LAWS OF THE NEW SUDAN

THE ATTORNEY GENERAL'S CHAMBERS ACT, 2004

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Provisional Order

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PROVISIONAL ORDER

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An Act, to provide for the establishment, functions and duties of The Attorney General's Chambers and any other issues related thereto.

CHAPTER ONE
PRELIMINARY PROVISIONS

Section 1. Title and Commencement.

This Provisional Order may be cited as "The Attorney General's Chambers Act, 2004, and shall come into force on the date of signature.

Section 2. Saving.

All the regulations, rules and orders made or issued under any other Law shall continue in force as if they were made or issued under this Act, until they are repealed or amended in accordance with the provisions of this Act.

Section 3. Definitions.

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

"The Chambers" means the Attorney General's Chambers and Secretariat of Legal Affairs and Constitutional Development.

"The Attorney General" means the Commissioner for Legal Affairs and Constitutional Development, and the Attorney General of the New Sudan.

"The New Sudan" means the area comprising of Bahr El Ghazal, Equatoria, Upper Nile, Nuba Mountains and Funj regions.

"CANS" means the Civil Authority of the New Sudan.

"SPLM" means the Sudan People's Liberation Movement.

"Chairman" means the chairperson of SPLM and CANS.

"The Under Secretary" means the Chief Civil Administrator of the Chambers appointed in accordance with the provisions of this Act.

"The Directorate" means any of the administrations of the Chambers established by regulations.

"The Director" means the person appointed in accordance with the provisions of this Act, as the head of a Directorate.

"Legal Counsel" includes the Under Secretary, Directors, Senior Legal Counsels, Legal Counsels and Assistant Legal Counsels.

"CANS Institutions" means the Leadership Council, Commissions, Secretariats, departments and any other administrative units of CANS, public corporations, parastal bodies, regional and local government institutions, legislatures and public sector companies.

"The Commission" means the Administration, Judiciary and Law Enforcement Agencies Commission.

CHAPTER TWO
ESTABLISHMENT, FUNCTIONS AND POWERS OF THE CHAMBERS

Section 4. Establishment of the Chambers.

1) There shall be established in the New Sudan a Chambers to be known as the Attorney General's Chambers, hereafter referred to as "the Chambers".

2) The Chambers shall be headed by a Commissioner who shall be the Attorney General of the New Sudan and here in after referred to as "the Attorney General".

Section 5. Functions of the Chambers.

1) The Chambers, represented by the Attorney General and the Legal Counsels, shall be the legal advisor of CANS and shall transact on behalf of CANS alls the businesses of legal nature.

2) Without prejudice to the generality of sub-section (1) above, and in addition to any functions that may be conferred upon the Chambers by any other Law, the Chambers shall have the following functions:-

   (i) ensure that the rule of Law and prompt justice are dominant and prevalent in the Legal sector;

   (ii) improvement of efficiency in the legal profession and ensure that proper rules, sound traditions, practices and ethics are laid down;

   (iii) to undertake law review and law reform processes;

   (iv) to conduct and encourage legal researches and studies and specially in Customary Law;

   (v) represent CANS before the civil courts in any civil suit for or against CANS institutions;

   (vi) supervise the conduct of criminal cases, investigation there in and undertake prosecution before criminal courts;

(vii) provide CANS institutions with legal services, drafting of decisions and orders, contracts and agreements, legal advice in respect of any activity or dispute involving such institutions and to represent them before competent tribunals;

(viii) legally advice on matters arising between CANS institutions and arbitrate in civil disputes arising between these institutions;

(ix) undertake the registration of companies, organizations, societies, advocates and transactions, authentication of documents, take legal attestations and issue the same in accordance with the Law;

(x) provide legal services to the public such as legal advice and legal aid;

(xi) any other legal functions that may be assigned to the Chambers or to the Attorney General by any other law or the Chairman.

Section 6. Powers of the Chambers.

1) The Chambers shall have power with respect to any dispute under consideration before it, to call any public servant to give any evidence or order him/her to give any information or submit any documents. Such power shall be as of the courts regarding appearance and giving of evidence.

2) Notwithstanding the provisions of any other Law:-

(i) the Chambers shall have the power to take cognizance of any offence, to investigate there into and undertake prosecution. The Chambers shall have all the powers contained in any Law regulating investigation and specially the Code of Criminal Procedure, 2003.

(ii) All the persons on whom powers were vested before the commencement of this Act to conduct investigations in accordance with the provisions of the Code of Criminal Procedure, 2003; or any other law in force, shall continue to exercise such powers subject to any subsequent order of the Attorney General exercising or regulating such powers.

3) The Chambers shall have power to authenticate documents, take affidavits and administer oaths in accordance with Law and regulations.

Section 7. Legal Advice.

1) Any legal advice relating to a civil dispute, signed by the Attorney General shall be binding on all the CANS institutions concerned and shall not be reviewed except by the Chairman on appeal.

2) A legal advice rendered by any legal counsel in the Chambers, relating to any civil dispute shall be binding on such CANS institutions unless it is reviewed by the Attorney General on his/her own motion or on appeal.

Section 8. Arbitration.

1) In case of dispute between two or more CANS institutions, the Attorney General may, on submission of the dispute to him/her, direct that such dispute be referred to arbitration.

2) The arbitration committee shall be constituted of equal representation nominated by the institutions concerned and the chairperson shall be appointed by the Attorney General.

3) The award made by the arbitration committee shall be binding but may be appealed against, by the aggrieved institution, to the Attorney General whose decision shall be final and binding.

Section 9. Appearance and Litigation.

The Attorney General and the legal counsels of the Chambers shall have the power to appear and litigate before all the courts of the New Sudan.

CHAPTER THREE
ADMINISTRATION AND SUPERVISION OF THE CHAMBERS

Section 10. Administrative Supervision.

1) The Attorney General shall have administrative and supervisory role in the Chambers and shall be responsible to the Chairman of the Commission for good performance there in.

2) The Chambers shall consist of the Attorney General, Under Secretary, Directors, Legal Counsels, Officials and Workers.

Section 11. The Under Secretary.

1) The Chambers shall have an Under Secretary who shall be appointed by the Chairman on the recommendation of the Chairman of the Commission after consultation with the Attorney General.

2) The Under Secretary shall before assuming office, take the following oath before the Chairman of the Commission:-
"I _____ the Under Secretary of the Attorney General's Chambers and the Secretariat of Legal Affairs and Constitutional Development, do hereby swear by almighty God, that I will respect the Constitution and the Law, render justice without fear or favour and perform my functions and duties diligently and honestly, so help me God".

Section 12. Functions of Under Secretary.

The Under Secretary shall:-

1) Assist the Attorney General in the performance of his/her duties, and shall be the Chief Administrator of the Chambers in the performance of the day to day activities.

2) Exercise the powers of the Attorney General not of the Commissioner and discharge his/her duties in his/her absence.

3) Be answerable to the Attorney General in the performance of his/her functions and duties.

Section 13. Legal Counsels.

1) The office of a legal counsel shall be held through:-

   (i) selection or promotion,

   (ii) appointment, secondment or transfer from outside the Chambers,

2) The office of the Director of a Directorate shall be filled by an order issued by the Chairman on the recommendation of the Chairman of the Commission after consultation with the Attorney General.

3) The offices of Senior Legal Counsels shall be filled by an order issued by the Chairman of the Commission on the recommendation of the Attorney General.

4) All the other offices of Legal Counsels shall be filled by an order issued by the Attorney General on the recommendation of the Under Secretary.

Section 14. Oath of Legal Counsels.

A Legal Counsel shall before assuming office, take before the Attorney General, an oath in the form specified in section 11 (2) above.

CHAPTER FOUR
MISCELLANEOUS PROVISIONS

Section 15. Engagement of Legal Expertise.

The Attorney General may engage lawyers or make use of legal expertise outside the Chambers whenever necessary.

Section 16. Secondment of Legal Counsels.

Legal Counsels shall be seconded to institutions outside the Chambers for one renewable year. Legal Counsels seconded to the institutions of CANS shall be subject to technical and professional supervision of the Chambers during the period of secondment.

Section 17. Transfer and Termination of Service.

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

Section 18. Immunity and Trial of Legal Counsels.

1) Except where he/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/her except with the written consent of the Attorney General.

2) Where a Legal Counsel is arrested or detained after being caught committing an offence, the matter shall be referred to the Attorney General with in 48 hours for directives.

3) The Attorney General 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. He/she may reconsider the order before or after trial.

Section 19. Retirement for Old Age.

A Legal Counsel shall retire, and nobody shall be appointed as a Legal Counsel after attainment of 65 years of age, but the Chairman may extend his/her service for one year, provided that the total period of extensions shall not exceed five years. The additional period shall be part of the pensionable service.

Section 20. Retirement for Health Reasons.

Whenever it is clear that a Legal Counsel cannot, for health reasons, perform his/her functions and duties satisfactorily, the Chairman shall, on the recommendation of the Attorney General through the Chairman of the Commission, issue an order retiring the Legal Counsel. The Attorney General shall convey the order to the Legal Counsel, and shall be considered retired from the date of conveyance of the order.

Section 21. Resignation of Legal Counsels.

1) Resignation of Legal Counsels 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/her resignation.

Section 22. 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, public service laws, rules and regulations on pensions and gratuities shall apply to the pensions and gratuities of Legal Counsels.

Section 23. Removal and Retirement of Legal Counsels.

Without prejudice to the provisions of this Act:-

1) A Legal Counsel may be removed at anytime by the Chairman on the recommendation of the Chairman of the Commission after consultation with the Attorney General, for public interest.

2) A Legal Counsel may be retired by the Chairman on the recommendation of the Chairman of the Commission after consultation with the Attorney General, for health reasons or old age.

3) Removal or retirement of a Legal Counsel under sub sections (1) and (2) of this section shall not deprive the Legal Counsel of his/her right of pension or gratuity.

Section 24. Other Employees.

Employees of the Chambers other than the Legal Counsels shall be subjected to the conditions of service and treatment in accordance with the provisions of public service laws, rules and regulations.

Section 25. Regulations.

1) The Attorney General may issue regulations for efficient and effective implementation of the provisions of this Act, and achievement of higher level of performance in the Chambers.

2) Without prejudice to the generality of the foregoing subsection, such regulations may inter alia, provide for the following:-

   (i) the structural and organizational skeleton of the Chambers; the methods and procedures of legal and administrative work in the Chambers;

   (ii) establishment and constitution of the Directorates of the Chambers; their functions and duties, levels of responsibility and supervision therein;

   (iii) conditions and procedures governing appointment, training, promotion and retirement of Legal Counsels.

   (iv) procedures governing settlement of disputes among the institutions of CANS, tendering and review of legal advice;

(v) procedure governing settlement of disputes between institutions of CANS and private sector and or individuals;

(vi) limits and rules governing legal services offered by the Chamber to the public.

Given under my hand this _____ day of _____ in the year, 2004 AD.

_____

Dr. John Garang de Mabior
Chairman
SPLM/CANS