

# LAWS OF SOUTHERN SUDAN

## **The Southern Sudan Human Rights Commission Act, 2009**

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 enacts the following:

### **Chapter I**

#### **Preliminary Provisions**

##### **1. Title and Commencement**

This Act may be cited as "The Southern Sudan Human Rights Commission Act, 2009" and shall come into force on the date of its signature by the President.

##### **2. Repeal and Saving**

Any provisions of an existing legislation in Southern Sudan which are governed by the provisions of this Act are hereby repealed or cease to operate in Southern Sudan; provided that, all proceedings, orders and regulations taken or made thereunder, except to the extent they are cancelled by or are otherwise inconsistent with the provisions of this Act, shall remain in force or effect, until they are repealed or amended in accordance with the provisions of this Act.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**

This Act provides for the establishment and governance of an independent commission to, *inter alia*, monitor the application and enforcement of the rights and freedoms enshrined in the ICSS and ratified international and regional human rights instruments, to investigate complaints against violations of human rights, to offer advice to government organs on any issues relating to human rights, and to formulate, implement and oversee programmes of research, education and awareness of citizens' rights and obligations to enhance respect for human rights; and other issues related thereto.

##### **4. Authority and Application**

- 1 This Act is drafted in accordance with the provisions of Article 149 of the Interim Constitution of Southern Sudan, ICSS 2005 which grants the Government of Southern Sudan the authority to establish an entity to engage in the types of activities provided for in this Act.

2 The provisions of this Act shall apply throughout Southern Sudan in all matters related to the functions and duties of the Commission as provided for in this Act.

## 5. 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;

**“Auditor-General”** means the head of the Southern Sudan Auditor General Chambers;

**“Chairperson”** means the Chairperson of the Commission appointed by the President;

**“Commission”** means the Southern Sudan Human Rights Commission;

**“Commissioner”** means a Member of the Commission appointed in accordance with the provisions of this Act, and unless the context otherwise requires, shall include the Chairperson, Deputy Chairperson, full time and part time members;

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

**“Deputy Chairperson”** means the second highest authority of the Commission, next to the Chairperson;

**“Executive Director”** means the Chief Administrator of the Commission in charge of its day to day activities;

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

**“Government Institution”** means:

- (a) Government, or any Government organ, Ministry, the Bank of Southern Sudan, or any department, institution or undertaking thereof;
- (b) any State government organ, Ministry, department, institution of the State or undertaking thereof;
- (c) any local government authority;
- (d) any authority, commission, corporation, committee or other body, whether paid or unpaid, which is vested with or is performing, whether permanently or temporarily and in part or wholly, functions and duties of public nature, whether located within or outside Southern Sudan;

**“National Constitution”** means the Interim National Constitution (INC);

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

**“Property”** means real or personal property of every description, including money, whether situated in Southern Sudan or elsewhere and includes any interest in movable or immovable property;

**“Public Officials”** means:

- (a) all members of Southern Sudan and State governments including the President, Vice President, Ministers, Assembly Members, Governors, State Ministers, and County Commissioners;
- (b) Judges of the Judiciary;
- (c) persons employed or engaged in any capacity, including unpaid, part-time or temporary employment in government institutions as defined or who

are under the control and supervision of an employer who is a government institution as defined in this section whether or not they are called employees;

**“Public Service”** means the Public Service of Southern Sudan;

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

**“Southern Sudan”** means the territory which comprises the ten states into which the previous regions of Upper Nile; Bahr eL Ghazal and Equatoria have been decentralised;

**“Support staff”** means the support staff employed by the Commission excluding the Commissioners.

## **Chapter II**

### **Establishment, Functions, Duties and Principles**

#### **6. Establishment of the Commission**

- 1 “The Southern Sudan Human Rights Commission” (hereinafter called “the Commission”) is hereby established as an autonomous commission in Southern Sudan, to be responsible for, *inter alia*, monitoring the application and enforcement of the rights and freedoms enshrined in the ICSS and ratified international and regional human rights instruments receiving and investigating complaints against violations of human rights, offering advice to government organs on issues relating to human rights, and formulating, implementing and overseeing programmes of research, education and awareness of citizens’ media rights and obligations to enhance respect for human rights.
- 2 The Commission shall be independent and impartial, and shall exercise its powers and perform its functions and duties without fear or favour.
- 3 The Commission shall have the powers of a body corporate and shall have the right to:
  - (a) acquire, hold and dispose of movable and immovable property;
  - (b) sue and be sued; and,
  - (c) do all acts and things a body corporate may lawfully do.
- 4 The Commission shall have its head office in the Capital of Southern Sudan, and may establish branch offices in the ten states.

#### **7. Functions and Duties of the Commission**

- 1 The functions and duties of the Commission shall, *inter alia*, be to:

- (a) monitor the application and enforcement of the provisions of the Act of Rights and other rights and freedoms enshrined in the Constitution;
  - (b) investigate, on its own initiative or on a complaint made by any person or group of persons against any violation of human rights;
  - (c) visit jails, prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations to the relevant authority;
  - (d) establish a continuing programme of research, education and information to enhance respect for human rights;
  - (e) recommend to the Assembly effective measures to promote human rights;
  - (f) create and sustain within the society awareness of the provisions of the Constitution as the fundamental law of the people of Southern Sudan in the area of human rights;
  - (g) educate and encourage the public to defend the Constitution at all times against all forms of abuse and violation of human rights;
  - (h) formulate, implement and oversee programmes intended to inculcate in the citizens of Southern Sudan awareness of their civic responsibilities and appreciation of their rights and obligations as citizens;
  - (i) monitor compliance of all levels of government in Southern Sudan with international and regional human rights treaties and conventions ratified by the Republic of the Sudan;
  - (j) express opinion or present advice to government organs on any issue related to human rights; and
  - (k) perform such other functions as may be provided by law.
- 2 The Commission shall submit its annual reports to the President and the Assembly on the state of human rights and freedoms in Southern Sudan.
- 3 The Commission shall be accountable to the public through the Assembly and the President.
- 4 The Commission may engage in such other functions and duties, and exercise such other powers as conferred upon it by or under the ICSS, the President, the provisions of this Act, and or any other law.

## **Chapter III**

### **Governance of the Commission**

#### **8. The Governance of the Commission**

The Commission shall have the following governance structures—

- 1 The Commission; and
- 2 The Management.

#### **9. The Commission and Functions**

- 1 The legal authority of the Human Rights Commission shall vest in the Commission (hereinafter referred the “Commission”), which shall be its highest administrative and executive authority.
- 2 Decisions of the Commission shall be made in a transparent manner, independent of political, industrial and any other influences.
- 3 The functions and duties of the Commissioners shall be to:
  - (a) set policies, objectives and guidelines for the Commission;
  - (b) set priorities and annual performance targets for the Commission;
  - (c) review and evaluate the performance of the Commission;
  - (d) assess and approve the annual reports and the internally audited accounts of the Commission;
  - (e) oversee the process of realising the vision and strategic goals of the Commission;
  - (f) mobilise resources for the activities of the Commission as set out in this Act;
  - (g) protect independence and autonomy of the Commission;
  - (j) approve the annual budget of the Commission for submission to the Assembly in the Government’s Annual Budget.

#### **10. Composition of the Commission**

- 1 The composition of the Commission shall be as follows:
  - (a) Chairperson;
  - (b) Deputy Chairperson; and
  - (c) Three Commissioners.

- 2 The Chairperson, Deputy Chairperson and Commissioners shall be appointed by the President and approved by the Assembly by a simple majority vote.
- 3 The Executive Director shall be appointed by the President on the recommendation of the Commission. He or she shall be the Secretary of the Commission as an ex-officio member.
- 4 In the composition of the Commission, at least twenty-five percent of the aggregate membership shall be women.

## **11. Eligibility and Appointment**

- 1 The Chairperson, Deputy Chairperson and the Commissioners shall be selected from persons of high moral integrity, and shall possess the necessary qualifications, expertise and experience in matters related to human rights having regard to the provisions of section 10(4) above.
- 2 Without prejudice to the generality of subsection (1), above, any person shall be eligible for appointment to serve as the Chairperson, Deputy Chairperson or a Commissioner if he or she meets the following requirements:
  - (a) a Sudanese citizenship;
  - (b) be of sound mind and high character;
  - (c) be at least thirty five years of age;
  - (d) not employed in the civil service or any other branch of Government;
  - (e) not a holder of a public office, or an employee of a political party;
  - (f) not a holder of an elected position at any level of government;
  - (g) possesses the skills and knowledge relevant to the work of the Commission or qualifications deemed relevant to the position;
  - (h) not an undischarged bankrupt or insolvent; and,
  - (i) not been convicted of an offence involving dishonesty or moral turpitude.

## **12. Declaration of Assets**

The Chairperson, Deputy Chairperson, Commissioners, Executive Director and any senior public service official employed by the Commission shall, upon assumption of his or her office, make confidential declaration of his or her assets, liabilities and income including those of their spouses and children in accordance with article 121(1) of the ICSS, 2005

### **13. Tenure, Resignation and Removal**

- 1 The tenure of office of the Chairperson and Deputy Chairperson shall be five years, and the tenure of office of a Commissioner shall be four years, subject to renewal for one additional term.
- 2 The Deputy Chairperson or a Commissioner may resign by a letter addressed to the President through the Chairperson. In case of the Chairperson, he or she shall submit his or her letter of resignation directly to the President.
- 3 The President may remove the Chairperson, Deputy Chairperson or a Commissioner from the Commission or upon a resolution passed by a two-thirds majority vote of the Assembly, after a hearing. A hearing under this section shall be held in accordance with the Assembly's Conduct of Business Regulations; provided that the concerned Commissioner shall be given an opportunity to respond to the allegations.
- 4 Reasons for removal under subsection (3) above, shall include but not limited to:-
  - (a) ineligibility for appointment under section 11 of this Act;
  - (b) inability to perform the functions of his or her office.
  - (c) gross misconduct;
  - (d) incompetence and inefficiency;
  - (e) absence without permission or sufficient cause from three consecutive meetings of the Commission;
  - (f) conviction of an offence involving dishonesty, fraud or moral turpitude; and/or,
  - (g) death.
- 5 Where the Chairperson, Deputy Chairperson or a Commissioner is removed from office, resigns or dies, he or she shall be duly replaced under the same conditions, and in the same manner, as he or she was appointed under section 11 of this Act.

## **Chapter IV**

### **Procedures and Committees of the Commission**

#### **14. General Policies**

The Commissions shall lay down the general policies of operations, with standards of conduct for the Commissioners and support staff which may not be inconsistent with standards or codes of conduct contained in Public Service laws. Its policies of operations and standards of conduct shall be made available to the public for review and inspection.

**15. Proceedings of the Commission**

- 1 The Commission shall meet as often as it deems necessary and shall, in any case, meet for the discharge of its functions and duties at least every three months.
- 2 The Chairperson may, at anytime, convene an extraordinary meeting of the Commission and shall also call a meeting within ten calendar days upon a written request for an extraordinary meeting by at least three Commissioners.
- 3 The Chairperson, and in his or her absence, the Deputy Chairperson, shall convene and preside over all the meetings of the Commission, and in the absence of both, the Commissioners present at the meeting shall elect one of them to preside over that meeting.
- 4 Notice of a meeting of the Commission shall be served upon each Commissioner in writing, by post or e-mail. When necessary, notice may also be made by phone, provided that, the verbal notices are followed by notices in writing.
- 5 The quorum for meetings of the Commission shall be a simple majority of all the Commissioners.
- 6 For determination of quorum, a member withdrawing from a meeting under section 16(3) below shall be considered as present.
- 7 The decisions of the Commission shall be made by consensus and in lieu of that, by simple majority of the Commissioners present and voting and in case of a tie, the chair shall have a casting vote.
- 8 The Commission may, whenever necessary, invite any expert to provide specific technical knowledge during its meeting; provided that he or she shall have no right to vote on any matter considered at the meeting.
- 9 The meetings of the Commission shall not be open to the public unless decided otherwise by the Chairperson on an ad hoc basis.

**16. Disclosure of Interests**



- 1 Any Commissioner, who has a direct or indirect interest in a contract made or proposed to be made by the Commission or in any other matter to be considered by the Commission, shall disclose the nature or extent of his or her interest at the meeting of the Commission, before the matter is discussed or considered.
- 3 A disclosure made under sub-section (1) above, shall be recorded in the minutes of the meeting.
- 4 Any Commissioner, who makes a disclosure under sub-section (1) above, shall not participate in the deliberations or take part in any decision of the Commission with respect to that matter.

**17. Validity of Proceedings**

The validity of any proceedings of the Commission shall not be affected by a vacancy in its membership or by any defect in the appointment or disqualification of a Commissioner.

**18. Committees of the Commission**

- 1 The Commission may set up committees to facilitate the operations of the Commission, and to advise the Commission on matters as it may determine.
- 2 The Commission may also dissolve any committee which has fulfilled its function.
- 3 Any committee set up under sub-section (1) above, shall be headed by a Commissioner and shall comprise of such persons as the Commission may determine.
- 4 The terms and conditions of service of members of any committee set up under this section shall be subject to the Public Service laws and regulations.
- 5 The Commission may delegate any of its functions to a committee set up by it subject to limitations as it may deem appropriate.
- 6 Subject to any directives by the Commission, a committee set up under this section may regulate its own proceedings.

**Chapter V**

**Management of the Commission**

**19. Management of the Commission**

- 1 The Commission shall be administered by the Executive Director under the supervision of the Chairperson of the Commission.
- 2 The Executive Director shall, in the performance of his or her administrative functions and duties be assisted by the officers and staff of the Commission.

## **20. Functions and Duties of the Chairperson**

- 1 Management of the Commission shall be under the direct supervision of the Chairperson.
- 2 Without prejudice to the generality of subsection (1) above, the Chairperson shall have the following powers, functions and duties:
  - (a) representing the Commission in official functions and occasions, in Southern Sudan, nationally, regionally and internationally;
  - (b) providing the oversight of and monitoring the use of funds of the Commission;
  - (c) providing periodic reports to the President and the Assembly as approved by the Commission;
  - (d) appointing, within budgetary limitations, on the recommendation of the Executive Director and approval of the Commission, the officers and staff of the Commission in accordance with the Public Service laws and regulations;
  - (e) monitoring and evaluating the performance of the Commission; and
  - (f) performing other functions and duties as may be prescribed by this Act or any other law.

## **21. Functions and Duties of the Deputy Chairperson**

The Deputy Chairperson shall—

- 1 be the second highest authority in the Commission, he or she shall assist the Chairperson in overseeing the day-to-day operations of the Commission and acts in his or her absence; and
- 2 perform other functions and duties that may be assigned to him or her by the Chairperson or the Commission.

## **22. Functions and Duties of the Executive Director**

- 1 Serve as the Chief Administrative and financial officer responsible for the day to day activities of the Commission and implement decisions of the

Commission and supervision of the staff.

- 2 Supervise the practical implementation of the provisions of this Act.
- 3 Table, three months before the beginning of each new financial year, to the Commission, a work plan for the next financial year, setting out all the objectives and activities of the Commission for the year, as well as estimates of expenditure and revenue related to the work plan;
- 4 Table reports within three months after each financial year, to the Commission, with regard to the activities of the Commission in the preceding financial year.
- 5 Initiate policies and framework documents to the Commission.
- 6 Initiate internal policies and procedures including the job description of the support staff and organizational chart of the Commission.
- 7 Receive and execute resolutions and directives of the Commission.
- 8 Perform other functions and duties prescribed in this Act.

**23. Remuneration of the Chairperson, Deputy Chairperson, Commissioners and the Executive Director**

- 1 The Chairperson shall have the status of a GoSS Minister and shall be entitled to all the rights, privileges and benefits accorded to that position.
- 2 The Deputy Chairperson shall have the status of a state Minister and shall be entitled to all the rights, privileges and benefits accorded to that position.
- 3 Commissioners shall have the status of an Undersecretary and shall be entitled to all the rights, privileges and benefits accorded to that position.
- 4 The Executive Director shall have the status of an Undersecretary and shall be entitled to all the rights, privileges and benefits accorded to that office.

**24. Restriction on Outside Employment**

The Chairperson, Deputy Chairperson, Commissioners, Executive Director and support staff of the Commission shall not practice any private profession, transact commercial business, or receive remuneration or accept employment of any kind from any source other than the Commission.

**25. Outsourced Functions**

The Chairperson, with the approval of the Commission, may engage experts and professional advisors and institutions on a fixed term contract basis to perform partial functions of the Commission. Where such a contract substantively covers the functions of one or more permanent staff positions in the organisational chart, the term of the contract may not be for more than three months within one year.

**26. Oath**

The Chairperson, Deputy Chairperson and every Commissioner shall, before assuming his or her office, take the following oath of office before the President:

"I....., do hereby swear by the Almighty God/solemnly affirm, that as the Chairperson/Deputy Chairperson/Commissioner of the Southern Sudan Human Rights Commission, I shall be faithful, and shall diligently and honestly discharge my functions and duties, abide by the Interim Constitution of Southern Sudan, 2005 and shall strive to exercise the powers vested upon me by the Southern Sudan Human Rights Commission Act, with integrity and dignity, in the best interest of the people of Southern Sudan; and that I shall respect and abide by all the rules, regulations and instructions thereunder; and that I shall not without due authority disclose or make known any information, matter or thing that comes to my knowledge by reason of my assignment in the Commission, so help me God/God is my witness".

**27. Exemption from Liability**

No Commissioner, officer or employee of the Commission, shall be liable for any act or omission committed in the exercise or performance of his or her functions and duties with the Commission; *provided that* such acts or omissions are committed in good faith.

**Chapter VI**

**Investigation**

**28. The Power of Investigation**

The Commission shall have the power to investigate any allegations, facts, conditions, practices or matters, which it considers necessary or proper to determine whether any person is engaged in or has violated human rights.

**29. Investigation Committee**

If the Commission has a reasonable suspicion that a human rights violation has been committed based on a report from an outside source or on its own initiative,

the Commission shall form an Investigation Committee headed by a Commissioner and designated competent officers, to investigate the case. If the Chairperson of the Commission is a member of the Investigation Committee, he or she shall be the Chairperson of the Committee.

**30. Investigations to be conducted in Private Save in the Public Interest**

- 1 Pursuant to the provisions of Article 26 of the ICSS, 2005 investigations shall be conducted in private unless the Commission is satisfied that it is in the public interest to conduct a public inquiry.
- 2 Without limiting the factors that it may take into account in determining whether or not it is in the public interest to conduct a public inquiry, the Commission shall consider the following—
  - (a) Article 26 of the ICSS,2005;
  - (b) the benefit of exposing to the public, and making it aware, of a human right violation;
  - (c) the seriousness of the allegation or complaint being investigated;
  - (d) any risk of undue prejudice to a person’s reputation, including prejudice that might arise from holding a public investigation;
  - (e) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.
- 3 The Commission shall initiate a public investigation upon the written consent of the President

**31. Evidence and Procedure**

- 1 Subject to the provisions of this Act, or any rules and regulations thereunder, the procedures and conduct of an investigation shall be as the Chairperson of the Investigation Committee may direct.
- 2 The Chairperson of the Investigation Committee may take evidence on oath, and for that purpose administer oath to witnesses.
- 3 In making any decision as to the procedures or conduct of an investigation, the Chairperson of the Investigation Committee shall act with fairness and with due regard to the need to avoid unnecessary cost.
- 4 Subject to the provisions of this Act, or any rules and regulations thereunder, the Commission shall adopt specific rules and procedures to govern public investigations; and
- 5 In the case of public investigation, the Commission shall make its public investigation procedures available to the public.

### **32. Power to Compel Attendance and Require Production of Evidence**

- 1 In conducting an investigation, a Commissioner or the Chairperson of the Investigation Committee shall have the power to issue summons or orders to—
  - (a) any person or agency to produce, within a specified period, any documents, contracts, agreements, records, reports or data of any private person, public or private institution relevant to the investigation in his or her possession or in the custody of any person under his or her control or at a location determined by the Commission; and
  - (b) any witness within a reasonable period to attend in person at a certain place and requiring him or her to provide any information or to answer any question relevant to the investigation, and produce documents, contracts, agreements, and any other records in his or her possession relevant to the investigation.
- 2 Any summons or orders served under subsection (1) above shall—
  - (a) state the nature of the allegation or complaint under investigation;
  - (b) explain the possible consequences of not complying with the notice; and
  - (c) indicate the steps that should be taken by the recipient of the notice if he or she wishes to make a claim within subsection (3), below.
- 3 A claim by a person that—
  - (a) he or she is unable to comply with a notice under sub-section (1)(a) and (b) above, or
  - (b) it is not reasonable in all the circumstances to require him or her to comply with such notice, shall be determined by the Chairperson of the Investigation, who may revoke or vary the notice on either ground.
- 4 In deciding whether to revoke or vary a notice on the ground mentioned in subsection (3)(b) above, 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.

### **33. Failure to Attend or Produce Document**

- 1 Any person who—
  - (a) fails to appear before the Commission in accordance with any summons issued under section 34(1) above; or
  - (b) having appeared before the Commission, refuses to swear or make an affirmation, or having been sworn or affirmed and refuses,

- without lawful excuse, to answer any question or produce any document; or
- (c) knowingly gives any false or misleading information to the Commission; or
  - (d) causes an obstruction or disturbance in the course of any proceedings before the Commission, shall be deemed to have committed the relevant offense or offences in Chapters IX and X of the Penal Code 2008.
- 2 In the event that any person fails to obey the Commission's order issued under section 33(1) above, the Commission shall seek the aid of the Ministry of Legal Affairs and Constitutional Development to enforce the order and secure compliance therewith.

**34. Privilege**

A person may not under section 33 above, be required to answer any question or give, produce or provide any evidence, information or document if he or she would not be required to do so, if the proceedings of the investigation were civil or criminal proceedings in a court of law. Where the Commission disputes an exercise of privilege under this section the Commission shall through the Ministry of Legal Affairs and Constitutional Development, seek an appropriate order in a court of law.

**35. Representation and Cross-Examination**

- 1 The Investigation Committee shall give a reasonable opportunity for a person giving evidence at an investigation or public inquiry including any person subject to investigation to be legally represented.
- 2 Any person or his or her representative may, with the leave of the Commission, examine or cross-examine any witness on any matter that the Commission considers relevant.

**36. Inspection of Public Premises**

- 1 The Chairperson or an officer of the Commission authorized in writing by the Chairperson may, at any time:
  - (a) enter and inspect any premises occupied or used by a government or private institution or official in that capacity subject to investigation, and
  - (b) inspect any document or other thing in or on the premises, and
  - (c) take copies of any document in or on the premises.
- 2 The Government or private Institution or official shall make available to the Chairperson or authorised officer such facilities as are necessary to

enable the exercise of the powers conferred upon him or her by this section.

- 3 Officers authorised under sub-section (1) above, to enter and inspect premises shall carry and produce identification documents when inspecting premises under this section;

### **37. Disclosure That May Affect Investigation**

No person shall, except with a lawful authority, disclose the details of an investigation under this Act, including the identity of anyone being investigated or any other person called before the Investigation Committee.

### **38. Investigation Reports**

- 1 The investigation process shall lead to the preparation of a final report. The Investigation Committee shall deliver the report to the Commission setting out—
  - (a) the facts determined by the Investigation Committee;
  - (b) the findings and recommendations of the Investigation Committee;
  - (c) anything that the Investigation Committee considers to be relevant.
- 2 Where the findings of the report warrant a prosecution, the matter shall be referred to the Ministry of Legal Affairs and Constitutional Development for appropriate action.

### **39. The Commission's Investigation Powers and Investigation of Human Rights Violations by Other Entities**

- 1 The Commission may delegate, in whole or in part to the Government of Southern Sudan or State investigation bodies, as the case may be, the general investigation powers concerning human rights violations, with which the Commission is vested under this Act.
- 2 Government or State investigation bodies that are not delegated powers under subsection (1) above shall investigate any alleged or suspected human rights violation falling under the competence of the Commission and shall immediately provide information to the Commission on the same.
- 3 The Commission may, upon receipt of the information as specified in subsection (2) above, from the investigating organ, investigate the matter by itself.



- 4 Where the Commission fails to act on the information it received under sub-section (3) above, the organ commencing investigation shall finish and send the same to the Commission.
- 5 The Commission shall issue directives concerning the manner of reporting and or transferring of human rights violation cases whose investigations were carried out by other investigating bodies, as provided in sub-sections (1) and (2) above and notify the same to all the concerned investigating bodies.

**40. Claims and Compensation for Expenses and Damages:**

- 1 Notwithstanding the powers of the Commission set out in this Act, the Commission shall adopt procedures to effectively address complaints from affected parties, persons with legitimate interests and the public generally.
- 2 The Commission may, subject to the provisions of this Act, order that expenses suffered by any person in the course of or in connection with investigation by the Commission, shall be paid from the accounts of the Commission.

**41. Duty to Report**

- 1 Any executive or legislative constitutional office holder, Justice, or senior civil servant who has knowledge of a human rights violation and fails to report the same to the Commission commits an offence and shall, on conviction, be sentenced to imprisonment for a term not exceeding three months, or a fine or with both.
- 2 Any person who reports a proven human rights violation to the Commission, shall be immune from any prosecution arising from that report unless that person has knowingly been involved in the reported human rights violation.
- 3 Any employee who reports a proven human rights violation in a public or private institution or individual dealings, shall be immune from disciplinary measures, discrimination, and termination of service or demotion because of this reporting process.
- 4 Notwithstanding the provisions of sub-sections (2) and (3) above, any person who makes a false, frivolous or groundless complaint or allegation to the Commission to the effect that a person has committed, aided, abetted or concealed the commission of, or conspired with any other person in a human rights violation commits an offense and shall, on conviction, be sentenced to imprisonment for a term not exceeding one year or a fine or with both.

- 5 An employer who takes disciplinary measures or any other action against a person, as indicated in sub-section (3) above, shall be the subject of a civil suit for such disciplinary measures.
- 6 The Commission may issue guidelines as to what matters need or need not be reported.

## **Chapter VII**

### **Finance, Audit and Reporting**

#### **42. Operational Principle**

The Commission shall manage 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.

#### **43. Sources of Funding**

- 1 The Commission's main source of funding shall be its annual budget, approved in accordance with the budget procedures established by the Government.
- 2 Each year, the Commission shall prepare and submit for approval a budget, in accordance with the Government budget process, for the following financial year. Such budget shall be subject to review, revision and approval by the Assembly.
- 3 Without prejudice to the provisions of sub-section (1), above, the Commission may obtain additional funds from any other source approved by the Commission with the consent of the President.

#### **44. Borrowing Powers**

The Commission shall not obtain loans or other credit facilities from any person, organisation or institution for the purposes of meeting its obligations, and in case of necessity shall be obtained by the Ministry of Finance and Economic Planning on the recommendation of the Commission and approval by the President.

**45. Bank Accounts**

- 1 The Executive Director shall open, maintain and manage bank account in the Bank of Southern Sudan or its branches for the performance of the functions and duties of the Commission.
- 2 The Executive Director shall ensure that any money received by or on behalf of the Commission is safely kept and immediately deposited in its bank account.
- 3 The Executive Director shall ensure that no money is withdrawn from, or paid out of, any of the bank accounts of the Commission without prior authorisation.

**46. Surplus Funds**

Funds belonging to the Commission, not immediately required for any purpose provided for in this Act shall, at the end of financial year, revert to the Consolidated Fund in the Ministry of Finance and Economic Planning.

**47. Accounts**

- 1 The Executive Director shall keep and maintain proper books of accounts and records of all funds received and spent by the Commission during the financial year.
- 2 The Executive Director shall prepare and submit a financial report to the Commission, not later than three months from the end of the previous financial year. 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 Commission for the financial year, prepared in accordance with generally accepted accounting principles, submitted to and audited by the Auditor-General; and,
  - (c) a Financial Audit Report.

**48. Audit**

- 1 The Chairperson shall ensure that, for each financial year, the accounts of the Commission are audited by the Auditor-General or such other audit firm approved by the Auditor-General.
- 2 The Commission shall ensure that within four months from the end of the financial year or such other period as the Government may require in

writing, an audited statement of accounts, in accordance with the provisions of section 48 above, is submitted to the President and the Ministry of Finance and Economic Planning.

- 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 and any other records of the Commission.

#### **49. Annual and Other Reports**

- 1 In addition to the Financial Audit Report, required by section 49 above, when required by the Ministry of Finance and Economic Planning, the Commission shall also prepare an Annual Report of its activities during that financial year.
- 2 The Annual Report shall, inter alia, include the following information—
  - (a) a copy of the auditor's report;
  - (b) a statement of financial performance and of cash flows;
  - (c) the budget for the coming financial year;
  - (d) a description of the activities of the Commission during the previous year;
  - (e) an analysis of the extent to which the Commission has met its objectives of the previous year;
  - (f) an evaluation as to the extent to which the advice and directives of the Commission have been complied with;
  - (g) objectives of the Commission for the coming year; and,
  - (h) any recommendations on the matters governed by the provisions of this Act.
- 3 The Commission shall publish and disseminate widely the Annual Report, along with its audited accounts. In the event the Commission fails to distribute the Annual Report, it shall be distributed by the Ministry of Finance and Economic Planning.
- 4 The Commission shall submit to the President and the Assembly such other reports on its activities or any other matter that may from time to time be required.

## **Chapter VIII**

### **Miscellaneous Provisions**

#### **50. Offenses and Penalties**

Any member of the Executive or Legislative branch of the Government or employee of a Government Institution or a member of his or her immediate family—

- (a) having direct or indirect interest or decision making power in any company or undertaking with which the Executive or Legislative branch of the government or any Government Institution proposes to deal; and
- (b) knowing or having constructive knowledge of the proposal of the Executive or Legislative branch of the government or any Government Institution to so deal, who fails to disclose the nature of such interest and votes or participates in the proceedings of such an institution relating to such a deal or decision, commits an offense and shall on conviction be sentenced to imprisonment for a term not exceeding five years, or a fine, or with both.

#### **51. Collaboration and Coordination with the Ministry of Legal Affairs and Constitutional Development**

- 1 The Commission shall collaborate and coordinate with the Ministry of Legal Affairs and Constitutional Development in the enforcement of the provisions of this Act.
- 2 If at any time the Commission identifies a violation of the provisions of this Act, it shall coordinate with the Ministry of Legal Affairs and Constitutional Development to facilitate the issuance of a citation, effect an arrest, or take any other appropriate measures.

#### **52. Official Seal and Logo**

- 1 The official seal and logo of the Commission shall be in a form to be determined by the Commission.

- 2 The official seal when affixed to any document shall be authenticated by the signature of the Chairperson or any other person whom he or she may authorise.

**53. Confidentiality**

To protect the confidentiality of its activities, the Deputy Chairperson, Commissioners, officers and staff of the Commission shall not divulge or publish any information about the Commission or its activities without prior written authorisation by the Chairperson.

**54. Terms and Conditions of Service of Support Staff**

- 1 Without prejudice to the provisions of this Act, the Commission may in consultation with the Ministry of Labour, Public Service and Human Resource Development and Ministry of Finance and Economic Planning, work out special terms and conditions of service for the officers and staff of the Commission.
- 2 All aspects of employment of officers and staff of the Commission, including but not limited to recruitment, employment, payment, promotion and termination, shall be governed by the provisions of Public Service Laws and Regulations.

**55. Regulations**

The Commission shall make rules and regulations as may be necessary for the effective and efficient implementation of the provisions of this Act.

---