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Act 8 *Ministry of Legal Affairs and
Constitutional Development Organization Act* **2008**

**THE MINISTRY OF LEGAL AFFAIRS AND CONSTITUTIONAL
DEVELOPMENT ORGANIZATION ACT, 2008**

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LAWS OF SOUTHERN SUDAN**THE MINISTRY OF LEGAL AFFAIRS AND
CONSTITUTIONAL DEVELOPMENT
ORGANIZATION ACT, 2008**

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

CHAPTER I**PRELIMINARY PROVISIONS****1. Title and Commencement.**

This Act may be cited as “the Ministry of Legal Affairs and Constitutional Development Organization Act, 2008”, and shall come into force on the date of its signature by the President. *Signed on 23rd July, 2008*

2. Repeal and Saving.

The Attorney-General’s Chambers Act, 2004, is hereby repealed; provided that, all proceedings, orders, regulations and appointments taken or made thereunder, except to the extent they are repealed by or are otherwise inconsistent with the provisions of this Act, shall remain in force or effect, until they are repealed or amended in accordance with the provisions of this Act.

3. Purpose.

The purpose of this Act is to provide for the establishment, organization, functions and duties of the Ministry of Legal Affairs and Constitutional Development, and any other issues related thereto.

4. Authority and Application.

This Act is drafted in accordance with the provisions of paragraph 4 of Schedule (B) of the Interim Constitution of Southern Sudan “ICSS”, which grants to the Government of Southern Sudan the exclusive legislative competences for delivery of services at all levels of the Government of Southern Sudan, subject to Article 139 of the ICSS.

5. Interpretations.

In this Act, unless the context otherwise requires, the following words and expressions shall bear the meaning assigned to them—

“**Director**” means the person appointed as the head of a Directorate, in accordance with the provisions of this Act;

“**Directorate**” means any of the administrations of the Ministry established by this Act;

“**Government**” means the Government of Southern Sudan (GoSS);

“**GoSS and State Institutions**” includes all of the following—

- (a) GoSS, or any GoSS Ministry, the Bank of Southern Sudan, or any department, institution or undertaking thereof;
- (b) any State government, department, institution of the State or undertaking thereof;
- (c) any local government authority; or

- (d) any authority, board, commission, committee or other body, whether paid or unpaid, which is invested with or is performing, whether permanently or temporarily, functions of a public nature;

“**Constitution**” means the Interim Constitution of Southern Sudan, 2005; (ICSS)

“**INC**” means the Interim National Constitution, 2005;

“**Interim Period**” means the six year period following the 9th July 2005;

“**Legal Counsel**” includes the Under Secretary, Directors, Legal Advisors, Public Attorneys and other professional staff;

“**Minister**” means the Minister for Legal Affairs and Constitutional Development;

“**NGOs**” means Non Governmental Organizations;

“**Ministry**” means the Ministry of Legal Affairs and Constitutional Development;

“**President**” means the President of the GoSS;

“**Under Secretary**” means the Chief Civil Administrator of the Ministry appointed in accordance with the provisions of section 30 (1) of this Act;

“**Vice-President**” means the person serving as Vice-President of the GoSS.

CHAPTER II

ESTABLISHMENT, ORGANIZATION, FUNCTIONS AND POWERS OF THE MINISTRY

6. Establishment of the Ministry and Directorates.

- (1) There is hereby established, the Southern Sudan Ministry of Legal Affairs and Constitutional Development (hereinafter called the “Ministry”).

- (2) The Ministry shall be headed by the Minister, and his or her decisions with respect to the Ministry shall prevail therein.
- (3) The functions and powers of the Ministry are collective and cumulative in nature. They may be exercised by one or more of the Directorates, or outside of a Directorate in the fulfilment of the Ministry's functions and duties.

7. Establishment of Directorates.

Pursuant to the provisions of this Act, the Directorates as set forth in the following sections are hereby established within the Ministry, to facilitate the effective and efficient exercise and performance of the Ministry's functions and powers.

8. Directorate of Public Prosecution.

- (1) Within the Ministry, there is hereby established a directorate to be known as the Directorate of Public Prosecution (hereinafter called the "DPP").
- (2) The DPP shall exercise all powers reasonably necessary to fulfil the following functions of the Ministry—
 - (a) rendering legal advice to GoSS, State Governments and Institutions in all matters relating to criminal law and criminal procedures and any other relevant penal laws;
 - (b) supervising investigations, taking cognizance of and prosecuting criminal cases at the GoSS and State levels in accordance with applicable law;
 - (c) supervising all Public Attorneys at the GoSS level and during four years into the Interim Period at the State level;
 - (d) preparing data and reporting on the rate of crime and submit such report to the Under Secretary;

- (e) undertaking prosecution and appearing before the criminal courts of Southern Sudan on behalf of GoSS and the States; and
- (f) performing any other functions or duties that may be assigned to it, or which is reasonably related to the forgoing activities.

9. Directorate of Legislation, *Gazette*, Publication and Printing.

- (1) Within the Ministry, there is hereby established a directorate to be known as “the Directorate of Legislation, *Gazette*, Publications and Printing”.
- (2) The Directorate of Legislation, *Gazette*, Publications and Printing, shall exercise all powers reasonably necessary to fulfil the following functions of the Ministry—
 - (a) drafting Government legislation including subsidiary legislation, as requested by GoSS and the State legislatures and executive branches;
 - (b) overseeing the progress of legislation and provision of legal opinions thereon;
 - (c) printing and publishing the Southern Sudan *Gazette* and any other necessary government publications;
 - (d) translating legislation and any other legal documents from English to other languages, as necessary;
 - (e) publishing written laws;
 - (f) reviewing, refining and improving the legislative drafting process in Southern Sudan;
 - (g) conducting research and proposing legal reforms; and
 - (h) performing any other duty or function that may be assigned to it, or which is reasonably related to the forgoing activities.

10. Directorate of Contracts, Conventions and Treaties, Human Rights and Legal Aid.

- (1) Within the Ministry, there is hereby established a directorate to be known as “the Directorate of Contracts, Conventions and Treaties, Human Rights and Legal Aid”.
- (2) The Directorate of Contracts, Conventions and Treaties, Human Rights and Legal Aid shall exercise all powers reasonably necessary to fulfil the following functions of the Ministry—
 - (a) representing the Ministry and providing legal opinion to the Government Institutions in all negotiations leading to conclusion of such contracts in Southern Sudan;
 - (b) reviewing and recommending approval or otherwise, of such agreements, contracts and documents by whatever name to which a Government Institution has an interest as specified by law;
 - (c) overseeing the implementation of conventions and treaties and human rights in Southern Sudan;
 - (d) providing legal aid for persons in need;
 - (e) overseeing the enforcement of rights and freedoms enshrined in the INC and ICSS;
 - (f) providing legal opinion to GoSS and the State governments on violations of human rights;
 - (g) educating citizens on their constitutional rights through workshops, seminars and the media;
 - (h) identifying and studying conventions and treaties relating to matters affecting Southern Sudan and making recommendations accordingly;
 - (i) providing legal opinion to GoSS on National and State matters directly or indirectly affecting Southern Sudan and the States;

- (j) drafting treaties, conventions and contracts to which Southern Sudan or a State is a party; and
- (k) performing any other functions and duties that may be assigned to it, or which are reasonably related to the forgoing activities.

11. Directorate of Civil Litigation and Legal Opinion.

- (1) Within the Ministry, there is hereby established a directorate to be known as “the Directorate of Civil Litigation and Legal Opinion”.
- (2) The Directorate of Civil Litigation and Legal Opinion shall exercise all powers reasonably necessary to fulfil the following functions of the Ministry—
 - (a) rendering legal opinions to the GoSS and State Governments on matters of civil nature;
 - (b) representing Government in court or any other legal proceeding for or against it, making statements therein and submitting recommendations to the Under Secretary;
 - (c) arbitrating and settling disputes among the GoSS and State Governments, as well as between them and others;
 - (d) rendering legal opinion and assuming litigation on constitutional matters;
 - (e) receiving reports on civil claims from Legal Counsels in the States, public corporations and companies periodically;
 - (f) receiving reports and data in civil suits against the Government;
 - (g) submitting memorandum on matters which require intervention by the Under Secretary or the Minister; and
 - (h) performing any other functions and duties which may be assigned to it, or are reasonably related to the forgoing activities.

12. Directorate of Registration of Businesses, Associations and NGOs.

- (1) Within the Ministry, there is hereby established a directorate to be known as “the Directorate of Registration of Businesses, Associations and NGOs”.
- (2) The Directorate of Registration of Businesses, Associations and NGOs shall exercise all powers, reasonably necessary, to fulfil the following functions of the Ministry—
 - (a) registering companies, businesses, NGOs, societies, associations and other legal entities in Southern Sudan;
 - (b) ensuring that all businesses are operated in accordance with the law;
 - (c) registering patents, inventions, designs and intellectual property rights in Southern Sudan;
 - (d) reviewing the articles and memoranda of association of companies and constitutions of associations and societies for compatibility with the INC, ICSS, and the States Interim Constitutions;
 - (e) ensuring that NGOs operate in conformity with their own laws of establishment;
 - (f) performing any other function or duty which may be assigned to it or reasonably related to the foregoing activities.

13. Directorate of Administration and Finance.

- (1) Within the Ministry, there is hereby established a directorate to be known as the Directorate of Administration and Finance.
- (2) The Directorate of Administration and Finance shall exercise all powers reasonably necessary, to fulfil the following functions of the Ministry—

- (a) preparing budget proposals in consultation with other Directorates;
- (b) keeping records of positions in conformity with the nominal roll of the Ministry;
- (c) implementing the approved budget and supervising and advising on its expenditure;
- (d) rendering technical advice on matters relating to terms of service, employment and dismissal of employees of the Ministry; and
- (e) performing any other functions and duties that may be assigned to it, or which are reasonably related to the forgoing activities.

14. Directorate of Training and Research.

- (1) Within the Ministry, there is hereby established a directorate to be known as the Directorate of Training and Research.
- (2) The Directorate of Training and Research shall exercise all powers reasonably necessary to fulfil the following functions of the Ministry—
 - (a) drawing comprehensive training programme for Legal Counsels and support staff of the Ministry;
 - (b) conducting research on laws and legislation with the objective of improving and incorporating positive customs and traditions into them;
 - (c) establishing a customary law centre with the aim of conducting research on customary law, recording, harmonizing and codification thereof;
 - (d) establishing a paralegal training centre with the ultimate goal of transferring such centre into an Institute for Legal Studies or a Law Development Centre; and
 - (e) performing any other functions and duties that may be assigned to it, or which are reasonably related to the forgoing activities.

15. Appearance and Litigation.

- (1) The Ministry, represented by the Minister and the Legal Counsels, shall serve as the legal advisor to GoSS and State Governments, and shall transact on behalf of GoSS and State Governments all the businesses of a legal nature.
- (2) The Minister and the Legal Counsels shall have the power to appear and litigate before all the courts of Southern Sudan or any other Court within the Sudan, before which any Government Institution is a party to the suit or otherwise interested.

16. Powers of Investigation and Prosecution.

- (1) In the fulfilment of its functions and duties, the Ministry shall have the power to investigate any facts, conditions, practices or matters which it finds necessary or proper to determine whether any person has violated or is about to violate the laws of Southern Sudan, other applicable laws, or any regulations issued thereunder.
- (2) In its representation of GoSS, State Governments and Institutions with respect to any dispute under consideration, the Ministry shall have the power to call any public servant to give evidence or order him or her to give information or submit documents. Such power shall be as of the courts regarding appearance and giving of evidence.
- (3) Notwithstanding the provisions of any other law—
 - (a) the Ministry shall have the power to take cognizance of any offence, to investigate there into and undertake prosecution; and
 - (b) the Ministry shall have all the powers contained in the Code of Criminal Procedure Act, and any other law regulating investigation.

17. Authentication of Documents.

The Minister shall have power to authenticate Government documents, take and authenticate affidavits and legal attestations, and administer oath in accordance with law.

18. Legal Advice.

- (1) Any legal advice relating to a civil dispute, signed by the Minister shall be binding on all the GoSS and State Institutions.
- (2) Any legal advice rendered by any Legal Counsel, relating to any civil dispute shall be binding on such GoSS and State Institutions unless it is reviewed by the Minister on his or her own motion or on appeal.

19. Arbitration.

- (1) In case of dispute between two or more GoSS and, or State Institutions, the Minister may, on submission of the dispute to him or her, direct that such dispute be referred to arbitration.
- (2) In case a dispute disposable in accordance with the provisions of subsection (1), above, arises, and the parties thereto do not amicably settle the same, such parties shall not resort to litigation before a Court, except with the leave of the Minister.
- (3) The arbitration tribunal shall be constituted by the Minister of equal representation nominated by the institutions concerned and the chairperson shall be appointed by the Minister and the decree constituting the arbitration tribunal shall indicate the name of the parties and the dispute purported to be disposed of by the tribunal.
- (4) The arbitration tribunal shall fix the date and venue for the determination of the dispute and shall notify the parties thereof.

- (5) The arbitration tribunal shall promptly dispose of the dispute and in so doing shall not be required to strictly abide by the rules governing arbitration in the Code of Civil Procedure, except those that relate to guarantees basic to the rule of litigation.
- (6) The arbitration tribunal may, call witnesses to testify and order submission of any document it deems necessary for the determination of the dispute. In so doing the arbitration tribunal shall have power of the Minister regarding compelling appearances and the production of documents.
- (7) In case any party fails to appear, despite proper service of summons, such party shall be re-summoned, and if such party does not appear the arbitration tribunal may proceed with the determination in that party's absence.
- (8) The award of the arbitration tribunal shall, be made by the majority of the members provided that any dissenting opinion shall be attached with the award.
- (9) The award of the arbitration tribunal shall be based on recorded fact which shall include a brief statement of the parties, the evidence and documents produced, and the grounds for the award which shall be signed by the chairperson and members of the arbitration tribunal.
- (10) The award made by the arbitration tribunal shall be binding but may be appealed against by the aggrieved institution, within one month from the date of issuance. The Minister may, before the determination of such appeal, hear the parties through written memoranda and thereafter render a decision. The decision of the Minister shall be final and binding.

20. Review and Contesting Ministerial Decisions.

- (1) The decisions of the Minister may be reviewed, amended or cancelled by the Southern Sudan Council of Ministers.

Further, the President may suspend the decision of the Minister pending such review, amendment or cancellation.

- (2) Any person aggrieved by an act or decision of the Ministry may contest such an act or decision—
 - (a) before the Supreme Court of Southern Sudan, if the alleged act or decision involves a violation of the ICSS or the INC; or
 - (b) before any other court of law or competent authority if the allegation is based on other legal grounds.

21. Compliance with Laws.

At all times, the Ministry shall operate in accordance with the INC, ICSS, this Act, and any other applicable law and subsidiary regulations.

22. Cooperation with the National Ministry of Justice.

In the interest of justice and effectiveness in the execution of their legal duties, the National Ministry of Justice and the Ministry shall co-ordinate, co-operate and assist each other in the fulfilment of their functions and may to this end, establish the necessary mechanisms and channels of implementation.

23. Rule of Law and Legal Profession.

The Ministry shall also be responsible for the following—

- (a) ensuring that the rule of law and prompt justice are dominant and prevalent in the legal sector of Southern Sudan; and
- (b) improving efficiency in the legal profession and ensuring that proper rules, sound traditions, practices and ethics are established.

CHAPTER III**ADMINISTRATION AND SUPERVISION OF THE
MINISTRY****24. Administrative Supervision.**

The Ministry shall consist of the Minister, Under Secretary, Directors, Legal Advisors, Public Attorneys, officials and support staff.

25. Powers and Functions of the Minister.

- (1) The Minister shall be the chief legal advisor of the GoSS, he or she shall be the prosecuting authority at the levels of the GoSS and the States and may perform such other functions of legal character as may be prescribed by law.
- (2) Without prejudice to the generality of subsection (1), above, and in addition to any functions that may be conferred upon the Minister by any other law, the Minister shall have the following functions—
 - (a) ensure that the rule of law and prompt justice are dominant and prevailing in the legal sector;
 - (b) improve efficiency in the legal profession and ensure that proper rules, sound traditions, practices and ethics are laid down;
 - (c) to undertake law review and law reform processes;
 - (d) to conduct and encourage legal researches and studies and especially in the area of customary law;
 - (e) draft Government Acts and other related legislative arrangements in Southern Sudan;
 - (f) represent all levels of Government in Southern Sudan before the civil courts in civil suits for or against them;
 - (g) supervise the conduct of criminal cases, investigations therein and undertake prosecution before criminal courts;

- (h) provide all levels of Government in Southern Sudan Institutions with legal services, drafting of decisions and orders, contracts, agreements and all other legislative provisions of GoSS Institutions, legal advice in respect to any activity or dispute involving such levels and to represent them before competent tribunals;
 - (i) provide legal advice on matters arising between GoSS Institutions and arbitrate in civil disputes arising between the institutions;
 - (j) undertake the registration of companies, organizations, societies and transactions, authentication of documents, take legal attestations and issue the same in accordance with the law;
 - (k) provide legal service to the public such as legal advice and legal aid; and
 - (l) any other legal function that may be assigned to the Minister by any other law or the President.
- (3) In addition to the foregoing, the Minister shall also be responsible for—
- (a) collaborating and establishing good working relations with GoSS Ministries and the Ministers at the State level in fulfilment of their respective constitutional obligations;
 - (b) performing any public or political role and provide leadership in public affairs to achieve the policy objectives of the GoSS; and
 - (c) performing any other functions or powers assigned by law or delegation.

26. Duties and Responsibilities of the Minister.

- (1) The Minister shall be individually answerable to the President, the Southern Sudan Council of Ministers and the Southern Sudan Legislative Assembly for the performance

of the Ministry.

- (2) The Minister shall be bound by decisions of the President and the collective decisions of the Council of Ministers.

27. Appointment and Removal from Office.

- (1) The Minister shall be appointed and removed from office by the President, in consultation with the Vice President.
- (2) To assume office, the Minister shall, take the oath provided for by Article 114 of the ICSS, before the President.

28. Vacancy of the Office of the Minister.

The office of the Minister shall fall vacant in any of the following cases—

- (a) acceptance of a written resignation by the President;
- (b) removal from office by the President after consultation with the Vice President;
- (c) removal from office by the President on the ground of mental infirmity or physical incapacity based on an official medical report;
- (d) resolution of the Southern Sudan Legislative Assembly, as set forth in Article 120 (2) of the ICSS; and
- (e) death.

29. Restriction on Outside Employment.

During his or her tenure in office, the Minister shall not practice any private profession, transact commercial business or receive remuneration or accept employment of any kind from any source other than the GoSS.

30. Appointment and Functions of the Under Secretary.

- (1) The Ministry shall have an Under Secretary who shall be appointed to and removed from office by the President, in consultation with the Vice President, and on the

recommendation of the Minister.

- (2) The Under Secretary shall be of the status of a Deputy President of the Supreme Court of the Judiciary of Southern Sudan, and shall be entitled to all the rights, privileges and benefits accorded that position.
- (3) Before assuming office, the Under Secretary shall take the following oath—

“I....., do hereby swear by the Almighty God/solemnly affirm, that as Under Secretary of the Southern Sudan Ministry of Legal Affairs and Constitutional Development, I shall be faithful and bear true allegiance to Southern Sudan and shall diligently and honestly discharge my duties and responsibilities and strive to foster the development and welfare of its people; that I shall obey, preserve and defend the Interim Constitution of Southern Sudan and the Interim National Constitution and abide by the law; and that I shall protect and promote the unity of the people of Southern Sudan and consolidate the democratic decentralized system of governance and preserve the integrity and dignity of the people of Southern Sudan; so help me God/ and God is my witness”.

31. Functions of Under Secretary.

The Under Secretary shall—

- (a) be the Chief Civil Administrator of the Ministry and responsible for the day-to-day activities of the Ministry;
- (b) supervise the implementation of the Ministry’s policies on technical, administrative and financial matters;
- (c) issue circulars and orders and make decisions relating to the policies of the Ministry;
- (d) report regularly to the Minister;
- (e) act as chief co-ordinator of policies of all Directorates

- of the Ministry;
- (f) make recommendations on all matters concerning the functions and duties of the Ministry;
 - (g) establish regular programmes for the internal and external training of all Ministry staff;
 - (h) establish rules and procedures for inspection, supervision and implementation of programmes;
 - (i) oversee the issuance of identity cards for counsellors and other staff of the Ministry;
 - (j) assist the Minister in the performance of his or her duties;
 - (k) be answerable to the Minister in the performance of his or her functions and duties; and
 - (l) perform any other functions and duties that may be assigned to him or her by the Minister.

32. Appointment and Functions of Counsel Generals.

- (1) The Ministry shall have Counsel Generals who shall be appointed to and removed from office by the President, in consultation with the Vice President, on the recommendation of the Minister.
- (2) The Counsel Generals shall before assuming office, take an oath similar to that of the Under Secretary.

33. Functions of a Counsel General.

A Director shall—

- (a) serve as the Chief Administrator of his or her individual Directorate, and be responsible for the day-to-day activities of such Directorate;
- (b) be answerable to the Minister and the Under Secretary in the performance of his or her functions and duties;
- (c) supervise the implementation of Ministry policies on technical, administrative and financial matters with

- respect to his or her Directorate;
- (d) make recommendations on all matters concerning the functions and duties of his or her Directorate and its relationship with other Directorates;
 - (e) establish rules and procedures for the operation of his or her Directorate in compliance with the Ministry policies and programmes; and
 - (f) perform any other duties that may be assigned to him or her by the Minister or the Under Secretary.

34. Appointment and Removal of Public Attorneys and Legal Advisors.

- (1) A person shall be eligible for appointment as a Public Attorney or Legal Counsel if—
 - (a) he or she is Sudanese with full capacity; and
 - (b) he or she is a holder of a degree or higher qualification of law from a recognized university or institution of higher education.
- (2) He or she shall be of good behaviour and conduct, and should not have been convicted before any Court or board of discipline for an offence involving dishonesty or moral turpitude, even if he or she was pardoned.
- (3) The office of a Public Attorney or Legal Advisor shall be filled by an order issued by the Minister on the recommendation of the Under Secretary through—
 - (a) selection or promotion,
 - (b) appointment, secondment or transfer from outside the Ministry.
- (4) The office of Director of a Directorate, Senior Legal Counsel and First Legal Counsel shall be filled by an order issued by the President on the recommendation of the

Minister after consultation with the Under Secretary.

- (5) The office of the Second Legal Counsel shall be filled by an order issued by the Minister after consultation with the Under Secretary.
- (6) The office of all other Legal Counsels shall be filled by an order issued by the Under Secretary.

35. Conditions of Appointment of the Counsels General.

Subject to the provisions of section 34, the Counsels General shall be appointed as follows—

- (a) by promotion of a Senior Legal Counsel; provided that, the Senior Legal Counsel has been a practicing lawyer for at least twenty years;
- (b) by appointment from outside the Ministry as follows—
 - (i) from former Legal Counsels or Judges of the Supreme Court or Judges of the Court of Appeal; provided that, they have been practicing lawyers for at least twenty years;
 - (ii) from advocates; provided that, they have been practicing lawyers for at least twenty years; or
 - (iii) from members of the teaching staff of law of any recognised university; provided that, they have been teaching law for a period not less than fifteen years.

36. Conditions of Appointment of Senior Legal Counsels.

Subject to the provisions of section 34, the Senior Legal Counsels shall be appointed as follows—

- (a) by promotion of a First Legal Counsel; provided that, the First Legal Counsel has been a practicing lawyer for at

least fifteen years;

- (b) by appointment from outside the Ministry as follows—
- (i) from former First Legal Counsels or Judges of Court of Appeal; provided that, they have been practicing lawyers for at least fifteen years;
 - (ii) from Advocates; provided that, they have been practicing lawyers for at least fifteen years; or
 - (iii) from members of the teaching staff of law of any recognised university; provided that, they have been teaching law for a period not less than fifteen years.

37. Conditions of Appointment of First Legal Counsels.

Subject to the provisions of section 34, First Legal Counsel shall be appointed as follows—

- (a) by promotion of the Second Legal Counsels; provided that, their legal experience shall not be less than ten years;
- (b) by appointment from outside the Ministry as follows—
 - (i) from former First Legal Counsels or High Court Judges; provided that, their legal experience shall not be less than ten years;
 - (ii) from advocates; provided that, their legal experience shall not be less than ten years;
 - (iii) from members or teaching staff of law of any recognized university in the Sudan; provided that, they shall have been teaching law for a period not less than seven years.

38. Conditions of Appointment of Second Legal Counsels.

Subject to provisions of section 34, Second Legal Counsels shall be appointed as follows—

- (a) by promotion from Third Legal Counsels; provided that,

- their legal experience shall not be less than five years;
- (b) by appointment from outside the Ministry as follows—
- (i) from former Second Legal Counsels or County Court Judges of the First Grade; provided that, their legal experience shall not be less than five years;
 - (ii) from advocates; provided that, their legal experience shall not be less than five years;
 - (iii) from those practicing legal work to be considered by an order of the legal profession regulations as similar to that of the Minister as similar to that of the Legal Counsels at the Ministry; provide that, they have consecutively practiced such legal work for a period not less than seven years.

39. Conditions of Appointment of Third Legal Counsels.

Subject to provisions of section 34, Third Legal Counsels shall be appointed as follows—

- (a) by promotion from the post of the Legal Counsel; provided that, their legal experience shall not be less than three years;
- (b) by appointment from outside the Ministry as follows—
 - (i) from former Third Legal Counsels or the County Court Judges of First, Second or Third Grade or Legal Assistants; provided that, their legal experience shall not be less than three years;
 - (ii) from advocates; provided that, their legal experience shall not be less than three years;
 - (iii) from those practicing legal work to be considered by an order of the Minister as similar to that of the Legal Counsels of the Ministry; provided that, they shall have consecutively practiced such

legal work for a period not less than five years.

40. Appointment of Legal Counsels.

Subject to the provisions of section 34, the Legal Counsels shall be appointed as follows—

- (a) by promotion from Assistant Legal Counsel;
- (b) by appointment from outside the Ministry as follows—
 - (i) from Legal Assistants, County Court Judges of Third Grade or former Assistant Judges; provided that, their legal experience shall not be less than one year;
 - (ii) from advocates; provided that, their legal experience shall not be less than two years;
 - (iii) from those practicing legal work to be considered by an order of the Minister as similar to that of the Legal Counsels at the Ministry; provided that, they shall have consecutively practiced such legal work for a period not less than three years.

41. Appointment of Assistant Legal Counsels.

Subject to the provisions of section 34, Assistant Legal Counsels shall be employed for a one year probation period, by an order of the Under Secretary; provided that, the Under Secretary may extend the probationary period if the performance of the Assistant Legal Counsel has not been satisfactory. The Under Secretary may also shorten the probationary period if, the Assistant Legal Counsel, has previous service, good performance record, or high qualifications.

42. Functions and Duties of Public Attorneys and Legal Advisors.

- (1) Public Attorneys and Legal Advisors shall be assigned to one or more Directorates to represent the Ministry in

fulfilling its functions and duties.

- (2) In the performance of their functions and duties, Public Attorneys and Legal Advisors shall—
 - (a) exercise the powers of the Ministry, subject to the supervision and guidance of the Minister, Under Secretary and Directors;
 - (b) advise all levels of government in Southern Sudan and represent them in public prosecution, litigation and adjudication;
 - (c) conduct pre-trial proceedings;
 - (d) recommend law reform;
 - (e) strive to protect public and private rights, advise on legal matters and render legal aid; and
 - (f) perform any other duties that may be assigned to them by the Minister, Under Secretary or Directors.
- (3) Public Attorneys and Legal Advisors are required to perform their functions and duties diligently in accordance with the ICSS and the law.

43. Oath of Public Attorneys and Legal Advisors.

Before assuming office, a Public Attorney or Legal Advisor shall take an oath before the Minister, in the form similar to that of the Under Secretary and Directors.

44. Interim Provisions.

- (1) Public Attorneys and Legal Advisors at the levels of Government of Southern Sudan and the States shall be employed and serve under the authority of the Ministry, during the first four years of the Interim Period.
- (2) At the end of the four-year period, referenced in subsection (1), above, the Ministry shall relinquish its authority and powers over state public attorneys and legal advisors and transfer them to the state governments. The terms and conditions of service of public attorneys and legal advisors

in the states shall then be regulated by state law.

45. Engagement of Additional Legal Expertise.

The Minister may engage advocates or make use of legal expertise from outside the Ministry whenever necessary.

CHAPTER IV

PROVISIONS APPLICABLE TO ALL LEGAL COUNSELS

46. Eligibility Requirements and Status.

- (1) A person shall be eligible for appointment as a Legal Counsel only if he or she meets each of the following—
 - (a) he or she is a Sudanese citizen with full capacity;
 - (b) he or she is a holder of a LLB. or similar degree or higher qualification in the field of law from a recognized university or institution of higher education; and
 - (c) he or she is of good behaviour and conduct and should not have been convicted by any court or board of discipline for an offence involving dishonesty or moral turpitude even if he or she was pardoned.
- (2) Except as otherwise provided in section 30, above, with respect to the Under Secretary, all Legal Counsels shall be entitled to the status, conditions of service and benefits of similar tenure Judges of the Southern Sudan Judiciary.

47. Promotion of Legal Counsels.

- (1) Promotions within the Ministry shall be made on the basis of the degree of efficiency of the candidates; provided that, academic qualification and seniority shall be taken into

consideration.

- (2) In the evaluation of the degree of efficiency of the Legal Counsel, and the nature and the standard of performance, the regularity of his or her attendance to his or her duty and his or her administration of employees shall be taken into consideration.

48. Secondment of Legal Counsels.

Legal Counsels may be seconded to institutions outside the Ministry for one renewable year. Legal Counsels seconded to the GoSS or State Institutions other than the Ministry shall be subject to technical and professional supervision of the Ministry during the period of secondment.

49. Transfer and Termination of Service.

Transfer of a Legal Counsel to a non-legal office shall not be done except with his or her consent, and in case of termination of his or her service, it shall be after his or her notification of the reasons thereof.

50. Retirement.

No one shall be appointed as a Legal Counsel, and a Legal Counsel shall retire upon attaining 65 years of age. The President has the power, however, to extend the service of a Legal Counsel for a period of one year, provided that, the total period of extensions shall not exceed five years. The additional period shall be part of the pensionable service.

51. Retirement for Health Reasons.

Whenever it is clear that a Legal Counsel cannot, for health reasons, perform his or her functions and duties satisfactorily,

the President shall, on the recommendation of the Minister, issue an order retiring the Legal Counsel. The Minister shall convey the order to the Legal Counsel, and shall be considered retired from the date of conveyance of the order.

52. Pensions of Legal Counsels.

- (1) A Legal Counsel shall in case of voluntary retirement be entitled for pension after twelve years service, and shall be entitled for gratuity if the period of service is less than that.
- (2) Except where otherwise provided for under this Act or any other law, the public service laws, rules and regulations on pensions and gratuities shall apply to the pensions and gratuities of Legal Counsels.

53. Removal and Retirement of Legal Counsels.

Without prejudice to the provisions of this Act—

- (a) a Legal Counsel may be removed at anytime by the President on the recommendation of the Minister after consultation with the Under Secretary, in the interest of the public;
- (b) a Legal Counsel may be retired by the President on the recommendation of the Minister after consultation with the Under Secretary, for health reasons or old age;
- (c) removal or retirement of a Legal Counsel under subsections (a) or (b), above, shall not deprive the Legal Counsel of his or her right of pension or gratuity.

54. Resignation of Legal Counsels.

- (1) Resignation of a Legal Counsel shall be addressed to the

appropriate level of authority.

- (2) A Legal Counsel shall be considered to have resigned from the date of the order accepting his or her resignation.

55. Restriction on Outside Employment.

During his or her tenure in office, a Legal Counsel shall not practice any private profession, transact commercial business, or receive remuneration or accept employment of any kind from any source other than in accordance with this law.

56. Support Staff.

Employees of the Ministry other than the Legal Counsels shall be subject to the conditions of service and treatment in accordance with the provisions of public service law, rules and regulations.

CHAPTER V

DISCIPLINE, IMMUNITY AND TRIAL OF LEGAL COUNSELS

Internal Discipline of Legal Counsel

57. Board of Discipline.

- (1) Any Legal Counsel who violates professional ethics, rules and regulations or behaves in a way that is incompatible with the duties of his or her office, or commits an act which degrades the Ministry or legal profession, shall be subject to investigation and possible discipline.
- (2) The incident or matter which could subject a Legal Counsel to investigation and possible discipline shall be referred to

a Board of Discipline “Board” formed within the Ministry. The Board shall be responsible for conducting or overseeing investigation into the matter, hearing evidence and recommending appropriate disciplinary action, if any.

58. Constitution of Board.

- (1) The Board shall be constituted by the Minister, Under Secretary or the Counsel General who supervises the work of the Legal Counsel involved.
- (2) Request for constitution of a Board shall be made after an administrative investigation has been conducted by the Counsel General who supervises the Legal Counsel involved, or in the case of a Counsel General, the Under Secretary.
- (3) An investigation may also be conducted by a committee or a Legal Counsel appointed by the Minister or Under Secretary for such purpose; provided that, the Legal Counsel is senior to the Legal Counsel involved.
- (4) Framing of discipline charges shall be the responsibility of the Minister or Under Secretary as the case may be.

59. Powers and Proceedings of the Board.

- (1) If, based on the preliminary investigation, the Board decides to proceed against the Legal Counsel on all or some of the charges, the Legal Counsel shall be summoned to appear before the Board.
- (2) A copy of the charges shall be attached to the summons.

- (3) All the sittings of the Board shall be *in camera*.
- (4) The Legal Counsel shall appear in person before the Board. He or she may submit a written defence or be represented by a counsel or friend.
- (5) The Board shall hear the defence of the Legal Counsel against whom the proceedings are made.
- (6) If the Legal Counsel, subject to the hearing, fails to appear before the Board, the Board may proceed in his or her absence if it is satisfied that the summon was actually served.
- (7) The findings of the Board shall state reasons and the recommended penalty. It shall be read out in the sitting *in camera*.

60. Suspension during Investigation.

- (1) The Board may, if it decides to proceed with a hearing, suspend the Legal Counsel from performance of his or her duties during the course of the investigation and before the conclusion of proceedings. The Board may reconsider the order of suspension and reinstate the Legal Counsel, thereafter.
- (2) Suspension of a Legal Counsel under subsection (1) above does not automatically deprive the Legal Counsel of his or her pay while on suspension. The Board may at its own discretion decide to deprive him or her of pay, in whole or part, during the suspension.
- (3) The Minister or Under Secretary may suspend the Legal Counsel with, without or with half pay as the case may be.

61. Disciplinary Penalties.

The disciplinary penalties that may be imposed on Legal

Counsel are—

- (a) reprimand;
- (b) deprivation from allowances and or promotion; and
- (c) removal from office.

62. Report of the Board and Appeal.

- (1) The Chairperson of the Board shall report the decision of the Board to the Minister or Undersecretary.
- (2) The Legal Counsel shall have the right to appeal against the decision of the Board to the Minister within seven days from the date of announcement.

63. Removal or Reprimand.

- (1) Removal of a Legal Counsel from office shall be effective from the date of issuance of an order issued by the President in case of Under Secretary and Counsel Generals, and by the Minister, as the case may be, in all other cases.
- (2) Reprimand shall be executed by notification, issued by the Minister or Under Secretary, based on the report of the Board. The notification and the decision of the Board shall be kept in the file of the Legal Counsel.

Criminal Acts by Legal Counsels

64. Limitations on Arrest.

- (1) Except where he or she is found in the act of committing an offence, a Legal Counsel shall not be arrested or detained nor shall any investigation proceedings be taken or criminal

proceedings instituted against him or her except with the written consent of the Minister.

- (2) Where a Legal Counsel is arrested or detained after being caught committing an offence, the matter shall be referred to the Minister within 24 hours for directives.
- (3) The Minister or the Under Secretary, as the case may be, may order the suspension from duty of the Legal Counsel with or without pay during the proceedings, investigation or trial. The Minister or Under Secretary may reconsider the order before or after trial.

CHAPTER VI

MISSCELLANEOUS PROVISIONS

65. Subsidiary Regulations.

- (1) The Minister may issue subsidiary legislation for the efficient and effective implementation of the provisions of this Act, and achievement of higher level of performance in the Ministry.
- (2) Without prejudice to the generality of subsection (1) above, such subsidiary legislation may *inter alia*, provide for the following—
 - (a) the implementation of the organizational structure of the Ministry, including the methods and procedures of legal and administrative work in each of the Directorates, and the Ministry as a whole;
 - (b) conditions and procedures governing appointment, training, promotion and retirement of the Legal Counsels;
 - (c) procedures governing settlement of disputes among

- the GoSS Institutions, tendering and review of legal advice;
- (d) procedure governing settlement of disputes between GoSS Institutions and private sector and or individuals;
 - (e) limits and rules governing legal services offered by the Ministry to the public;
 - (f) Procedures to ensure fair, transparent employment, promotion and termination of service of Legal Counsels;
 - (g) procedures to ensure orderly investigation, review and exercise of internal disciplinary measures for Legal Counsels;
 - (h) procedures governing such other functions as are legally within the scope of the Ministry's responsibilities or conferred upon the Ministry by any other written law; and
 - (i) uniform procedures for issuing regulations.
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