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Judiciary Act

2008

LAWS OF SOUTHERN SUDAN

THE JUDICIARY ACT, 2008

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LAWS OF SOUTHERN SUDAN**THE JUDICIARY 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, 2005 the Southern Sudan Legislative Assembly, with the assent of the President of the Government of Southern Sudan, hereby enact the following:

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

This Act may be cited as “The Judiciary Act, 2008”, *Signed on 26th January, 2008* and shall come into force on the date of its signature by the President.

2. Repeal and Saving.

The Judiciary Act, 2003, is hereby repealed, and the Judiciary Act, 1986, shall cease to apply and be of no further effect in Southern Sudan; provided that, all proceedings, orders, regulations and appointments taken or made there under, except to the extent they are repealed by or are otherwise inconsistent with the provisions of this Act, shall remain in force or effect, until they are repealed or amended in accordance with the provisions of this Act.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.

Subject to the provisions of Article 126(9) of the Interim Constitution of Southern Sudan, 2005(ICSS), this Act provides for the establishment and governance of the Judiciary of Southern Sudan, and any other issues related thereto.

4. Authority and Application.

- (1) This Act is drafted in accordance with the provisions of Article 126 of the ICSS, which gives GoSS the power to establish an independent Judiciary in Southern Sudan.
- (2) The provisions of this Act shall apply throughout Southern Sudan in all matters related to the Judiciary pending establishment of State Judiciaries in accordance with the provisions of Article 172 (3) of the ICSS.

5. Interpretations.

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

“Administration” means the management and supervision of the Courts;

“Assembly” means the Southern Sudan Legislative Assembly;

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

“Council” means the Judicial Service Council, established and governed by the Judicial Service Council Act, 2008;

“County Courts” mean the County Courts referred to in Article 127(d) of the ICSS and section 16 of this Act;

“Courts of Appeal” mean the second highest Courts in Southern Sudan, which are referred to in Article 127(b) of the ICSS and section 12 of this Act;

“Circuit” means High Courts, County Courts and Payam Courts under a Court of Appeal in each of the areas and States of Southern Sudan of the former Bahr-el-Ghazal, Equatoria and Upper Nile regions;

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

“Headquarters Committee” means the committee established pursuant to section 36 of this Act, to evaluate the performance of Judges up to the level of Justices of the Courts of Appeal;

“High Courts” mean the third highest Courts in Southern Sudan, which are referred to in Article 127(c) of the ICSS;

“Judge” means a Judge appointed in accordance with the provisions of this Act;

“Judiciary” means the Judiciary of Southern Sudan (JoSS);

“Justice” refers to a Judge of the Supreme Court or a Court of Appeal;

“Lay Magistrate” means a non-lawyer appointed by the President of the Supreme Court to exercise judicial powers;

“National Constitution” means the Interim National Constitution 2005, (INC);

“President” means the President of the Government of Southern Sudan;

“President of the Supreme Court” means the President of Supreme Court of Southern Sudan, and the head of the Judiciary;

“President of a Court of Appeal” means the Justice responsible for the administration of a Court of Appeal;

“President of a High Court” means the Judge responsible for the administration of a High Court;

“Public Service laws” means the laws, regulations and policies on public service as may be in effect from time to time in Southern Sudan;

“State” means any of the Southern Sudan States referred to in the ICSS; and

“Supreme Court” means the Supreme Court referred to in Article 127(a) of the ICSS, which serves as the Court of last resort and of which members are appointed by the President.

CHAPTER II

ESTABLISHMENT AND STRUCTURES OF THE JUDICIARY

General Provisions

6. Judicial Power and Independence.

- (1) Judicial power in Southern Sudan is vested in an independent organ to be known as “The Judiciary of Southern Sudan” hereinafter referred to as the “Judiciary”.
- (2) The Judiciary shall be independent of the Southern Sudan Executive and the Legislature. The President of the Supreme Court, as the head of the Judiciary, shall be answerable to the President of GoSS for the proper functioning and administration of the Judiciary.

- (3) The Judiciary shall have an independent financial budget charge on the consolidated fund, approved by the President of the Government of Southern Sudan, on the recommendation of the Council.

7. Establishment and Structures of the Judiciary.

The Judiciary shall be established and structured as follows—

- (a) The Supreme Court;
- (b) The Courts of Appeal;
- (c) The High Courts;
- (d) The County Courts;
- (e) The Payam Courts; and
- (f) Such other Courts or tribunals as deemed necessary to be established in accordance with the provisions of the ICSS and any other law.

8. Competence of the Courts.

Courts shall have competence to determine all disputes and offences as may be submitted thereto in pursuance of the law.

9. Rules of Jurisdiction.

Except as otherwise specifically provided for, in any other law, the rules governing the Jurisdiction of the courts and the procedure to be applied thereto, shall be prescribed by the Codes of Civil procedure and Criminal Procedure Acts as may be in effect from time to time.

10. The Supreme Court.

- (1) The Supreme Court shall consist of the President of the Supreme Court, a Deputy President and five (5) other Justices.
- (2) The President of the Supreme Court shall regulate the functioning and procedures of the Supreme Court and its panels according to the law.
- (3) The seat of the Supreme Court shall be in Juba, but in the performance of its duties, it may sit at any other place within Southern Sudan, as the President of the Supreme Court deems appropriate and necessary.
- (4) The powers and Jurisdiction of the Supreme Court shall be as provided for by Article 130 of the Interim Constitution of Southern Sudan supplemented by the Code of Criminal and Civil Procedure Acts or any other law.

11. Panels of the Supreme Court.

- (1) There shall be established within the Supreme Court, the following Panels—
 - (a) a Constitutional Panel to determine Constitutional matters, the Constitutionality of laws, interpretation of laws and conflict of Jurisdiction;
 - (b) a Criminal Panel to determine appeals and confirmations in criminal matters; and
 - (c) a Civil Panel to determine appeals in civil, commercial and other matters.

- (2) The Constitutional Panel shall be constituted by all Justices of the Supreme Court and presided over by the President of the Supreme Court. In the event a Justice is unable to sit on this Panel, the President of the Supreme Court shall confer powers upon the most senior Justice of the Court of Appeal for that purpose.
- (3) The Criminal and Civil Panels shall consist of three (3) Justices each, and shall be presided over by the President of the Supreme Court, the Deputy President or any other Senior Justice, whom the President of the Supreme Court may authorize.
- (4) Judgements shall be passed by majority decision of the Justices, and the order shall be issued and signed by the Presiding Justice of the Panel.

12. Establishment and Constitution of Courts of Appeal.

- (1) The Courts of Appeal shall be established by warrants of establishment issued by the President of the Supreme Court. The seats of such courts shall be specified in the warrant of establishment of each court.
- (2) a Court of Appeal may, when necessary, sit at any place within its Jurisdiction in accordance with a decision made by its President.
- (3) a Court of Appeal shall consist of the President of the Court of Appeal and other Justices not exceeding four.

13. Jurisdiction and Powers of Courts of Appeal.

- (1) Appeals shall lie to the Courts of Appeal against decisions of the High Courts within their Jurisdictions.

- (2) a President of a Court of Appeal shall constitute panels of at least three (3) Justices, each of which shall be presided over by the most senior Justice.
- (3) Judgements of the Court of Appeal shall be determined by majority decision of Justices, and the order shall be issued and signed by the presiding Justice.
- (4) The President of the Court of Appeal shall have the power of administrative supervision over the courts within his or her jurisdiction.

The High Courts

14. Establishment of the High Courts.

- (1) There shall be established, by warrants issued by the President of the Supreme Court, one High Court in each of the ten States of Southern Sudan.
- (2) The High Court, which is the highest Court in the State, shall consist of the President of the High Court and two other Judges.
- (3) The Seat of the High Court shall be in the capital of the State, the President of the High Court may, when necessary, convene the Court at any other place within its jurisdiction.

15. Jurisdiction and Powers of the High Courts.

- (1) A High Court shall have the powers and jurisdiction specified in the Codes of Civil Procedure and Criminal Procedure Acts.
- (2) A High Court Judge sitting alone shall try cases with the exception of criminal cases that may require special composition.

- (3) The President of a High Court shall have the power of administrative supervision over the Courts within his or her Jurisdiction, he or she shall be answerable to the Governor of the State for the performance and administration of the State Judiciary.
- (4) The High Court shall exercise appellate jurisdiction as a panel of three Judges, presided over by the President or any other senior High Court Judge.

16. Establishment of County and Payam Courts.

The President of the Supreme Court shall by warrants establish County and Payam Courts.

17. Grading of the County and Payam Court Judges.

County and Payam Court Judges shall consist of the followings—

- (a) First Grade;
- (b) Second Grade; and
- (c) Third Grade.

18. Jurisdiction of the County and Payam Courts.

- (1) The County Court of the First Grade Judge shall have original and appellate jurisdiction as specified by the Codes of Civil Procedure and Criminal Procedure as may be in effect from time to time, and in any other law.
- (2) The County Court of second Grade Judge shall have original Jurisdiction as specified by the Codes of Civil and Criminal Procedure as may be in effect from time to time and in any other law.

- (3) The Payam Court shall have original Jurisdiction as specified by the Codes of Civil and Criminal Procedure as may be in force from time to time and in any other law.
- (4) The seat of the County Court shall be in the County Headquarters or in any other place within its Jurisdiction.
- (5) The seat of the Payam Court shall be in the Payam Headquarters or any other place within its Jurisdiction.

19. Temporary Grant of Judicial Powers.

The President of the Supreme Court shall have the power to grant temporary judicial powers to any Judge or person for a specified period and may renew such powers from time to time.

CHAPTER III

GENERAL CONDITIONS FOR APPOINTMENT TO JUDICIAL POSITIONS

20. General Conditions for Appointment.

Any person appointed to a judicial position—

- (a) shall be a Sudanese citizen;
- (b) shall be of sound mind;
- (c) shall be a holder of at least LLB Degree or its equivalent qualification in law from a recognized University or higher institution of law;
- (d) shall not be less than—
 - (i) twenty-five years of age if the appointment is to a County or Payam Court;

- (ii) thirty five years of age if the appointment is to a High Court or a Court of Appeal; or
- (iii) forty five years of age if the appointment is to the Supreme Court, and
- (e) should not have been convicted by a competent Court of an offence involving dishonesty or moral turpitude, notwithstanding the fact of being subsequently pardoned.

21. Power to Appoint Justices and Judges.

- (1) Each of the following shall be appointed by the President of GoSS, having regard to competence, integrity, credibility and impartiality as provided for in the ICSS and this Act—
 - (a) the President of the Supreme Court;
 - (b) the Deputy President of the Supreme Court;
 - (c) the Justices of the Supreme Court;
 - (d) the Presidents of the Courts of Appeal; and
 - (e) the Justices of the Court of Appeal.
- (2) The Council shall make recommendations to the President with respect to the appointments set forth in subsection (1), above.
- (3) Judges of the High Courts, County and Payam Courts shall be appointed by the President on recommendation of the President of the Supreme Court of Southern Sudan.

22. Appointment of Justices of the Supreme Court.

- (1) The appointment of the President, Deputy President and Justices of the Supreme Court shall be subject to approval by two-thirds majority of all members of the Assembly.
- (2) Subject to the provisions of sections 20 and 21 of this Act, appointment of the Justices of the Supreme Court shall be as follows—
 - (a) by selection from among Justices of the Courts of Appeal;
 - (b) by appointment from outside the Judiciary as follows—
 - (i) from among the former Justices of the Supreme Court or the Court of Appeal; provided that, the conditions under which his or her prior appointment had been terminated are not inconsistent with his or her judicial integrity;
 - (ii) from among the Legal Counsels at the Ministry of Legal Affairs and Constitutional Development or from the National Ministry of Justice, with experience of not less than fifteen years in these Ministries;
 - (iii) from among the advocates with experience or practice in the legal profession for a period not less than fifteen years; and
 - (iv) from members of the law teaching staff, at a recognized university, or its equivalent on condition that they should have actually taught law for a period not less than eighteen years.

23. Appointment of Justices of the Courts of Appeal.

The appointment of Justices of the Courts of Appeal shall be as follows—

- (a) by promotion from among the Judges of the High Courts;
or
- (b) by appointment from outside the Judiciary as follows;
 - (i) from former Judges who have held the post of a Judge of a Court of Appeal or High Court; provided that, the conditions under which his or her previous service was terminated are not inconsistent with his or her judicial integrity;
 - (ii) from Legal Counsels at the Ministry of Legal Affairs and Constitutional Development or from Legal Counsels in the National Ministry of Justice, with experience of not less than thirteen years in those Ministries;
 - (ii) from advocates; provided that they should have actually practised advocacy for a period of at least thirteen years; and
 - (iv) from members of the teaching staff of a recognised university or its equivalent, provided that they should have taught law for a period of at least fifteen years.

24. Appointment of High Court Judges.

The High Court Judges shall be appointed as follows—

- (a) by promotion from County Court Judges of First Grade;

- (b) by appointment from outside the Judiciary as follows—
- (i) from former Judges who have held the post of a High Court Judge and County Court Judges of First Grade; provided that, the conditions under which his or her service was terminated were not inconsistent with their judicial integrity;
 - (ii) from Legal Counsels from the Ministry of Legal Affairs and Constitutional Development or from Legal Counsels in the National Ministry of Justice, with experience of at least ten years, in these Ministries;
 - (iii) from advocates, with an experience of practice for a period not less than ten years; and
 - (iv) from members of the teaching staff of a recognized university, or its equivalent, on condition that they should have taught law for a period not less than twelve years.

25. Appointment of County and Payam Court Judges.

The County and Payam Court Judges shall be appointed as follows—

- (a) by promotion within the Judiciary from—
- (i) a County Court Judge of Second Grade to County Court Judge of First Grade;
 - (ii) from a Payam Court Judge to a County Court Judge of second grade; and
 - (iii) from Judicial Assistant to a Payam Court Judge; and

- (b) by appointment from outside the Judiciary as follows—
 - (i) from former County Court Judges of First, Second or Third Grade, and Judicial Assistants; provided that, the conditions under which their previous services were terminated are not inconsistent with their judicial integrity;
 - (ii) from Legal Counsels at the Ministry of Legal Affairs and Constitutional Development or from Legal Counsels in the National Ministry of Justice on condition that—
 - (a) where the appointment is in the post of County Court Judge of the First Grade, he or she should have actual experience of at least six years;
 - (b) where the appointment is to the post of County Court Judge of the Second Grade, he or she should have actual experience of at least four years; and
 - (c) where the appointment is to the post of a Payam Court Judge, he or she should have actual experience of at least eighteen months as an Assistant Legal Counsel;
 - (c) from advocates, on condition that—
 - (i) where the appointment is to a post of County Court Judge of the First Grade, he or she should have actually practised in the legal profession for a period of at least six (6) years;
 - (ii) where the appointment is to the post of a County Court Judge of second grade he or she should have actually practised in the legal profession for at least four (4) years;

- (iii) Where the appointment is to the post of a Payam Court Judge he or she should have actually practised for eight months;
- (d) from the members of the law teaching staff of a recognized university or its equivalent, on the condition that—
 - (i) where the appointment is to a post of a Court Judge of the First Grade he or she should have experience of at least nine years;
 - (ii) where the appointment is to the post of a County Court Judge of the Second Grade, he or she should have an experience of at least seven years; and
 - (iii) where the appointment is to the post of a Payam Court Judge, he or she should have actually taught law for at least two years.

26. Appointment of Judicial Assistants.

- (1) The appointment of Judicial Assistants shall be by way of selection.
- (2) A Judicial Assistant shall be under probation, for a period of eighteen months.
- (3) The President of Supreme Court may—
 - (a) shorten the probation period, for the purpose of appointment, when such Judicial Assistant is in possession of the following—
 - (i) good performance; or
 - (ii) a post-graduate certificate in law;

- (b) increase the probation period, where the performance of such Judicial Assistant is not satisfactory.
- (4) Subject to the provisions of subsection (2), above, a Judicial Assistant after completion of the probation period, shall be in service by an order of the President of GoSS on the recommendation of the President of the Supreme Court.

27. Oath.

Upon appointment to the Judicial service, the President of the Supreme Court, the Deputy President of the Supreme Court, the Justices of the Supreme Court, and the Justices of the Court of Appeal shall take an oath before the President in the form set out below, and the remaining Judges shall take the same oath, before the President of the Supreme Court, or whoever he or she may designate.

Judicial Oath

“I, _____ swear in the name of Almighty God/Solemnly affirm, that, as a Judge, I will truly uphold and protect the Interim Constitution of the Republic of Sudan and the laws applicable in Southern Sudan; the Interim Constitution of Southern Sudan, the laws and usage of Southern Sudan; and that I will administer Justice to all manner of people without fear, favour, affection or ill will, so help me God/God is my witness.”

28. Prohibition of Engagement in Business Incompatible with the Judicial Office.

- (1) Justices and Judges shall not engage in trade or associate their judicial office with any other employment or business incompatible with their duties and which compromise the independence of Judiciary.

- (2) The Judicial Code of Conduct shall specify the businesses and activities which are incompatible with the judicial office and which compromise the independence of Judiciary.

CHAPTER IV

COURTS ADMINISTRATION

29. Administrative Supervision.

Subject to the provisions of Articles 126(8) and 136(1) of the ICSS and the provisions of this Act, the President of the Supreme Court shall have the power of administrative supervision with respect to all Courts, Justices, Judges, organs and administrations within the Judiciary.

30. Delegation of Powers.

The President of the Supreme Court may delegate any of his or her powers, provided for in this Act, to his or her Deputy, the Chief Registrar, in respect of administrative matters, a President of the Court of Appeal concerned, a Justice of the Supreme Court, or a Justice of the Court of Appeal, as he or she may deem necessary and appropriate.

31. Courts Administration.

- (1) There shall be established in the Judiciary an administrative unit, to be known as the “Courts Administration”, and shall be subordinate and answerable to the President of the Supreme Court.
- (2) Without prejudice to the generality of section 29 of this Act, the Courts Administration shall be headed by a Justice of the Supreme Court who shall be known as the “Chief Registrar.”

- (3) The Chief Registrar shall be answerable to the President of the Supreme Court for the overall administration of the Judiciary.
- (4) The Council, upon recommendation of the President of Supreme Court, may establish any units as may be deemed necessary.
- (5) The units, established under this section shall be subordinate and answerable to the President of Supreme Court. The heads of such units shall be appointed by the President of Supreme Court from among the Justices of the Supreme Court or Courts of Appeal.
- (6) The regulations shall specify the structures and functions of the units established under the provisions of this section.

32. Functions of the Courts Administration.

The Functions of the Courts Administration shall be as follows—

- (a) to supervise the administrative, clerical and accounts of the courts, and prepare directives and circulars relating to the regulation of the work and achievement of adequacy in performance;
- (b) to set standards, policies, regulations, coordination of appointments, promotions, transfers, trainings and grant of annual increment of pay to the officials of the Courts, inspect their work, investigate complaints made against them, consider appeals submitted by them against the proceedings made against them and render opinion thereon;
- (c) draw up policies, plans and modules for construction and maintenance of the buildings of the Courts, hiring of buildings, purchase of equipment, furniture, stationary and whatever is related thereto;

- (d) to monitor and evaluate the overall progress of the administration of courts; and
- (e) perform any other functions and duties as may be assigned or delegated thereto by the President of the Supreme court.

33. Technical Bureau.

There shall be established a training technical bureau, the functions and formation of which shall be specified by the regulations.

34. Appointment of Lay Magistrates.

- (1) The President of the High Court may, in the interest of work, recommend to the President of the Court of Appeal concerned, any citizen with relevant knowledge and experience for appointment as a Lay Magistrate in the Payam Court. If the President of the Court of Appeal is satisfied, he or she may forward the same to the President of the Supreme Court for appointment.
- (2) The appointment of Lay Magistrates shall be for a limited period as shall be specified in the letter of appointment.
- (3) Lay Magistrates appointed prior to the commencement of this Act shall be deemed to have been appointed as Payam Court Magistrate under this Act unless the appointment is revoked or terminated.

35. Support Staff.

- (1) The Courts Administration shall engage such other officers and employees on such terms as it may deem necessary or desirable for the efficient and effective performance of the functions of the Judiciary.

- (2) All aspects of employment of the Judiciary support staff, including but not limited to recruitment, employment, payment, promotion and termination, shall be governed by the provisions of the Southern Sudan Public Service law, rules and regulations.

CHAPTER V

INSPECTION AND EVALUATION OF PERFORMANCE

36. Headquarters and Circuit Committees.

- (1) There shall be established an Inspection and Evaluation of Performance of Judges Committee in the Judiciary Headquarters, hereinafter called the “Headquarters Committee”, to inspect and evaluate the performance of Judges.
- (2) The Headquarters Committee shall be administratively answerable to the President of the Supreme Court.
- (3) The Headquarters Committee shall be constituted by the President of the Supreme Court and chaired by the Deputy President of the Supreme Court or one of the Supreme Court Justices, and its membership shall consist of an appropriate number of both Justices of the Supreme Court and Courts of Appeal.
- (4) There shall be established a second committee to inspect and evaluate the performance of Judges at each circuit level, hereinafter called the “Circuit Committee”, which shall be technically answerable to the Headquarters Committee for the performance of Judges and administratively to the President of the Court of Appeal concerned.

- (5) The Circuit Committee shall be constituted by the President of the Court of Appeal concerned, of an appropriate number of Justices of the Court of Appeal and Judges of High Courts.

37. Functions of the Headquarters Committee.

- (1) The Headquarters Committee shall have the following functions—
 - (a) inspect the work of Justices of Courts of Appeal, assess the competence thereof, and present such proposals as it may deem necessary, for enhancement of performance;
 - (b) study the applications referred to it by the Council, or the President of the Supreme Court, and submit recommendations, with respect thereto; and
 - (c) revise the reports of the Circuit Committees for the purpose of confirming the same.
- (2) The Headquarters Committee shall submit its reports to the Council, through the President of the Supreme Court.
- (3) The Headquarters Committee shall notify Judges of such remarks, which are not in their favour, as may be deposited in their files.

38. Functions of the Circuit Committees.

- (1) A Circuit Committee shall have the following functions—
 - (a) inspect the work of High Court, County and Payam Court Judges and assess the competence thereof, and to present such proposals, as may be deemed necessary for the enhancement of performance; and

- (b) study such applications, as may be referred to it by the Chairperson of the Headquarters Committee, through the President of the Court of Appeal concerned, and submit the proposals with respect thereto.
- (2) The Circuit Committee shall submit its report to the Headquarters Committee, through the President of the Court of Appeal concerned.

39. Committees Regulations.

The Headquarters and the Circuit Committees shall follow such procedures as the regulations may specify.

CHAPTER VI**PROMOTIONS****40. Promotion.**

- (1) Promotion of all Justices and Judges shall be based on competence and seniority.
- (2) Assessment of competence shall be based on the following criteria—
 - (a) the judicial performance of the Justices or Judge; and
 - (b) the report of a direct superior authority on the conduct of the Judge.
- (3) Justices and Judges may be eligible for promotion as indicated below—
 - (a) Judicial Assistants may be considered for appointment to a Payam Court Judge after eighteen months of service;

- (b) Payam Court Judges may be considered for promotion to County Court Judges of Second Grade after five years of service;
- (c) County Court Judges of Second Grade may be considered for promotion to County Court Judges of First Grade after five years of service;
- (d) County Court Judges of First Grade may be considered for promotion to High Court Judges after five years of service;
- (e) A High Court Judges may be considered for promotion to the Court of Appeal Justices, after five years of service; and
- (f) Justices of the Court of Appeal may be considered for promotion to the Supreme Court after five years of service.

41. Notification.

- (1) The President of the Supreme Court shall, after completion of inspection and evaluation of the work of Justices and Judges, and before promotions are made, notify in writing, a Judge, who has not been included for promotion for reasons regarding his or her judicial performance or any other reasons.
- (2) Any Judge notified, in accordance with the provisions of subsection (1) above, is entitled to appeal in writing to the President of the Supreme Court, who shall forward the same to the Council. The Judge concerned shall file his or her appeal, within fifteen days from the date of receipt of the notification referred to in subsection (1) above.

- (3) The President of the Supreme Court shall send the appeal and file of the Judge concerned to the Council within seven days from the receipt of the appeal.
- (4) The Council shall decide on the appeal within fifteen days and its decision shall be final.
- (5) If the decision of the Council is in favour of the Judge who made the appeal, his or her seniority shall be restored and promoted accordingly.

42. Seniority of Justices and Judges.

- (1) Seniority of Justices and Judges shall be determined according to the dates of appointment, and where two or more Judges have been appointed on the same date and list, their seniority shall be determined according to the order in the list of their appointment.
- (2) The Council may amend the seniority list upon recommendation of the President of the Supreme Court, based on the report of the Inspection and Evaluation Committee and any other favourable previous background.

CHAPTER VII

ASSIGNMENT, DEPUTATION, SECONDMENT, TRANSFER AND IMMUNITIES OF JUDGES

43. Assignment.

- (1) The President of the Supreme Court or the President of the Court of Appeal concerned may assign any Judge to work at any court that has a backlog of cases or perform any other work as he or she may specify in the assignment order, for such a period as he or she may deem necessary.

- (2) In the absence or disability of a Judge for any reason, to exercise his or her duties thereof, his or her functions shall be performed by the Senior Judge at that Court.

44. Deputation.

- (1) A Judge may be deputed upon a decision of the President of Supreme Court and upon his or her consent and the consent of the body to which he or she is to be deputed, to perform judicial or legal work.
- (2) The period of deputation of a Judge for work other than his or her work shall not exceed three successive years.
- (3) Upon deputation of a Judge, his or her post shall be deemed to be vacant, and may be filled.

45. Secondment.

- (1) A Judge may be seconded to a foreign government or international organization by an order made by the President on the recommendation of the President of the Supreme Court.
- (2) A Judge may be seconded to a non judicial body by order of the President, with the consent of the President of the Supreme Court and the consent of the body to which he or she is to be seconded.
- (3) The period of secondment shall not exceed three successive years, and in the case of necessity, may be extended once for additional three years.

46. Transfer.

- (1) Subject to the requirements of work and the special circumstances of Judges, transfer of Judges shall be made by a decision of the President of the Supreme Court, after consultation with the Presidents of the Courts of Appeal.
- (2) The President of the Supreme Court may make supplementary transfers in cases of necessity and the same may be done by the President of the Court of Appeal, within his or her Circuit.

47. Immunity.

A Justice, Judge or any other person permitted by law to exercise judicial functions may not be liable to be sued before any court of law for any act done or ordered to be done by that Justice, Judge or person during the course of or discharge of his or her judicial functions, whether or not the act was within the limits of his or her Jurisdiction.

CHAPTER VIII**COMPLAINTS AND DISCIPLINARY MEASURES****48. Complaints Against Justices and Judges.**

- (1) Complaints against Justices and Judges shall be presented directly to the President of the Supreme Court his or her Deputy or through the President of the Court of Appeal concerned as the case may be.
- (2) The President of the Supreme Court may refer such complaints to any Judge higher in grade than the Judge complained against, to conduct investigation, as may be necessary, and submit his or her report with the recommendations thereof to the President of the Supreme Court.

- (3) Where it transpires from the investigation, provided for in subsection (2), above, that the matter may require discipline of the Justice or Judge concerned, the President of the Supreme Court shall take measures against him or her as he or she deems necessary in accordance with the provisions of this Act.

49. Board of Discipline.

There shall be constituted by the President of the Supreme Court, a Board of Discipline when necessary, for the discipline of Justices and Judges.

50. Requirements for Discipline.

Every Justice or Judge who contravenes his or her duty, or the ethics of the profession, or conducts himself or herself either by an act or omission in such a way as may degrade his or her judicial position or absents himself or herself from work without permission or acceptable reason, or is convicted in the Court of law for any offence or commits an act of insubordination, may be subject to disciplinary measures.

51. Powers of the President and Deputy President of the Supreme Court.

- (1) Subject to the provisions of Article 136(2) of the ICSS, a Board of Discipline against Justices of the Supreme Court may be held by an order of the Council, based on the recommendation of the President of the Supreme Court.
- (2) Boards of Discipline against Presidents and Justices of the Court of Appeal, Presidents and Judges of High Court, County and Payam Court Judges may be held by a decision of the President of the Supreme Court on his or her own motion or on the recommendation of the President of the Court of Appeal concerned, as the case may be.

52. Powers of the Board of Discipline to Investigate.

The Board of Discipline may conduct any investigation, as it may deem necessary, and may assign one of its members, to conduct the same.

53. Procedures of Board of Discipline and its Decision.

- (1) A Board of Discipline may not be held under the provisions of this Act, except after conducting a preliminary investigation on the basis of an explanation *per se*.
- (2) A Board of Discipline shall conduct its sittings in *camera*.
- (3) The Board of Discipline shall avail the Justice or Judge being disciplined, the opportunity of being heard and to defend himself or herself.
- (4) The Justice or Judge may present his or her defense by himself or herself, or through a counsel of his or her own choice.
- (5) Whenever it appears to the Board of Discipline that the person being disciplined has duly been served with summons and has not appeared before it, the Board of Discipline may proceed with the proceedings in his or her absence.
- (6) The decision of the Board of Discipline shall be read in *camera*, and a copy of the decision shall, when ever possible, be delivered to the Judge who has been disciplined.
- (6) The decision of the Board of Discipline shall be submitted to the President of the Supreme Court within a period of seven days from the date of its issuance and he or she shall forward the same to the Council for consideration.

54. Penalties.

The Board of Discipline may impose any of the following penalties—

- (a) warning;
- (b) reprimand;
- (c) deprivation of increment or promotion, for a period, not exceeding one year;
- (d) cut of pay for a period of one month's salary; or
- (e) dismissal.

55. Confirmation of Board Decision.

- (1) The decision of a Board of Discipline may be confirmed by the Council in respect to Justices of the Supreme Court and of the Court of Appeal, and by the President of the Supreme Court, in respect of the Judges of the High Court, County and Payam Courts; provided that, if the decision is for removal of a Justice of the Supreme Court, shall be as provided for under Article 136(2) of the ICSS.
- (2) The Council, upon the recommendation of the President of the Supreme Court on his or her own motion, or upon the request of the Justice or Judge who has been disciplined, may dismiss, amend or confirm the findings and conviction, and its decision shall be final.
- (3) The Council, on the recommendation of the President of the Supreme Court, may review its decision once.

56. Enforcement of Penalty.

- (1) The penalty of dismissal of the Justice or Judge shall be effective, and the judicial mandate shall be deemed to have ceased, as from such date of the confirmation by the President.
- (2) The other penalties, which have been imposed by the Board of Discipline, other than dismissals, shall be effective, as from the date of confirmation by the Council, provided that, a copy of the decision of confirmation shall be filed in the file of the Justice or Judge concerned.

57. Effect of Disciplinary Proceedings.

Disciplinary proceedings shall not prejudice any civil or criminal proceedings arising out of the same fact or facts.

Section 58: Lapse of Disciplinary Proceedings

Disciplinary proceedings shall lapse by acceptance of resignation of the Justice or Judge, on his or her attainment of retirement age or death.

Treatment of Justices and Judges During Investigation or Trial**59. Arrest or Detention.**

- (1) Except where a Justice or Judge is caught in the act of committing a crime, he or she shall not be arrested, searched or detained nor shall any investigation or criminal proceedings be instituted against him or her, except with permission from the President of the Supreme Court, or the President of the Court of Appeal concerned.

- (2) Notwithstanding the provisions of subsection (1), above, a Justice or Judge may be arrested, or detained, in case of being caught in the act of committing an offences; provided that, the matter shall be submitted to the President of the Supreme Court or the President of the Court of Appeal concerned, as the case may be, within twenty four hours as from the time of arrest, or detention, for confirmation or revocation. The Justice or Judge shall be arrested or detained in his or her house.
- (3) Investigation, in all cases, shall be undertaken by a Justice or Judge, who is senior to the Justice or Judge being investigated.

60. Suspension During Investigation or Trial.

- (1) The President of the Supreme Court, or the President of the Court of Appeal concerned, may make an order to suspend a Justice or Judge from performing his or her duties during the proceedings of investigation, or trial. In case of the President of the Court of Appeal, by the President of the Supreme Court provided that suspension from work shall not exceed ninety days from the date of suspension.
- (2) The President of the Supreme Court shall have the power to reconsider the order of suspension.
- (3) The order of suspension of a Justice or Judge from his or her work shall specify whether it is with, without or with half pay, as the case may be.

CHAPTER IX

TERMINATION, RESIGNATION AND RETIREMENT

61. Reasons of Termination of Service.

The service of any Justice or Judge shall be terminated for any of the following reasons—

- (a) removal or dismissal;
- (b) resignation;
- (c) retirement; or
- (d) death.

62. Resignation.

- (1) The resignation of the Deputy President of the Supreme Court, and the Justices and Judges of all the Courts shall be submitted to the President, through the President of the Supreme Court; and
- (2) The President of Supreme Court shall submit his or her resignation directly to the President.

63. Retirement on Pension.

- (1) a Justice or Judge shall be retired on pension, where he or she has attained seventy years of age.
- (2) retirement upon application of subsection (1), above, shall be by an order issued by the President, on the recommendation of President of the Supreme Court.

64. Retirement for Medical Reasons.

If at any time it appears to the President of the Supreme Court that a Justice or Judge for medical reasons is unable to discharge his or her duties, the Council may recommend to the President to retire the Justice or Judge by an order, and the Council shall notify him or her of such an order; provided that a Medical Commission has certified that he or she is medically unfit.

65. Prohibition of Work in Advocacy.

- (1) The President of the Supreme Court and his or her Deputy shall, after termination of his or her service, be prohibited from working as an advocate, during the two years subsequent to termination of service; he or she shall be granted, during the same period, all the emoluments and privileges of that office.
- (2) Justices of the Supreme Court and Courts of Appeal after termination of service, shall be prohibited from working as advocates during one year subsequent to termination of their service; they shall be granted, during the same period, all the emoluments and privileges of that offices.

CHAPTER X**BENEFITS****66. Annual Leave.**

- (1) A Justice or Judge shall be entitled to annual leave inside the country at the expense of the Judiciary.
- (2) Without prejudice to the generality of subsection (1), above, the President, Deputy President and Justices of the Supreme Court and Courts of Appeal shall be entitled to annual leave outside the country, at the expense of the Judiciary.
- (3) The courts shall have an annual leave, the duration of which, the date of commencement and the manner of regulating the work shall be specified by regulations.

67. Leave Without Pay.

- (1) A Justice or Judge, who has spent effective judicial service, not less than five years, may be granted a leave without pay, by a decision of the President of Supreme Court, based on sufficient cause, upon the request of the Justice or Judge.
- (2) The leave without pay shall be granted to a Justice or Judge once, for a period not exceeding three years. Upon granting the Justice or Judge a leave without pay, his or her post shall be deemed to be vacant.

68. Medical Treatment of Justices or Judges.

- (1) A Justice or Judge and his or her family shall be entitled to free medical treatment inside and outside the country; provided that medical treatment outside the country shall be on the recommendation of Southern Sudan Medical Commission.
- (2) Female Justices or Judges shall be entitled to three months maternity leave.

69. Pensions of Justices and Judges.

Pension of Justices and Judges shall be governed by Southern Sudan Judges pension's law.

70. Identity Cards.

A Justice or Judge shall have an identity card, which shall be an official document, for the purpose of his or her identity, and acceptance of which shall be mandatory to Government bodies, and shall be renewable every two years for Justices and Judges who are still in active service.

71. Annual Allowances.

Justices and Judges, shall be entitled to annual allowances provided for in circulars issued by the President.

72. Additional Retirement Benefits.

- (1) The President of the Supreme Court and his or her Deputy, and Justices of Supreme Court, shall continue to enjoy the right to have diplomatic passports, after their retirement.
- (2) The President, Deputy President and the Justices of the Supreme Court shall, after their retirement on pension, be entitled to one, two way, air travel ticket, once annually, inside and outside the Sudan, on condition that they are not re-engaged by the State.
- (3) After their retirement on pension, the President of the Supreme Court and his or her Deputy, and the Justices of the Supreme Court shall be entitled to—
 - (a) the cost of treatment for themselves inside the Sudan; or
 - (b) the cost of treatment for themselves outside Sudan, where the Medical Commission recommends the same; and
 - (c) the cost of travel of the accompanying person, in case of treatment outside the Sudan, where the Medical Commission recommends the same.

CHAPTER XI**FINANCIAL PROVISIONS****73. Operational Principle.**

The Judiciary shall operate its finances in accordance with sound financial principles and practices and shall in that respect ensure that its budget is sufficient to meet its expenditures, including payment of operational cost.

74. Sources of Funding.

- (1) The main source of funding for the Judiciary shall be those funds received through the annual budget allocations, approved in accordance with the budget procedures established by the Government.
- (2) Each year, the Judiciary shall submit for approval a budget, in accordance with the Government budget process, for the next fiscal year.
- (3) Without prejudice to the provisions of subsection (1) above, the Judiciary may obtain additional financial support from international donor agencies and any other source approved by and through the Ministry of Finance and Economic Planning.

75. Bank Accounts.

- (1) The Judiciary shall open and operate bank accounts as may be necessary for the performance of its functions.
- (2) The Deputy President of the Supreme Court or such other person as may be designated by the President of the Supreme Court, shall ensure that any money received by or on behalf of the Judiciary are safely kept and deposited into a bank account as soon as practicable.

- (3) The Deputy President of the Supreme Court shall ensure that no money is withdrawn from, or paid out of any of the Judiciary's bank accounts without authorisation.

76. Fiscal Year.

The fiscal year of the Judiciary shall be a period of twelve months commencing on such date in each year as determined by the financial laws of the Government of Southern Sudan.

77. Accounts.

- (1) The President of the Supreme Court shall keep proper books of accounts and records of all the financial transactions of the Judiciary.
- (2) The President of the Supreme Court shall prepare and submit a financial report for the previous financial year, in accordance with the laws and/or regulations of the GoSS. The report shall include—
 - (a) a financial statement of income and expenditure during the financial year;
 - (b) a statement of assets and liabilities of the Judiciary for the fiscal year submitted to and audited by the Auditor General; and
 - (c) a Financial Audit Report.

78. Audit.

- (1) The President of the Supreme Court shall in each fiscal year, ensure that the accounts of the Judiciary are audited by the Auditor General's Chamber or any other audit firm whom the Auditor General may authorise.

- (2) The President of the Supreme Court shall ensure that an audited statement of accounts is submitted to the President and to the Ministry of Finance and Economic Planning, in accordance with the laws and regulations of GoSS.
- (3) The Auditor General shall have access to all the books of accounts, vouchers and other records, and shall be entitled to any information and explanation required in relation to those records.

79. Circuit Budget.

Every circuit shall, have a budget internally within the overall budget of the Judiciary.

CHAPTER XII

MISCELLANEOUS PROVISIONS

80. Official Seal and Logo.

- (1) The official seal and logo of the Judiciary shall be in a form to be determined by the Council.
- (2) The official seal when affixed to any document shall be authenticated by the signature of the President of the Supreme Court or any other person whom he or she may authorise.

81. Power to Make Rules and Regulations.

The Council may make rules and regulations, as may be necessary, for the proper and efficient implementation of the provisions of this Act.