall provide for the matters mentioned in Part V of this Act.

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* *Official title*.
Entry into force: December 19, 1996.
Source: Communication from the Sudanese authorities.

** Added by the International Bureau of WIPO.