

# LAWS OF SOUTHERN SUDAN

## **The Southern Sudan Anti-Corruption 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**

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

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

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

Any provisions of an existing legislation in Southern Sudan which are governed by this Act are hereby repealed or cease to operate in Southern Sudan; *provided that*, all proceedings, orders and regulations taken or made thereunder, except to the extent they are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by or are otherwise inconsistent with the provisions of this Act, shall remain in force or effect, until they are repealed or amended in accordance with the provisions of this Act.

##### **Section 3. Purpose**

This Act provides for the establishment and governance of an independent commission to prevent and combat corruption at all levels of Government and Institutions, as well as to direct and provide oversight for the requirement under the Interim Constitution of Southern Sudan, 2005 for all persons holding constitutional posts and senior public officers to make declaration of their income, assets and liabilities, and any other issues related thereto.

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

- (1) This law is drafted in accordance with the provisions of Article 147(1) of the Interim Constitution of Southern Sudan, 2005, which grants the Government of Southern Sudan the authority to establish a Commission to prevent and combat corruption and corrupt practices 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 in this Act.
- (3) This Act shall apply to Public Officials, public entities, corporations, all other commercial enterprises, non-governmental organizations whether national or international, foundations, trusts, charities and civil society organizations and individuals, using, public or handling public resources or property.

#### **Section 5. Interpretations**

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

**“Advantage”** means:-any benefit or favour including;

- a) Any gift, loan, fee, reward or commission, consisting of money or of any value security or other property or interest in property;
- b) Any office, employment or contract;
- c) Any payment, discharge or liquidation of any loan; or
- d) Any other benefit or favour.

**“Agent”** means any person employed by or acting for another, including a trustee, administrator, executor, a person employed in the public service or under any corporation or public body and any person employed by or acting for a subcontractor.

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

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

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

**“Commission”** means the Southern Sudan Anti-Corruption Commission;

**“A member of the Commission”** means a person appointed in accordance with the provisions of this Act, and unless the context otherwise requires, shall include the Chairperson, Deputy Chairperson and members;

**“Court”** means competent court of Southern Sudan;

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

**“Corrupt practices”** means soliciting, accepting, obtaining, giving, promising or offering of a gratification by way of a bribe or other personal temptation or inducement, or the misuse of a public institution/authority or office to achieve private advantage or benefit to the person or others;

**“Corruption”** means a conduct comprising an offence under section 89 through 102 and sections 105 through 108 of the Penal code, 2008 and includes conduct comprising a conspiracy or attempt to commit or engage in an activity that would constitute a corrupt conduct under those sections.

**“Dealing”** means:

- (a) any purchase, sale, loan, charge, mortgage, pledge, caveat, transfer, delivery, assignment, subrogation, transmission, gift, donation, trust, settlement, deposit, withdrawal, transfer between accounts, or extension of credit;
- (b) any agency or grant of power of attorney; and
- (c) any act which results in any right, interest, title or privilege, whether present or future or whether vested or contingent, in the whole of or in part of any property being conferred on any person;

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

**“Document”** means the deeds, agreements, title papers, letters, receipts, and other instruments used to prove a fact.

**“Domestic Relationship”** means father, mother, spouse, other partner in a domestic relationship, child, brother, sister, uncle, aunt and cousins and their spouses;

**“Ethics Infrastructure”** means mechanisms, bodies, procedures or the necessary conditions that serve to reduce substantially unethical conduct and encourage efficiency and integrity in public service;

**“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);

**“Gratification”** means:-

- a) Money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable;
- b) Any office employment or contract;
- c) Any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- d) Any other services, favour, or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and

- e) Any offer, undertaking or promise of any gratification within the meaning of subparagraphs (a), (b), (c), (d)

**“Public Body”** means:

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

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

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

**“Official income”** means salaries, wages, allowances, pensions, gratuities and other monies paid to a public officer by virtue of his or her appointment as public officer.

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

**“principal”** means an employer, a beneficiary, under a trust, and a trust estate as though it were a person and any person beneficially interested in the estate of a deceased person as though the estate were a person and in the case of a person employed in the public service or a public body includes the government or the public body, as the case may be

**“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 Office”** means an office in the service of the government of Southern Sudan and includes service in the offices of President, Vice President, Minister, State Governor, Undersecretary, Member of the Legislative Assembly, Magistrate, Judge, Justice, offices in the armed forces, the police forces, wildlife service, fire bridge, a public corporation or on the Board thereof; a local authority, any commission or committee established by the government of Southern Sudan

**“Public Official”** means:

- (a) any member of Southern Sudan and State government including the President, Vice President, Minister, Assembly Member, Governor, State Minister, and County Commissioner;
- (b) Judge 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;
- “Domestic Relationship”** means father, mother, spouse, other partner in a domestic relationship, child, brother, sister, uncle, aunt and cousins and their spouses;
- “Senior Civil Service Officials”** includes all under-secretaries and directors general of Government Institutions;
- “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, Composition and Functions**

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

- (1) “The Southern Sudan Anti-Corruption Commission” (hereinafter called “the Commission”) is hereby established as an autonomous Commission in Southern Sudan, to be responsible for the investigation of cases of corruption with a view to protecting public property, combating administrative malpractices in public institutions, and requiring, under the ICSS, all public office holders to make declaration of their income, assets and liabilities.
- (2) The Commission shall be independent and impartial, and shall exercise its powers and perform its functions and duties in an open, objective, transparent and non-discriminatory manner, 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 be accountable to the public through the President and the Assembly.
- (5) The Commission shall have its head office in Juba the Capital of Southern Sudan

## **Section 7. 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.

## **Section 8. Composition of the Commission**

- (1) The Commission shall consist of:-
  - a) Chairperson;
  - b) Deputy Chairperson; and
  - c) Three members of the Commission.
- (2) In the composition of the Commission, at least twenty-five percent of the aggregate membership shall be women.
- (3) The Chairperson, Deputy Chairperson and members of the Commission shall be appointed by the President and approved by the Assembly by a simple majority of all the members.

## **Section 9. Functions of the Commission**

- (1) The functions of the Commission shall be to:-
  - (a) protect public property;
  - (b) investigate cases of corruption involving public property as well as the private sector; such investigation shall be submitted to the Ministry of Legal Affairs and Constitutional Development for appropriate action;
  - (c) coordinate with any agency of Government in the investigation of cases of corruption;
  - (d) combat conducts which tend to promote or encourage corrupt practices in public affairs;
  - (e) combat administrative malpractices in public institutions such as nepotism, favouritism, tribalism, sectionalism, gender discrimination, bribery, embezzlement and sexual harassment;
  - (f) enlist and educate the public and foster public support in combating corruption and corrupt practices.
  - (g) Collaborate with Southern Sudan, national, regional and international professional scientific institutions and organizations.
- (2) The Commission may engage in such other functions and duties and exercise such other powers as entrusted to it by or under the ICSS, the President, and the provisions of this Act and or any other law.

## **Chapter III**

### **Governance of the Commission**

#### **Section 10. Governance of the Commission**

The Commission shall have the following governance structures:-

- (1) The Commission; and
- (2) The Management.

#### **Section 11. The Commission**

- (1) The powers of the Southern Sudan Anti-Corruption Commission shall vest in the Commission which shall be the highest policy making body.
- (2) Decisions of the Commission shall be made in a transparent manner, independent of political, industrial and other influences. The members of the Commission, including the Chairperson and Deputy Chairperson, shall comply with the provisions of the Commission's standard of conduct.
- (3) Without prejudice to the provisions of section 9 of this Act, the functions of the Commission 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 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 the independence and autonomy of the Commission and;
  - (h) approve the annual budget of the Commission for submission to the Assembly in the General Annual Budget of the Government.
- (4) The Commission shall also:-
  - (a) audit the operations of the Commission for the purpose of monitoring its compliance with the law;
  - (b) deal with complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commissioners or those engaged by the Commission;
  - (c) deal with conduct amounting to maladministration including, actions or commissions contrary to law, or unreasonable, unjust,

- oppressive or discriminatory, or based wholly or partly on improper motives ,or delay in the conduct of investigations or unreasonable invasions of privacy by the members of the Commission or officers of the Commission;
- (d) assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.
- (5) The Commission may take whatever steps it deems necessary in order to carry out its functions and duties, including but not limited to:
- (a) investigating any aspect of the Commission’s operations or any conduct of member of the Commission or officers of the Commission;
  - (b) requiring the member of the Commission and officers of the Commission to supply information or produce documents or other things about any matter relating to the Commission’s operations or any conduct of a member of the Commission or officer of the Commission, or to appear before the Commission to answer questions;
  - (c) investigating and assessing complaints about member of the Commission or officers of the Commission;
  - (d) take disciplinary action against the member of the Commission or officers of the Commission, or recommend criminal proceedings to the Ministry of Legal Affairs and Constitutional Development where there is a reasonable suspicion that a criminal offense has been committed.
- (6) The Commission may in accordance with the provisions of this section, on its own, exercise its functions, duties and powers or in response to a complaint made to the same.
- (7) The Commission shall report periodically and annually, as the case may be, to the President and the Assembly.
- (8) The Commission shall approve projects, programmes and activities proposed by the Executive Director or a Committee.

## **Section 12. 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 be a person of ten years experienced and qualified to be appointed Director General.
- (3) The Executive Director shall be appointed by the President on the recommendation of the Commission.
- (4) The Commission shall appoint other officers on such terms and conditions subject to the provisions of section 46 of this Act.



### **Section 13. 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 the Commission, the President, this Act or any other law.

### **Section 14. Eligibility and Appointment**

- (1) The Chairperson, Deputy Chairperson and Commissioners shall be selected from persons of:-
  - (a) high moral reputation and integrity;
  - (b) possess the necessary qualifications, expertise and experience in matters related to exposing and preventing corruption and promoting the integrity of Government Institutions, having regard to gender balance.
- (2) Without prejudice to the generality of subsection (1) above, a person shall be eligible for appointment to serve as the Chairperson, Deputy Chairperson or a member of the Commission if he or she meets the following additional 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 an official 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.

### **Section 15. Functions and Duties of the Executive Director**

- (1) Serve as the Chief administrator 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) He or she shall be the secretary of the Commission as an ex-officio member
- (4) Table, three months before the beginning of each 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.
- (5) Table reports, within three months after the end of the financial year, to the Commission, with regard to the activities of the Commission in the preceding financial year.
- (6) Initiate policies and framework documents for the Commission;
- (7) Initiate internal policies and procedures including job description of the support staff and organizational chart of the Commission.
- (8) Receive and execute resolutions and directives of the Commission.
- (9) The Chief financial and administrative officer of the Commission; and
- (10) Perform other functions and duties prescribed under this Act or any other law, rules and regulations.

### **Section 16. Declaration of Assets**

The Chairperson, Deputy Chairperson, member of the Commission, Executive Director and any other 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 his or her spouse and children in accordance with the applicable law.

### **Section 17. Tenure, Resignation and Removal**

- (1) The tenure of office of the Chairperson, Deputy Chairperson and members of the Commission shall be four years, subject to renewal for one additional term.
- (2) The Deputy Chairperson or a member of the Commission 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 Chairperson, Deputy Chairperson or any member of the Commission

may be removed from office by the President or upon a resolution passed by a two-thirds majority of all members.

- (4) A member of Commission may not be removed except for the following reasons:-
- (a) ineligibility for appointment under section 14 of this Act;
  - (b) inability to perform the functions of his or her office due to mental infirmity or illness for a long time;
  - (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 member of the Commission is removed from office, resigns or dies, he or she shall be dully replaced within sixty days from the date of removal, resignation or death.

#### **Section 18. Remuneration of the Chairperson, Deputy Chairperson, Members 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) Members of the Commission shall have the status of 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 Undersecretary and shall be entitled to all the rights, privileges and benefits accorded to that office.

#### **Section 19. Exemption from Liability**

No Member of the Commission, 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 IV**

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

#### **Section 20. 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, in consultation with the Executive Director, convene an extraordinary meeting of the Commission. He or she shall also call a meeting within ten calendar days upon a written request by at least three members of the Commission.
- (3) The Chairperson, and in his or her absence, the Deputy Chairperson, shall convene and preside at all the meetings of the Commission, and in the absence of both, the members of the Commission present at the meeting shall elect one of them to preside at that meeting.
- (4) Notice of a meeting of the Commission shall be served to each member of the Commission 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 by the Executive Director.
- (5) The quorum for meetings of the Commission shall be three members of the Commission.
- (6) For determination of quorum, a member of the Commission withdrawing from a meeting under section 21(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 members of the Commission present and voting and in case of a tie, the Chair shall have a casting vote.
- (8) The Commission may, whenever necessary, invite any person to provide specific expertise during its meeting, he or her shall have no right to vote on any matter considered at the meeting.
- (9) Meetings of the Commission shall not be open to the public unless decided otherwise by the Chairperson on ad hoc basis.

#### **Section 21. Disclosure of Interests**

- (1) Any member of the Commission who has a direct or an indirect interest in any 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.

- (2) A disclosure made under subsection (1) above, shall be recorded in the minutes of the meeting.
- (3) A member of the Commission who makes a disclosure under subsection (1) above, shall not participate in the deliberations or take part in any decision of the Commission with respect to that matter.

#### **Section 22. 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 member of the Commission.

#### **Section 23. Committees of the Commission**

- (1) The Commission may set up committees to facilitate its operations and to advise it on matters as it may determine.
- (2) The Commission may also dissolve any committee which has accomplished its task.
- (3) Any committee set up under subsection (1), above, shall be headed by a member of the Commission 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 and duties to a committee set up by it subject to limitations as it may decide.
- (6) Subject to any directives by the Commission, a committee set up under this section may regulate its own proceedings.

## **Chapter V**

### **Investigation**

#### **Section 24. The Power of Investigation**

The Commission shall have the power to investigate any allegations, facts, conditions, practices or matters, including the search of bank accounts and other assets of spouses, children and others in a domestic relationship, which it

considers necessary or proper to determine whether any person is engaged in or about to commit corruption.

**Section 25. Inquiry/Investigation Committee**

If the Commission has a reasonable suspicion that a corruption offense has been or is about to be committed based on a report from an outside source or on its own initiative, the Commission shall form an Inquiry/Investigation Committee headed by a member of the Commission and designated competent officers, to investigate the case. If the Chairperson of the Commission is a member of the Inquiry/Investigation Committee, he or she shall be the Chairperson of the Committee.

**Section 26. Investigations to be conducted in Private Save in the Public Interest**

- (1) Pursuant to the provisions of Article 26 of the ICSS 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;
  - (b) the benefit of exposing to the public, and making it aware, of corrupt conduct; and practices;
  - (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 not holding an inquiry;
  - (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 inquiry upon the written consent of the President

**Section 27. Evidence and Procedure**

- (1) Subject to the provisions of this Act, or any rules and regulations thereunder, the procedure and conduct of an investigation shall be as the Chairperson of the Inquiry/Investigation Committee may direct.
- (2) The Chairperson of the Inquiry/Investigation Committee 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 of the Inquiry/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 inquiries; and
- (5) In the case of Public inquiry, the Commission shall make its public inquiry procedures available to the public.

**Section 28. Power to Compel Attendance and Require Production of Evidence**

- (1) In conducting an inquiry or investigation, a member of the Commission or the Chairperson of the Inquiry/Investigation Committee shall have the power to issue summons or orders to:-
  - (a) any person or agency to produce, within a specified period, any books, bank accounts, documents, contracts, agreements, records, returns, reports or data of any private person, public or private institution relevant to the inquiry/investigation in his or her possession or in 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/inquiry, and produce books, bank accounts, documents, contracts, agreements, and any other records in his or her possession relevant to the inquiry/ 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 subsection (1)(a) and ; 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 Inquiry/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.

## **Section 29. 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 28(1) above;
  - (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;
  - (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,commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding six months or with a fine not exceeding one thousand Sudanese Pounds or with both.
- (2) In the event that any person fails to obey the Commission's order issued under section 28(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.

## **Section 30. Privilege**

A person may not, under section 29 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.

## **Section 31. 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 Institution or Public Official in that capacity subject to inquiry or investigation,
  - (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 Institution or Public 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 subsection (1) above to enter and inspect premises shall carry and produce identification documents when inspecting premises under this section.

**Section 32. Investigation Reports**

- (1) The investigation process shall lead to the preparation of a final report. The Inquiry/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.

**Section 33. The Commission's Investigation Powers and Investigation of Corruption Offences 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 power concerning corruption cases with which the Commission is vested under section 24 of this Act.
- (2) Government or State investigation bodies that are not delegated powers under subsection (1) above shall investigate any alleged or suspected corruption offence 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 subsection (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 corruption cases whose investigations were carried out by other investigating bodies, as provided in subsections (2) and (3) above and notify the same to all the concerned investigating bodies.

### **Section 34. Duty to Report**

- (1) Any executive or legislative constitutional office holder, Justice, or senior civil servant who has knowledge of a corrupt practice 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 corrupt practice to the Commission, shall be immune from any prosecution arising from that report unless that person has knowingly been involved in the reported corrupt practice.
- (3) Any employee who reports a proven corrupt practice in a Government Institution or individual dealings involving Public Officials shall be immune from disciplinary measures, discrimination, and termination of service or demotion because of this reporting process.
- (4) Notwithstanding the provisions of subsections (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 or attempted to commit, or aided, abetted or concealed the commission of, or conspired with any other person in a corrupt conduct 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 subsection (3) above, shall be the subject of a civil suit for such disciplinary measures.
- (6) The Commission shall issue guidelines as to what matters need or need not be reported.

### **Section 35. Wealth Declarations**

- (1). Pursuant to the provisions of Article 121 (1) of the ICSS, the Commission shall oversee the requirement for all persons holding offices named there in including Senior Civil Service Officials to make confidential formal declarations of their incomes, assets and liabilities.
- (2). The Commission shall require all office holders referred to in subsection (1) above to deliver to the Commission their declarations in writing. All declarations shall include the income, assets and liabilities of their spouses and children. The declarations shall be made upon an individual's assumption of office and shall be conveyed to the Commission within 30 days thereof, the declarations shall be made by the office holder annually thereafter, and conveyed to the Commission by the end of February each calendar year, as long as they hold office. In case of non-compliance, necessary legal measures

may be taken against them.

- (1) A person serving under a non-governmental organization or such other organization using public resource shall declare his or her income, asset and liability and that of his or her spouse and dependent in accordance with the guideline and form prescribe by the Commission.
- (2) All declarations shall be maintained in a confidential and secure manner, and shall not be subject to public inquiry unless required to be part of a public inquiry.

## **Chapter VI**

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

#### **Section 36. 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.

#### **Section 37. 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 the review and approval of the Assembly.
- (3) Without prejudice to the provisions of subsection (1) above, the Commission may obtain additional funds from any other source approved by the Commission with the consent of the President.

#### **Section 38. 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.

### **Section 39. Bank Accounts**

- (1) The Executive Director shall open, maintain and manage bank accounts in the Bank of Southern Sudan or its branches or any other Bank operating in Southern Sudan as may be authorised by the Chairperson 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 the bank account of the Commission.
- (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.

### **Section 40. Surplus Funds**

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

### **Section 41. 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.

### **Section 42. 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 41 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.

### **Section 43. Annual and Other Reports**

- (1) In addition to the Financial Audit Report, required by section 63 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 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) the 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 VII**

### **Miscellaneous Provisions**

#### **Section 44. Protection of Informers and Witnesses**

No action or proceeding, including a disciplinary action, may be instituted or maintained against a person in respect of:-

- (a) A disclosure in good faith of information made by the person to the Commission or Assistance given by the person to the Commission or an investigator; or
- (b) an investigator.

#### **Section 45. 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.

#### **Section 46. 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.

#### **Section 47. Regulations**

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

## **First Schedule**

### **Oath**

The Chairperson, Deputy Chairperson and every member of the Commission 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/ member of the Commission of the Southern Sudan Anti-Corruption Commission, I shall be faithful, 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 Anti-Corruption Commission Act 2009, 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 hereunder; 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".

**Assent of the President of the Government of Southern Sudan**

In accordance with the provision of Article 85 (1) of the Interim Constitution of Southern Sudan, 2005, I Gen. Salva Kiir Mayardit, President of the Government of Southern Sudan, hereby Assent to the Southern Sudan Anti-Corruption Commission Act, 2009 and sign it into law.

Signed in Juba this-----day of the month of-----in the year 2009

**H.E. Gen. Salva Kiir Mayardit,  
President of the Government of Southern Sudan  
GoSS/Juba**