

LAWS OF THE NEW SUDAN

TIMBER UTILIZATION AND MANAGEMENT ACT, 2003.

(PROVISIONAL ORDER)
LAWS OF THE NEW SUDAN
TIMBER UTILIZATION AND MANAGEMENT ACT, 2003.

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(PROVISIONAL ORDER)
LAWS OF THE NEW SUDAN

THE TIMBER UTILIZATION AND MANAGEMENT ACT, 2003.

CHAPTER ONE

PRELIMINARY

1. Title and Commencement:-

This Act may be cited as “Timber Utilization and Management Act, 2003” and shall come into effect on the date of signature.

2. Repeal and Saving:-

- (i) The Timber Resources Management (Provisional Order) 2000 is hereby repealed.
- (ii) All acts, orders and regulations done or made under the repealed provisional order shall continue in force till repealed or amended in accordance with the provisions of this Act.

3. Definitions:-

“Alienation Holding” means any land acquired by a person through an outright sale of the land by the owner;

“Annual Rent” means the fee levied or paid per hectare per annum to the owner or landlord for the exercise of timber rights on his piece of land as specified in the contract;

“Contract” means a timber utilization contract entered into under this Act.

“Commissioner” means Commissioner for Agriculture, Forestry and Animal Resources;

“Commission” means The Forestry Commission established under section 4 of Forestry Commission Act, 2003.

“Evaluation Committee” means the Timber Rights Evaluation Committee established under section 8 of this Act.;

“Forest Offence” means any offence provided for by law in respect of a forest, timber, trees or forestry produce;

“Forest Produce” includes the following:-

- (a) timber, charcoal, rubber, wood, oil, peat, resin and natural varnish;
- (b) trees and leaves, flowers and fruits and all other parts and produce of trees not herein mentioned;

- (c) plants not being trees (including grass, creepers, reeds and moss) and all parts and produce of such plants;
- (d) silk, honey wax and all the associated products.
- (e) any other products that may be classified as forest produce.

“Harvest” means to fell, cut, collect or otherwise dispose of timber from land.

“Harvesting Plan” means the schedule of planned felling and harvesting operations for an area to which the contract relates prepared by the holder of the contract in accordance with the logging Manual;

“Contract Holder” means a person to whom timber rights have been granted under this Act.

“Logging Manual” means a set of rules intended to guide the activities of persons who harvest timber in the forest.

“Timber” includes standing, fallen and felled trees, wood for industrial purposes, logs, sawn wood etc.

“Timber Rights” means the right to harvest trees and extract timber from a specified area of land under a timber utilization contract;

“Timber Utilization Contract” means a written agreement that specifies the terms of timber rights granted in respect of an area of land for a fixed period of time;

a **“Community Land”** includes any land or interest in, or right over any land controlled by community or group for the benefit of the members of that community or group.

“SPLM/CANS” means the Sudan People’s Liberation Movement – Civil Authority of the New Sudan.

“NLC” means the National Liberation Council. The Legislative Organ of the New Sudan.

“Commission for Economy” means the Commission for Economic Production, Human Resource Development and Physical Infrastructure.

“Secretariat” means the Secretariat of Agriculture, Forestry and Animal Resources.

CHAPTER TWO
TIMBER UTILIZATION AND MANAGEMENT

4. Prohibition from Harvesting Timber without Timber Utilization Contract:-

No person shall harvest timber from any land to which section 7 of this Act applies, unless he holds a timber utilization contract.

5. Qualification for Timber Utilization Contract:-

No timber utilization contract shall be entered into with any person under this Act without a prior approval from the Commission for Economy.

6. Application for Timber Rights:-

(1) Procedure for application for timber rights shall be as prescribed by regulations made under this Act.

(2) Without prejudice to the Provisions of subsection (1) of this section, an application for timber rights shall be made in writing to the Director General of the Secretariat. Who shall then refer the application to the Forestry Commission which shall immediately refer the same to the timber Rights Evaluation Committee established under section 8 of this Act.

(3) The application shall be accompanied with:-

- (a) a harvesting plan prepared in accordance with sustainable management of timber resources;
- (b) an assessment of the likely environmental effect and proposed programme to redress any such effects;
- (c) evidence of the financial ability of the applicant to operate in the area or land on which the timber the subject matter of the contract is located.
- (d) proposals to assist in addressing social needs of the communities who have interest in the applicant's proposed area of operations; and
- (e) such other relevant information or documents as the Commission may request.

7. Land Subject to Timber Rights:-

(1) Timber rights may be granted under a timber utilization contract in respect of-

- (a) lands previously subject to timber rights, which have expired and are suitable for re-allocation;

- (b) unallocated public or communal lands suitable for timber operations or timber production; and
- (c) alienation holdings.

(2) No timber rights shall be granted in respect of-

- (a) land with forest plantations;
- (b) land with timber grown or owned by any individual or group of people;;
- (c) land subject to alienation holding; or
- (d) lands with farms

without the authorisation in writing of the individual, group or owner concerned.

8. Establishment of Timber Rights Evaluation Committee:-

(1) There shall be established a Timber Rights Evaluation Committee which shall be a Committee of the Commission and shall be composed of-

- (a) the Chief Conservator of Forests in the Directorate of the Forestry or his Deputy.
- (b) the Planning Officer in the Directorate of Forestry .
- (c) the representative of the Survey Department in the Directorate of Forestry
- (d) a representative of the Secretariat of Legal Affairs and Constitutional Development;
- (e) three other professionals appointed by the Commissioner;
- (f) a representative of the Secretariat of Finance and Economic Planning;

(2) The Chief Conservator of Forests or his Deputy shall be the Chairman of the Committee.

(3) The Evaluation Committee shall regulate the procedure of its meetings.

9. Functions of the Evaluation Committee-

(1) The functions of the Evaluation Committee shall be:-

- (a) to evaluate applications for timber utilization contracts in accordance with qualifications and criteria provided by regulations made under this Act; and
- (b) to rank the qualified applicants on merits through a competitive procedure prescribed by regulations under this Act.

- (2) For the purpose of subsection (1) of this section the Evaluation Committee may in respect of any evaluation:-
 - (a) request for such relevant documents and information,
 - (b) co-opt such persons as it considers necessary.
- (3) The Evaluation Committee shall submit all the evaluation reports together with recommendations thereon to the Commission within 30 days of receipt of the application.

10. Grant of Timber Rights:-

- (1) The Commission shall within two weeks of receipt of the evaluation report and on the basis of the recommendation therein grant or reject the timber rights.
- (2) If timber rights are granted, the Commission shall enter into a timber utilization contract with the successful applicant on behalf of the Commission for Economy.

11. Terms of Contract.

A timber utilization contract entered into under section 10 (2) shall be subject to such terms and conditions as shall be specified in it including:-

- (a) the demarcation of the area of land to which the contract relates;
- (b) the period of operation of the contract;
- (c) an undertaking by the holder of the contract to adhere to any prescriptions laid down by the Directorate of Forestry.
- (d) an undertaking by the holder to execute a reforestation plan during the period of the contract to the satisfaction of the Chief Conservator of Forests;
- (e) provisions for prompt payment of rents, taxes, compensation and such management and service charges as prescribed by law;
- (f) annual rent payable to the landlord or owner of the area of land relevant to the grant;
- (g) the periodic review of the operations of the holder by the Directorate of Forestry;
- (h) the submission to the Directorate of Forestry of a contract area plan every five (5) years, prepared by a professional forester in accordance with the Logging Manual; and
- (i) grounds for suspension or termination.
- (j) commitment of the holder to pay his local employees in accordance with the international standards of pay and public service regulations.
- (k) Solvency certificate of a holder of the contract from a reputable bank.

12. Ratification by National Liberation Council (NLC).

A Timber utilization contract entered into by the Commission with a foreign Company shall be subject to ratification by the NLC.

13. Logging Manual.

for the purposes of this Act and regulations made here under there shall be prepared a logging manual, by the Directorate of Forestry, in consultation with the Forestry Commission.

14. Survey.

No timber utilization contract shall be entered into under this Act unless the relevant land has been surveyed and accessed..

15. Management of Timber Operation.

(1) No timber utilization contract shall be entered into with any person under this Act unless that contract holder employs a professional forester as a manager to be in charge of the timber operations and related activities.

(2) The contract holder shall notify the Chief Conservator of Forests in writing of every appointment or removal of a manager.

16. Payment of Taxes, Charges and Other Fees.

There shall be paid in respect of timber utilization contracts entered into under this Act such local taxes, annual rent, fees and charges as the Commissioner of Finance and Economic Planning may prescribe.

17. Consequence of Non Payment.

A contract holder who fails to pay any taxes payable under section 16 above shall have his contract suspended or terminated.

18. Suspension and Termination of Timber Utilization Contracts.

(1) The Commissioner, on the recommendations of the Commission may suspend or terminate, a timber utilization contract as is appropriate in the circumstances of each case, if:-

(a) the contract holder breached any of the terms or conditions of the contract;

- (b) the contract holder becomes insolvent or otherwise failed to manage the timber resources efficiently;
 - (c) the area of the land relating to the contract or a part thereof , is under review.
 - (d) the area of land relating to the contract or a part of it is no longer suitable for the operation under a timber utilization contract;
 - (e) the contract holder is charged with or convicted of an offence under this Act or of a forest offence.
 - (f) the contract holder removes or takes away any genetic materials or forest produce without the approval of the commissioner.
- (2) The holder of the contract terminated under section 18 (1), (c) and (d) shall be entitled to an alternative area of land to continue performing his contract.
 - (3) On the suspension or termination of a timber utilization contract under this section the Civil Authority of the New Sudan shall have the right to claim damages in respect of any prior breach, non-performance or non-observance of any condition on the part of the contract holder.
 - (4) A holder of a timber utilization contract whose timber rights have been suspended under subsection (1) is entitled to a redress , under the Law of contract.

19. Transfer of Timber Rights.

- (1) No rights over or interest in timber granted under a timber utilization contract shall be transferred or assigned without the written consent of the Commission.
- (2) An application for such a transfer shall be evaluated by the Evaluation Committee.
- (3) A holder who transfers or assigns his timber rights under a timber utilization contract contrary to subsection (1) of this section commits an offence and is liable on conviction to a fine of not less than 300% of the annual rent payable.

CHAPTER THREE
MISCELLANEOUS

20. Offences and Penalties:-

- (1) Any public servant charged with the management or protection of a forestry resource who :-
- (a) by any act or omission in the performance of his duties facilitates the breach of any provision of this Act; or
 - (b) condones or connives with any other person or persons in breach of a provision of this Act,
commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five (5) years or fine or with both and may be liable for dismissal.
- (2) Any person who:-
- (a) harvests timber to which this Act applies without a valid timber utilization contract; or
 - (b) operates or causes to be operated a vehicle to carry, haul, evacuate or transport timber harvested in contravention of this Act; or
 - (c) offers for sale, sells or buys timber harvested in contravention of this Act; or
 - (d) stocks timber harvested in contravention of this Act; or
 - (e) carries, hauls or evacuates by non-mechanical means any timber harvested in contravention of this Act,
commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five (5) years. or fine or with both.
- (3) Where a person is convicted under subsection (2) of this section the court shall order the confiscation of any tool, equipment or machinery involved in the commission of the offence.

21. Regulations.

The Commissioner on the recommendation of the Forestry commission may make regulations:-

- (a) prescribing procedure for the identification of lands suitable for grant of timber rights;
- (b) prescribing the procedure for application, processing and grant of timber rights;
- (c) on the terms and conditions for timber rights;

- (d) in respect of the Logging Manual to ensure proper harvesting and yield;
- (e) prescribing the rate of taxes, fees, management service charges and other charges payable in respect of timber;
- (f) criteria for categorizing timber operations in terms of scale of operations;
- (g) on procedure for salvage and disposal of abandoned timber or seized timber produce;
- (h) specifying the proportion of timber originating from timber utilization contracts to be made available to the domestic and export markets;
- (i) on approved hours for timber harvesting and for conveyance of harvested timber;
- (j) on registration and operation of chainsaws sawmills and operators on land to which this Act applies and annual quantity of trees to be felled;
- (k) prescribing species of trees considered “depleted”, “threatened”, “endangered” or “economically extinct” and specifying the conditions under which they may be felled;
- (l) prescribing conditions for harvesting trees for domestic or social purposes; and
- (m) generally for the purpose of giving effect to the provisions of this Act.

Given under my hand this----- day of ----- Year 2003 A.D

Dr. John Garang de Mabior
Chairman
SPLM/CANS

**APPLICATION FOR
A TIMBER UTILIZATION CONTRACT**

Timber Rights Application Form

**Information supplied will be treated as
CONFIDENTIAL**

For Official Use Only

Fee

Receipt No

Authorization _____ Validity _____

To be completed and forwarded to:

**THE DIRECTOR GENERAL
SECRETARIAT OF AGRICULTURE, FORESTRY AND
ANIMAL RESOURCES
NEW SUDAN.**

Under Section 6 of Timber Utilization and Management Act 2003

1. Note for Application.

The purpose of the Timber Rights Application Form is to ensure that only bona fide corporate bodies who are up-to-date with the payment of taxes, social security obligations, forest fees and charges are permitted to enter the process of qualification of the award of timber rights.

Applicants should therefore complete Parts 2 to 6 in detail, attaching additional pages if necessary, and ensure that all the attachments required in Part 7 are provided.

The Timber Rights Evaluation Committee (TREC) will evaluate applicants using the information provided in sections 6 to 9 against specific technical, environmental, social and financial criteria. On the basis of the evaluation, the Committee will invite applicants who score above a level determined by the Committee to submit proposals on: (i) a social responsibility agreement to assist the local communities within the Timber Utilization Contract (TUC) areas; and (ii) a reforestation or an afforestation plan for the establishment and management of forest plantations.

The Committee will assess the proposals and make recommendations to the Forestry Commission for the award of the highest scoring applicant.

NOTE:

- (i) Applicants should complete separate application forms for each piece of forest applied for.
- (ii) The fee charged for this form is not refundable.

2. The Applicant.

2.1 Company's Name.

2.2 Company's address (both within and without the New Sudan if applicable), including telephone and fax numbers, e-mail, etc.

2.3 Describe the type of organization – private limited liability, partnership, individual, co-operative society, public corporation etc.

2.4 List particulars of all owners and Directors of the Company – name, address, shareholding.

2.5 Give name and address of the Company's Banker(s).

4. Logging Capability

4.1 List all road, construction and maintenance equipment and vehicles presently in use. State the make, model, year of manufacture, registration/identification numbers and date of purchase by the company.

4.2 List all felling and hauling equipment and vehicles presently in use. State the make model, year of manufacture, registration/identification numbers and date of purchase by the company.

5. Timber Conversion or Processing Plants.

5.1 Describe type and location of any timber conversion or processing plant owned by the company.

5.2 What is the installed capacity in cubic metres of log input per annum?

5.3 What is the total production capacity in cubic metres output by product type per annum?

5.4 What is the present utilization of installed capacity?

5.5 What is the planned utilization of installed capacity?

5.6 Describe the plant production method and processes.

6. Experience in the Timber Industry.

- 6.1 Describe the company's previous experience in the timber industry.
- 6.2 List any current concessions, leases or timber rights held within Forest Reserve(s).
Give lease number, location, period of lease or contract size of area and expiry date.
- 6.3 List any current concessions, leases or timber rights held in off-reserve areas.
Give the lease number, location, period of lease or contract size of area and expiry date.
- 6.4 What has been the production of logs by the company from on and off-reserve areas within the last three years. State year, number of logs, volume in cubic metres?

6.5 What have been the export sales by the company of processed products within the last three years? Describe the market and state volumes in cubic metres and values in US dollars for each product type.

6.6 What have been the domestic sales by the company of logs and/or processed products within the last three years. Describe the market and state volumes in cubic metres and values in local currency for each product type.

7. ATTACHMENTS.

- 7.1 Evidence of the company's incorporation under the companies law or Incorporated Private Partnership in the country of origin.
- 7.2 Business plan for the Company including a description of all the company's activities, resources and an income and expenditure statement for each of the last three years.
- 7.3 Income Tax and Social Security Clearance Certificates.
- 7.4 Audited accounts of the company for the past three years.
- 7.5 Banker's certificate or credit worthiness and details of any loans contracted.
- 7.6 Evidence of full payment of taxes, rents and details of any loans contracted.
- 7.7 Copies of vehicle insurance and roadworthiness certificates for all vehicles and plant (if applicable) owned by the company.
- 7.8 Summaries of qualifications and work experience for all professional forestry staff.
- 7.9 An Undertaking:
 - (a) to provide specific amenities,
 - (b) for reforestation or afforestation.
- 7.10 A topographic map of the proposed contract area which indicates a proposed schedule of felling, extraction routes and also fire protection and environmental management plans where necessary.

8. DECLARATION.

- 8.1 I hereby confirm that the information given on this application form and the attachments hereto are true and current to the best of my knowledge and that any false information supplied may render this application and any subsequent issue of timber rights null and void.

Signature and Name of Applicant

Date:

PROPOSAL FOR
TIMBER UTILIZATION CONTRACT

Timber Rights Selection Form.

Information Supplied will be treated as
CONFIDENTIAL

TUC Identification No. (FC/TUC/1)

Location of TUC Area

For Official Use Only

Authorization

Validity

To be completed and forwarded to:

**THE DIRECTOR GENERAL
SECRETARIAT OF AGRICULTURE, FORESTRY
AND ANIMAL RESOURCES
NEW SUDAN.**

1. SOCIAL RESPONSIBILITY (Attach additional page if necessary).

1.1 Size of Contract Area

1.2 Name(s) of Land Owner(s)

(i) Community land owner/alienation holder

(ii) Care taker Chief

(iii) Payam(s)

1.3 Summary of discussions with Landowners

(i) Code of Conduct Proposals:

(ii) Social Obligations Proposals (with Estimated Cost)

1.4 Name(s) County/ies

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2. AFFORESTATION/REFORESTATION.

2.1 Existing Plantation(s) Owned by the Company (include maps)

Year Planted	Location	Size (Ha)	Species	Proposed End-Use	% Success

**2.2 Existing Plantation(s) being managed, funded or sponsored for others, if any,
(include maps).**

Year Planted	Location	Size (Ha)	Species	Proposed End-Use	% Success

2.3 Proposed Reforestation/Aforestation Program

- (i) Project document.
- (ii) Land officially acquired and approved by Chief Conservator of Forests (include Maps).
 - (a) Location.
 - (b) Size.
- (iii) Annual Planting Targets and Species.
- (iv) Funding of Project.

3. Any Other Relevant Information.

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4. DECLARATION.

4.1 I hereby confirm that the information given on this application form and the attachments hereto are true and current to the best of my knowledge and that any false information supplied may render this application and any subsequent issue of timber rights null and void.

Signature and Name of Applicant

Date