

Act 3

Investigation Committees Act

2006

LAWS OF SOUTHERN SUDAN

THE INVESTIGATION COMMITTEES ACT, 2006

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LAWS OF SOUTHERN SUDAN

THE INVESTIGATION COMMITTEES ACT, 2006

CHAPTER I

PRELIMINARY PROVISIONS

1. Title and Commencement.

This Act may be cited as “The Investigation Committees Act, 2006” and shall come into force on the date of its signature by the President.

*Signed on
15th
November,
2006*

2. Purpose.

This Act provides for the establishment of Investigation Committees to address the Government need to conduct investigation into matters of public interest and any other issues related thereto.

3. Authority and Application.

This Act is drafted in accordance with the provisions of Schedule (B), paragraph (4) of the Interim Constitution of Southern Sudan, which grants the Government of Southern Sudan the exclusive legislative power relating to its activities for the delivery of services at all levels of the Government in Southern Sudan.

4. Interpretations.

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

“**Assembly**” means the Southern Sudan Legislative Assembly;

“**Chairperson**” means the head of an Investigation Committee;

“**court**” means a court in Southern Sudan, competent to hear and decide the issue at hand;

“**Gazette**” means the Southern Sudan *Gazette*, published by the GoSS, and any supplements thereto;

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

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

“**interested party**” means a person with a significant interest in the proceedings or outcome of the investigation;

“**Investigation Committee**” means a committee established pursuant to an order issued by the President or the Minister pursuant to section 6 of this Act;

“**Member**” means any person appointed to serve on the Investigation Committee, including the Chairperson;

“**Minister**” means any concerned Minister of the Government of Southern Sudan;

“**Order**” means the document issued by the President or the Minister, directing the formation of an Investigation Committee;

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

“relevant document” means any document related to the matter under the investigation;

“Terms of Reference” means—

- (a) the matters to which the investigation relates;
- (b) any particular matters as to which the Investigation Committee is to determine the facts;
- (c) any issue upon which the Investigation Committee is to make recommendations; and
- (d) any other matters relating to the scope of the investigation that the President or Minister may specify.

CHAPTER II

ESTABLISHMENT OF INVESTIGATION COMMITTEES

5. **Presidential or Ministerial Order.**

- (1) The President or the Minister, as the case may be, may from time to time issue an order for the establishment of a Committee to investigate into any matter of public interest.
- (2) Such committees may be established to conduct investigations in any public or private institutions.

6. **Contents of the Order.**

The Order establishing an Investigation Committee, whether issued by the President or the Minister, shall include the following information—

- (a) the name of the Chairperson of the Investigation Committee;

- (b) the name of the member or members of the Investigation Committee;
- (c) the Terms of Reference of the investigation, set forth in reasonable details;
- (d) the powers of the Investigation Committee; and
- (e) the establishment date and duration of the Investigation.

7. Amendment of Order.

- (1) The President or the Minister, as the case may be, may at any time after issuing the Order to convene an Investigation Committee, amend such Order, if he or she believes that it is in the public interest to do so.
- (2) Before amending the Order, the President or the Minister, as the case may be, shall consult with the Chairperson, whom he or she proposes to appoint, or whom he or she has appointed.

8. Appointment of Committee Members.

- (1) An investigation shall be undertaken by a Chairperson with at least, two Members.
- (2) Before appointing a Member to an Investigation Committee the President or the Minister as the case may be, shall consult with the Chairperson of the Committee.
- (3) In appointing a Member to an Investigation Committee, the President or the Minister shall have regard to—
 - (a) the need to ensure that the Investigation Committee, has the necessary expertise to undertake the investigation; and

- (b) in the case of an Investigation Committee consisting of a Chairperson and more Members, the need for balance shall be considered against the background of the Terms of Reference, in the composition of the Investigation Committee.

9. Additional Appointment to Investigation Committee.

- (1) The President or the Minister, as the case may be, may at any time, after the formation date of an Investigation Committee, appoint additional Members to the committee in order to—
 - (a) fill a vacancy that has arisen, including a vacancy in the position of Chairperson; or
 - (b) increase the number of Members on the Investigation Committee.
- (2) If the President or the Minister as the case may be, is exercising his or her right to appoint additional Members under subparagraph (1) (b), above, he or she shall first consult with the Chairperson of the Investigation Committee.

10. Oath.

Members of any Investigation Committee appointed under this Act shall take oath, to perform all the functions and duties assigned to them in good faith and in furtherance of justice, and in the public interest.

CHAPTER III**FUNCTIONS AND POWERS OF THE COMMITTEE****11. Functions and Powers of the Committee.**

Duly sworn Members of the Committee shall be responsible for investigating all the issues pertinent to the investigation, in good faith and shall submit the findings and recommendations to the President or the Minister as the case may be.

12. Powers of the Committee.

An Investigation Committee shall have the power to—

- (a) conduct hearings;
- (b) interview witnesses who may have relevant information regarding the investigation;
- (c) issue summons to any person to appear before it, if the Investigation Committee deems that there is a reasonable cause for summoning such a person to give evidence under oath;
- (d) require the production of any document, from anywhere;
- (e) issue warrants of arrest for any person who refuses to appear before the Investigation Committee without a valid reason;

provided that, all powers set forth in this section are exercised in good faith with the belief that they are necessary to the investigation.

13. Limitations on Authority.

Powers conferred by this Act on the Investigation Committee, or any Member thereof, shall be limited to the Terms of Reference.

14. No Determination of Liability.

An Investigation Committee shall not have the power to rule on nor determine any Civil or Criminal liability.

15. Functioning of the Committee.

- (1) The Committee shall conduct its business in a transparent manner, without fear, influence or favour.
- (2) A simple majority of the Members shall constitute a quorum to conduct the business of the Committee.
- (3) Each Member, including the Chairperson, shall have one vote, and the committee shall dispose of any item of business by simple majority. In the event of a tie the Chairperson shall have a casting vote.

CHAPTER IV**AUTHORITY AND PRINCIPLES OF THE FUNCTIONING OF THE COMMITTEE****16. Requirement of Impartiality.**

- (1) The President or the Minister shall not, as the case may be, appoint a person as a Member of the Investigation Committee if it appears that the person has—
 - (a) a direct interest in the matters to which the investigation is related; or
 - (b) a close association with an interested party;unless, the person's interest or association, does not affect the impartiality of the Investigation Committee.

- (2) Before a person is appointed as a Member as the case may be, of an Investigation Committee, he or she shall notify the President or Minister of any matters that, having regard to subsection (1), above, could affect his or her eligibility for appointment.
- (3) If at any time, whether before, during or after the course of the investigation, a Member of the Investigation Committee becomes aware that he or she has an interest or association falling within subsections (1)(a) or (b), he or she shall notify the Chairperson immediately.
- (4) A Member of an Investigation Committee shall not, during the course of the investigation, undertake any activity that could reasonably be regarded as affecting his or her competence to serve on the Committee.
- (5) A person under investigation shall have the right to object to membership of a Member of the Investigation Committee on grounds of interest or association; provided that a *prima facie* evidence has been established to that effect.

17. Duration of Appointment of Members to an Investigation Committee.

- (1) Subject to the provisions of this section, a Member of an Investigation Committee shall remain a Member until the investigation comes to an end, is terminated, or if he or she dies before the end of the investigation.
- (2) A Member of an Investigation Committee may at any time resign by notice to the President or the Minister, as the case may be.
- (3) The President or the Minister may at any time by notice, terminate the appointment of a Member of an Investigation Committee on the following grounds—

- (a) physical or mental illness, or for any other reason, the Member is unable to carry out his or her duties;
 - (b) failure to comply with any duty imposed on him or her by the Terms of Reference;
 - (c) a direct interest in the matters to which the investigation is related, or has a close association with an interested party;
 - (d) being guilty of any misconduct that makes him or her unsuitable to serve as a Member of an Investigation Committee.
- (4) Before exercising his or her power under subsection (3), above, with respect to a Member other than the Chairperson, the President or Minister, as the case may be, shall consult the Chairperson.
- (5) Before exercising his or her power under subsection (3), above, with respect to any Member of the Investigation Committee, including the Chairperson, the President or Minister shall—
- (a) inform the Member of the proposed decisions and of the reasons for it, and take into account any representations made by the Member in response;
 - (b) if the Member so requests, consult with the other Members of the Investigation Committee.

18. Power to Suspend Investigation.

- (1) The President or the Minister as the case may be, may at any time, by notice to the Chairperson, suspend an investigation for such period as it appears to be necessary to allow for—

- (a) the completion of any other investigation relating to any of the matters to which the investigation relates; or
 - (b) the determination of any civil or criminal proceedings arising out of any other of those matters.
- (2) The powers conferred by subsection (1), above, may be exercised whether or not the investigation or proceedings have started.
- (3) Before exercising such power, the President or the Minister shall consult the Chairperson of the Committee.
- (4) A notice under subsection (1), above, may suspend the investigation until a specific day, the happening of a specified event or the giving by the President or the Minister of further notice to the Chairperson.
- (5) When the President or Minister gives a notice under subsection (1), above, he or she shall set out in the notice his or her reasons for suspending the investigation.
- (6) A Member of the Investigation Committee shall not exercise the powers conferred by the Terms of Reference, during any period of suspension; but the duties imposed on a Member by sections 17 and this section of the Act shall continue during any such period.

19. End of Investigation.

For the purposes of this Act, an investigation comes to an end—

- (a) on the date of delivery of the report of the investigation;
- (b) on the date which the Chairperson notifies the President or the Minister that the Investigation Committee has accomplished its task; or

- (c) on any earlier date specified in a notice given to the Chairperson by the President or the Minister.

CHAPTER V

INVESTIGATION PROCEEDINGS

20. Evidence and Procedure.

- (1) Subject to the provisions of this Act, or any rules there under, the procedure for conducting an investigation are to be such as the Chairperson may direct.
- (2) The Chairperson may take evidence on oath, and for that purpose administer oath to witnesses.
- (3) In making any decision as to the procedure or conduct of an investigation, the Chairperson shall act with fairness and with regard also to the need to avoid any unnecessary cost.

21. Public Access to Investigation Proceedings and Information.

Subject to any restrictions imposed by a notice or order under section 6 of this Act, the Chairperson shall take such steps as he or she considers reasonable to secure that the members of the public are able to—

- (a) attend the investigation or see and hear a simultaneous transmission of proceedings of the investigation;
- (b) obtain or view a record of evidence and documents given, produced or provided to the Investigation Committee.

22. Restrictions on Public Access.

Restrictions may, in accordance with the provisions of this section, be imposed on—

- (a) attendance at an investigation, or at any particular part of the investigation; and
- (b) disclosure or publication of any evidence or documents given, produced or provided in an investigation.

23. Power of Chairperson to Require Production of Evidence.

- (1) The Chairperson may by notice, require a person to attend an investigation hearing, at a time and place stated in the notice—
 - (a) to give evidence;
 - (b) to produce any document in his or her custody or under his or her control that relates to a matter in question at the investigation; and
 - (c) to produce any other thing in his or her custody or under his or her control for inspection, examination or testing by or on behalf of the Investigation Committee.
- (2) The Chairperson may by notice, require a person within a reasonable time to—
 - (a) provide evidence to the Investigation Committee, in the form of a written statement;
 - (b) provide any document in his or her custody or under his or her control that is related to a matter in question at the investigation; and
 - (c) produce any other thing in his or her custody or under his or her control for inspection, examination or testing on behalf of the investigation committee.
- (3) A notice under subsection (1) or (2) shall—
 - (a) explain the possible consequences of not complying with the notice; and

- (b) indicate the steps that should be taken by the recipient of the notice if he or she wishes to make a claim within subsection (4), below.
- (4) A claim by a person that—
- (a) he or she is unable to comply with a notice under this section; or
 - (b) it is not reasonable in all the circumstances to require him or her to comply with such notice,
- is to be determined by the Chairperson of the investigation, who may revoke or vary the notice on either ground.
- (5) In deciding whether to revoke or vary a notice on the ground mentioned in (4)(b), the Chairperson shall consider the public interest in the information in question, being obtained by the investigation committee, having regard to the likely importance of the information requested.
- (6) For purposes of this section, a thing is under a person's "control" if it is in his or her possession or if he or she has a right to possess it.

24. Privileged Information.

A person may not under this section be required to give, produce or provide any evidence or document if he or she would not be required to do so, if the proceedings of the investigation were civil or criminal proceeding in a court.

25. Investigation Reports.

- (1) The Chairperson shall deliver the report to the President or the Minister, as the case may be, setting out—

- (a) the facts determined by the Investigation Committee; and
 - (b) the findings and recommendations of the committee, where the Terms of Reference required the committee to make recommendations.
- (2) The report may also contain anything else that the panel considers to be relevant to the Terms of Reference.
- (3) Before making the report under subsection (1), above, the Chairperson may deliver to the President or the Minister a report under this subsection, containing any information that a report under subsection (1) may contain.
- (4) If an Investigation Committee is unable to produce a unanimous report, the report shall reflect the points of disagreement.

CHAPTER VI

OFFENSES

26. Offenses.

- (1) A person is guilty of an offense if he or she fails without reasonable excuse to do anything that he or she is required to do by notice, under section 23 of this Act.
- (2) A person is guilty of an offense if during the course of an investigation, he or she does anything that is intended to have the effect of—
- (a) distorting or otherwise altering any evidence, document or other thing that is given, produced or provided to the Investigation Committee;

- (b) preventing any evidence, document or other thing from being given produced or provided to the Investigation Committee;

or anything that he or she knows or believes is likely to have that effect.

- (3) A persons is guilty of an offense if during the course of an investigation—
 - (a) he or she intentionally suppresses or conceals a document that is, and that he or she knows or believes to be a relevant document; or
 - (b) he or she intentionally alters or destroys any such document.

27. Enforcement by the Court.

- (1) Where a person—
 - (a) fails to comply with, or acts contrary to a notice under section 23, or any other notice or order made by an Investigation Committee; or
 - (b) threatens to do so, the Chairperson may transfer the matter to the appropriate court.
- (2) The court, after hearing any evidence or representations on a matter transferred to it under subsection (1), above, may make such order by way of enforcement or otherwise as it could make if the matter had arisen in proceedings before the court.

28. Immunity from Liability.

- (1) No action shall lie against—

- (a) a Member of the Investigation Committee;
- (b) any assessor, counsel or solicitor to an investigation;
or
- (c) a person engaged to provide assistance to an investigation.

with respect to any act done or omission made in the execution of his or her duty as such, or any act done or omission made in good faith in the purported execution of his or her duties.

- (2) Subsection (1), above, applies only to acts committed or omissions made during the course of the investigation, and not during any period of suspension, within the meaning of section 18 of this Act.
- (3) For the purposes of the laws on defamation, the same privilege attaches to:—
 - (a) any statement made in or for the purposes of proceeding before an inquiry, including any reports;
and
 - (b) reports of proceedings before the investigation,

as would be the case if those proceedings were held in a court.

CHAPTER VII

MISCELLANEOUS PROVISIONS

29. Payment of Investigation Expenses.

- (1) The President or the Minister shall approve payment to—
 - (a) the Members of the Investigation Committee;

- (b) any assessor, counsel or solicitor to the inquiry; and
 - (c) any persons engaged to provide assistance to the Investigation Committee,
 - such remuneration and expenses as he or she may determine.
- (2) The President or the Minister may pay any amounts awarded under section 30 below.
 - (3) The President or Minister shall pay any other expenses incurred in the conduct of investigation, including the cost of publication of any report.
 - (4) The President or the Minister as the case may be, is not obliged under this section or otherwise, to pay any amount or meet any expenses in so far as they are—
 - (a) related to any matter certified by the Minister, in accordance with such provisions, to be outside the Terms of Reference; and
 - (b) to any period falling after the date on which the notice under subsection (4) above was given.
 - (5) Within a reasonable time after the end of the investigation, the President or the Minister shall publish the total amount of what was paid under this section.

30. Expenses of Witnesses.

- (1) The Chairperson may with the approval of the President or the Minister, as the case may be, award reasonable amount to a person—

- (a) by way of compensation for loss of time, or
 - (b) in respect of expenses properly incurred, or to be incurred,

in attending, or otherwise in relation to, the inquiry.
- (2) The power to make an award under this section includes power, where the Chairperson considers it appropriate, to award amounts in respect of legal representation.
- (3) A person is eligible for an award under this section only if he or she is—
- (a) a person attending the investigation to give evidence or to produce any document or other thing; or
 - (b) a person who, in the opinion of the Chairperson, has such a particular interest in the proceedings or outcome of the investigation as to justify such an award.
- (4) The power to make an award under this section is subject to such conditions or qualification as may be determined by the President or the Minister.

31. Writings.

The Terms of Reference, and all other notices required under this Act, shall be given in writing.

32. Rules and Regulations.

- (1) The Minister shall promulgate rules and regulations for operation of the provisions of this Act.

- (3) Without prejudice to the generality of subsection (1), above, the Minister may promulgate rules and regulations dealing with—
- (a) matters of evidence and procedure in relation to investigations;
 - (b) the return or keeping, after the end of an investigation of documents given to or created by the Investigation Committee; and
 - (c) payments under sections 29 and 30 herein.
-