

LAWS OF SOUTHERN SUDAN

THE SUDAN PEOPLE'S LIBERATION ARMY ACT, 2009

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LAWS OF SOUTHERN SUDAN

THE SUDAN PEOPLE'S LIBERATION ARMY 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 Sudan People's Liberation Army Act, 2009 and shall come into force on the date of its signature by the President.

Section 2. Repeal and Saving

- (1) "The SPLA Act, 2003" is hereby repealed, but all the orders, rules and regulations issued or made under it, save in as far as the same are cancelled by or are inconsistent with the provisions of this Act, shall remain in force and shall be deemed to have been issued or made under this Act.
- (2) Nothing in this Act or in any rule or regulation made there-under shall operate to affect the validity of any court martial or any other proceedings held or being held by virtue of the repealed SPLA Act, 2003.

Section 3. Purpose

The purpose of this Act is to provide for the establishment, governance and discipline of the SPLA and for purposes connected therewith and incidental thereto.

Section 4. Authority and Application

- (1) This Act is drafted in accordance with the provisions of Articles 158, 159, 160 and 161 of the Interim Constitution of Southern Sudan, 2005 which grants the Government of Southern Sudan the exclusive legislative competences for the delivery of services at all levels of the Government of Southern Sudan, including provision, establishment, governance and discipline of the SPLA.

- (2) Save as otherwise expressly provided under this Act, the following persons shall be subject to the provisions of this Act:-
- (a) officers of the Sudan People's Liberation Army;
 - (b) persons enrolled or enlisted in the SPLA prior to the coming into force of this Act;
 - (c) persons enrolled or enlisted under this Act; and
 - (d) non-commissioned officers serving with and on the rank and file of the SPLA.
- (3) Notwithstanding the provisions of sub-section (2) (b) and (c) above, persons enrolled or enlisted in the reserve force shall be subject to the provisions of this Act:-
- (a) during the period prescribed for training; and
 - (b) when embodied for actual military service, commencing from the day immediately preceding the day on which the order or other notification for such training or embodiment was issued.
- (4) Every person who is subject to the provisions of this Act under subsection (2) herein shall continue to be subject to the provisions of this Act until his or her service with the Sudan People's Liberation Army is terminated in accordance with the provisions of this Act.

Section 5. Interpretations

- (1) In this Act, unless the context otherwise requires, the following words and expressions shall carry the meanings attached to them -
- “active force”*** means the Sudan People's Liberation Army force organized to render fulltime military service;
- “command”*** means authority exercised by Sudan People's Liberation Army commander over his or her subordinates by virtue of rank and, or assignment;
- “commanding officer”*** means an officer in charge of Sudan People's Liberation Army combat and service support units;
- “Commander-in-Chief (C-in-C)”*** means the Commander-in-Chief of the Sudan People's Liberation Army as defined in Article 159 (1) of the Interim Constitution of Southern Sudan;
- “commissioning”*** means an act of according to a member of the force, a status of an officer in the Sudan People's Liberation Army ;
- “corps or unit”*** means any separate body of persons subject to this Act which is prescribed as a corps or unit for the purposes of all or any of the provisions of this Act;
- “court-martial”*** means a military court constituted under this Act;
- “criminal court”*** means a court of criminal jurisdiction exercising powers within Southern Sudan, under the provisions of the Code of Criminal Procedure Act, 2008;
- “enemy”*** means any person or force which by means of armed opposition is hostile to the Comprehensive Peace Agreement, the

Interim National Constitution or the Government of National Unity, and the Interim Constitution of Southern Sudan or the Government of Southern Sudan, 2005, the will and aspirations of the people of Southern Sudan;

“Government of Southern Sudan)” means the level of Government in charge of Southern Sudan as defined in Article 53 (2) of the Interim Constitution of Southern Sudan, 2005;

“Joint Defence Board (JDB)” means a body established in accordance with the Security Arrangement Protocol, of the Comprehensive Peace Agreement, 2005;

“Judge-Advocate-General” means the Sudan People’s Liberation Army Director of Military Justice;

“Judge-Advocate” means a legal officer in the Directorate of Military Justice;

“Minister” means the Minister of Sudan People’s Liberation Army Affairs;

“non-commissioned officer” means any Sudan People’s Liberation Army personnel holding a rank lower than that of an officer and higher than the rank of private;

“offence” means any act or omission punishable under this Act and includes any offence punishable under the Penal Code Act, 2008 or any other law in force;

“pay” means salaries, remunerations and allowances paid to Sudan People’s Liberation Army personnel, civilian employees and others, for services rendered to the Sudan People’s Liberation Army ;

“parole” means a special pass word used only by persons authorized to do so;

“prescribe” means to authorize or appoint by order, rule or regulation made under this Act;

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

“reserve force” means the Sudan People’s Liberation Army force organized to be mobilized to render active service when need arises;

“safeguard” means anything that protects against loss or injury;

“services” refers to the Sudan People’s Liberation Army ground, air and riverine forces;

“soldier” refers to any uniformed SPLA personnel in active service;

“The Sudan People’s Liberation Army ” means the Sudan People’s Liberation Army constituted under section 7 (1) of this Act and abbreviated “SPLA”

“SPLA personnel” means the Sudan People’s Liberation Army officers and other ranks and any person subject to the provisions of this Act;

“Civilian employee” means non-uniformed personnel employed by the Sudan People’s Liberation Army ;

“Command Council” referred to as (CC) means a consultative body established under section 15 of this Act, to advise on SPLA affairs;

“Military Justice” means a body of laws, rules and regulations that are developed to meet the needs of the Sudan People’s Liberation Army

and includes rendering legal services in the Sudan People's Liberation Army , protection of constitutional rights of the Sudan People's Liberation Army personnel and the Sudan People's Liberation Army criminal justice system;

“Superior Officer” when used in relation to a person subject to this Act, means and includes a non-commissioned officer or any enrolled person as regards to persons placed under his or her charge or orders; and

“time of emergency” means the period, in respect of which an emergency has been proclaimed by the President or other duly authorized person, with reference to the place covered by the said emergency.

- (2) Save as aforesaid, all words and expressions used here-in and defined in the Penal Code, 2008 and other relevant laws shall have the meanings respectively attributed to them by that Code and the laws.

Section 6. Principles

In executing its mission and functions, the SPLA shall adhere to the following principles:-

- (1) be subject to democratic-civil control;
- (2) perform its functions in accordance with the provisions of the Comprehensive Peace Agreement, the Interim National Constitution, the Interim Constitution of Southern Sudan, and international law regulating the use of force;
- (3) be non-partisan;
- (4) promote the highest standard of professionalism and discipline within its rank and file;
- (5) reflect the ethnic composition of the people of the Sudan; and
- (6) respect the fundamental rights and dignity of all its members and the diverse communities of the Sudan at large.

CHAPTER II

CONSTITUTION, MISSION AND STRUCTURES OF THE SPLA

Section 7. Constitution of the SPLA

- (1) There shall be constituted in Southern Sudan a sole armed forces to be known as the “Sudan People's Liberation Army” herein after abbreviated and referred to as “SPLA”.
- (2) Members of the SPLA force shall be Sudanese nationals who satisfy the conditions for recruitment and without discrimination on grounds of sex, religion or ethnicity.

- (3) The SPLA shall be a regular, professional, patriotic, productive, disciplined, non-partisan military force subordinate to civilian authority as established under the Interim Constitution of Southern Sudan, 2005.

Section 8. Mission of the SPLA

The mission of the SPLA, in addition to its other national duties, shall be to:-

- (1) protect the Comprehensive Peace Agreement;
- (2) defend the Interim Constitution of Southern Sudan, 2005;
- (3) protect the people of Southern Sudan;
- (4) secure the territorial integrity of Southern Sudan;
- (5) undertake responsibility for the defence of Southern Sudan against internal and external threats and aggressions; and
- (6) be involved in addressing specified emergencies, participate in reconstruction activities, assist in disaster relief whenever directed by the Government of Southern Sudan, this Act and any other law in force in Southern Sudan.

Section 9. Roles and Functions of the SPLA

The Roles and functions of the SPLA shall be to:-

- (1) serve as one of the national armed forces of the Sudan and as the armed force for Southern Sudan;
- (2) provide forces to the Joint Integrated Units (JIUs);
- (3) participate in the command and develop its own doctrine based on the common doctrine for the Sudan National Armed Forces through the Joint Defence Board;
- (4) provide assistance in maintaining law and order within the legal framework of Southern Sudan;
- (5) at the direction of the Government of Southern Sudan, coordinate with defence forces in the region on security issues; and
- (6) participate in international peacekeeping missions.

Section 10. Structures of the SPLA

- (1) The Sudan People's Liberation Army shall be organized into:-
 - (a) an active force, and
 - (b) the reserve force called upon to serve along the active force during operations when the need arises.
- (2) The active force shall consist of:-
 - (a) the ground force;
 - (b) the air force; and
 - (c) the Riverine units.

- (3) The active force shall be organized into divisions down to brigades, battalions, companies, platoons and squads, organized into combat units, combat support and service support units and shall be under the direct command and control of such officers as may be assigned by the appropriate authority.
- (4) The Command Council which shall recommend the size of the active and reserve forces of the SPLA to the President and Commander in Chief.

Section 11. Composition of the Active Force

The active force shall consist of:-

- (1) commissioned officers appointed by the President and Commander in Chief ; and
- (2) non-commissioned officers men and women enrolled in accordance with regulations under this Act, for the purpose of rendering continuous service during the period of their assignment.

Section 12. Composition of the Reserve Force

- (1) The reserve force shall include:-
 - (a) personnel seconded from the active force;
 - (b) retired officers and discharged non-commissioned officers men and women; and
- (2) Membership of the reserve force shall be restricted on the basis of the following criteria:-
 - (a) human resource requirement determined by threat analysis and other security considerations;
 - (b) age;
 - (c) health, especially physical as well as mental fitness; and
 - (d) any other factors as may be determined, from time to time, by the Southern Sudan Security Council and the Command Council.
- (3) Notwithstanding the provisions of subsection (2) above, any retired officer or discharged personnel of any auxiliary force may be called upon for service in the reserve force.
- (4) Regulations made under this Act shall clearly define the composition of the reserve force, the command structure, command authority and command relationship between the active and reserve forces.

CHAPTER III

EXERCISE OF POWERS, FUNCTIONS AND DUTIES

Section 13. Command and Control

In accordance with the provisions of Article 159 of the Interim Constitution of Southern Sudan, 2005:-

- (1) command and control of the SPLA shall be vested in the President and Commander-in-Chief; and
- (2) the President and Commander-in-Chief shall commission, promote, retire or dismiss officers of the SPLA in accordance with the provisions of this Act.

Section 14. Functions and Powers of the Commander- In-Chief

The President in his or her capacity as Commander-in-Chief of the SPLA shall, in consultation with the Command Council, exercise the following powers:-

- (1) determine the political and military objectives of the SPLA ;
- (2) issue political and executive directives to the Minister;
- (3) Appoint the Chief of General Staff in consultation with the Vice President of the Government of Southern Sudan, on the recommendation of the Minister;
- (4) issue military orders to the Chief of General Staff;
- (5) Appoint Deputies to the Chief of General Staff, directors of branches, armed service division commanders in consultation with the Minister and Chief of General Staff;
- (6) commission officers, and in particular, grant promotion to general officers and delegate the promotion of other officers to the Chief of Staff;
- (7) convene a General Court Martial when appropriate;
- (8) commute sentences and pardon officers and other ranks sentenced by courts martial; and
- (9) declare a general mobilization and take appropriate measures in consultation with the Southern Sudan Legislative Assembly or request the declaration of the state of emergency in the whole or part of Southern Sudan in accordance with the provisions of Article 199 (2) of the ICSS.

Section 15. The Command Council

- (1) There shall be established a consultative body to be known as the Command Council.
- (2) The Command Council shall consist of the Commander-in-Chief, the Minister of SPLA Affairs, the Deputy Commander in Chief, the Chief of General Staff, the Under Secretary of the Ministry of SPLA Affairs, Deputies of the Chief of General Staff, directors of branches, armed services and division commanders.

- (3) The Command Council shall advise on the following:-
- (a) the SPLA defence policy;
 - (b) the SPLA military strategy;
 - (c) security situation in Southern Sudan and advice on necessary measures to be taken;
 - (d) review of the design and structure of the SPLA forces;
 - (e) programmes to enhance operational matters; and
 - (f) SPLA requirements.
- (4) The Command Council shall have a secretariat located in the SPLA General Headquarters.

Section 16. Functions, Powers and Duties of the Minister of SPLA Affairs

- (1) The Minister shall be a non-uniformed person assisted by a civilian Under Secretary.
- (2) The Minister shall:-
- (a) organise the Ministry in accordance with the directives of Government of Southern Sudan and the Commander -in-Chief;
 - (b) periodically produce strategic management guidelines which establish key planning priorities for resource allocation against an agreed time-frame;
 - (c) be responsible for the preparation and management of the SPLA budget, to meet the requirements of the SPLA in accordance with the Government financial rules and procurement regulations;
 - (d) be responsible for the development and management of military industries;
 - (e) promote democratic civil-military relations;
 - (f) ensures transparency and accountability in the overall activities of the SPLA;
 - (g) be responsible for representation of the SPLA internally and externally under the directives of the Government of Southern Sudan; and
 - (h) coordinate the disarmament, demobilization and reintegration programmes and efforts within the SPLA and with other government institutions and work for their speedy implementation.

Section 17. Functions and Powers of the Deputy Commander -in-Chief

The Deputy Commander-in-Chief shall exercise such powers and responsibilities as shall be assigned or delegated to him or her by the Commander-in-Chief.

Section 18. Functions, Powers and Duties of the Chief of General Staff

The Chief of General Staff shall be responsible for:-

- (1) the preparation of the SPLA military strategy and programmes on the directives of the Command Council to organize and modernize the SPLA to ensure its ability to carry out its mission;
- (2) the organisation of the SPLA forces into combat units, combat support and service support units and staff;
- (3) the determination of personnel, military equipment and material requirements; in consultation with his or her Staff Command.
- (4) the recruitment, training and education of military personnel and management of their assignments and careers;
- (5) the development of operational plans, deployment of forces and command of the SPLA on behalf of the Commander-in-Chief;
- (6) ensuring the sustenance of operational units through the distribution, management and maintenance of military equipment, hardware, material and facilities;
- (7) enhancing the morale and welfare of the SPLA personnel;
- (8) ensuring the combat readiness of the SPLA forces;
- (9) making recommendation to the Commander-in-Chief, of officers for commissioning and promotion in accordance with established regulations and procedures governing promotion;
- (10) convening a General Court Martial when appropriate;
- (11) the development of the necessary military rules, regulations and standing operating procedures for the purpose of effective and efficient management of the forces;
- (12) the recommendation for appointment of the staff branch Directors to the Commander -in-Chief, in consultation with the Minister;
- (13) the assignment of senior officers to various SPLA brigades, battalions and specialized units as shall be directed by the Commander-in-Chief;
- (14) the development and supervision of research and development capabilities;
- (15) determination of the number and the quality of civilian employees required to serve in the SPLA and submission of the same to the Minister for approval and appointment; and
- (16) any other function as shall be delegated to him or her by the President and Commander-in-Chief, the Minister, this Act and regulations.

Section 19. Functions, Powers and Duties of the Deputies of the Chief of General Staff

- (1) The Deputies of the Chief of General Staff shall:-
 - (a) assist the Chief of General Staff in preparing and executing strategic plans, coordinating and supervising the activities in their respective areas of responsibilities; and

- (b) prepare briefings and submit regular reports on their activities to the Chief of General Staff.
- (2) The Deputies of the Chief of General Staff shall have clearly defined functions, powers, duties and responsibilities.

CHAPTER IV

MILITARY SERVICE

Section 20. Enrolment Policy.

Enrolment into the SPLA military service shall be voluntary, except where the Southern Sudan Legislative Assembly, on the recommendation of the President, decides or deems it otherwise.

Section 21. Recruitment Authority and Procedure

- (1) Authority to recruit officer candidates and enlisted personnel into the SPLA shall be vested in the SPLA Command Council.
- (2) Every person who is interested or willing to be recruited in the SPLA shall fulfil the conditions set out in section 22 below.
- (3) Recruitment shall be carried out by the office of the Deputy Chief of General Staff for Administration.
- (4) Recruitment shall be representative widely publicized and carried out in accordance with the rules and procedures as prescribed by law and regulations.

Section 22. Eligibility for Enrolment

A person shall be eligible for enrolment into the SPLA forces if he or she satisfies the following conditions:-

- 1) is a Sudanese national;
- 2) has attained eighteen years of age.
- 3) has not exceeded thirty years;
- 4) is medically fit;
- 5) has no criminal record;
- 6) has attained basic education in the case of enlisted personnel and not less than secondary education in the case of officer cadets; and
- 7) in case of general mobilization, the provisions of sub-sections (3) and (6) above, shall not apply.

Section 23. Recruitment of Officer Cadets

Officer cadets shall be recruited from:-

- (a) secondary school leavers upward and other equivalent qualifications;and
- (b) among the SPLA non-commissioned officers and enlisted personnel who meet the requirements in section 22 above.

Section 24. Commissioning

- (1) Officer cadets shall be commissioned as officers in the SPLA upon completion of the requisite military training.
- (2) The President and Commander-in-Chief may grant to such person as he or she deems fit, a commission as an officer in the SPLA in accordance with the rules and regulation governing commissioning.
- (3) An officer cadet on commissioning shall take oath of allegiance in a prescribed form before the Commander-in-Chief or an officer duly authorized by him or her.

Section 25. Military Training

- (1) All recruits into the SPLA shall receive basic military training before assignment into service.
- (2) Enlisted personnel shall take an oath of allegiance upon completion of their basic military training.
- (3) SPLA personnel shall receive specialized military training in various areas relevant to the service.
- (4) The SPLA shall organize higher level military training programmes inside and outside Southern Sudan in order to enhance the military capability of the SPLA.

Section 26. Period of Service.

- (1) There shall be a minimum period of obligatory service in the SPLA forces categorized as follows:-
 - (a) officers after commissioning shall serve for ten years;
 - (b) enlisted personnel after basic military training for six years; and
 - (c) where the SPLA personnel is willing to serve additional period and the SPLA General Headquarters so agrees, the period of service may be extended; without, exceeding the prescribed retirement age.

- (2) The period of service beyond the minimum obligatory service may be extended under the following circumstances:-
- (a) during national mobilization;
 - (b) during period of national emergency, in which case the SPLA personnel concerned may be retained, and his or her service may be prolonged for such further period not exceeding twelve months, or as may be decided by the SPLA Command Council; and
 - (c) where the SPLA General Headquarters and the relevant SPLA personnel mutually agree to extend the obligatory period of service by reason of the said personnel acquiring an advanced specialized training.
- (3) Any SPLA personnel who fails to render a service by virtue of an employment contract, commits an offence and shall on conviction be liable to imprisonment for a period not exceeding two years.
- (4) SPLA personnel shall be retired when that person reaches the following age limit:-
- (a) Private to Sergeant forty seven years;
 - (b) Sergeant Major to Regimental Sergeant Major, at fifty years;
 - (c) Second Lieutenant to Captain, at fifty two years
 - (d) Major to Colonel, at fifty years; and
 - (e) General Officers, at sixty years.
- (5) The SPLA General Headquarters may, under special circumstances, extend the age of retirement specified above, for a period not exceeding two years.

Section 27. Assignment, Transfer and Secondment

- (1) Assignment, transfer and secondment in the SPLA shall be guided by the following considerations:-
- (a) requirement of the service and the objectives of the SPLA,
 - (b) military occupational specialty and career path;
 - (c) level of experience; and
 - (d) assignment appropriate to the rank.
- (2) Any SPLA personnel is obliged and under duty to accept assignment, transfer and secondment to render any service, inside and outside Southern Sudan, as the case may be, in accordance with the provisions of this Act and any regulations in force.

Section 28. Entitlements

- (1) The SPLA personnel shall be paid a salary based on the Government of Southern Sudan approved salary structure appropriate for each rank.

- (2) The SPLA personnel shall be entitled to retirement benefits in accordance with the Sudan People's Liberation Army pensions law.
- (3) The Government of Southern Sudan shall provide the SPLA personnel with:-
 - (a) rations;
 - (b) military uniform and other quarter master items;
 - (c) health care services;
 - (d) camp accommodation; and
 - (e) annual leave, maternity leave of 90 days and any other leaves prescribed by regulations.

Section 29. Promotion and Military Ranks

- (1) The following military ranks shall be instituted in the SPLA:-
 - (a) Marshal;
 - (b) General (Gen.);
 - (c) Lieutenant General (Lt. Gen.);
 - (d) Major General (Maj. Gen.);
 - (e) Brigadier (Brig.);
 - (f) Colonel (Col.);
 - (g) Lieutenant Colonel (Lt. Col.);
 - (h) Major (Maj.);
 - (i) Captain (Capt.);
 - (j) First Lieutenant (1st Lt.);
 - (k) Second Lieutenant (2nd Lt.);
 - (l) Regimental Sergeant Major (R/SM);
 - (m) Sergeant Major (SM);
 - (n) Sergeant (Sgt.);
 - (o) Corporal (Cpl.);
 - (p) Lance Corporal (L/Cpl.); and
 - (q) Private (Pvt.)
- (2) Promotion from a lower to a higher rank shall be based on:-
 - (a) availability of vacant positions;
 - (b) fulfilment of the required waiting time in rank;
 - (c) satisfactory performance report;
 - (d) fulfilment of the required training; and
 - (e) fulfilment of any other condition as shall be prescribed by the SPLA General Headquarters.
- (3) There shall be established at the levels of the SPLA General Headquarters, division, brigade, battalion and equivalent staff and specialized unit levels, Promotion Boards whose task shall be to evaluate and recommend appropriate candidates for promotion.

- (4) The Promotion Boards shall be chaired by the Deputy Chief of General Staff for Administration at the SPLA General Headquarters level, and by deputy commanders at the divisional, brigade and battalion levels.
- (5) Meritorious promotion shall be given in recognition of outstanding performance in the battle field.
- (6) The authority to promote officers shall be carried out according to section 14 (f) of this Act, and the authority to promote other ranks shall be prescribed by the General Headquarters.
- (7) There shall be developed regulations to govern the system and procedure of promotions in the SPLA.

Section 30. Termination of Service.

- (1) The service of an SPLA personnel shall cease and terminate upon:-
 - (a) reaching the required retirement age;
 - (b) the expiration of the contract of service;
 - (c) acceptance of resignation;
 - (d) conviction by court martial for offences that necessitate termination of service;
 - (e) mental and physical unfitness;
 - (f) right-sizing and restructuring of the SPLA ;
 - (g) incompetence in the performance of regular duties;
 - (h) absence without leave for a period exceeding thirty days; and
 - (i) death.
- (2) The SPLA personnel whose service ceased or is terminated shall be given a discharge certificate upon handing over all properties, materials and documents issued to him or her during his or her service.

CHAPTER V

EMPLOYMENT OF CIVILIANS

Section 31. Employment of Civilians

A civilian may be employed in the SPLA where:-

- (1) the SPLA does not have an appropriately qualified and, or adequately experienced military personnel to fill a vacancy in the establishment;
- (2) the SPLA deems it necessary to employ a civilian to improve its efficiency; and
- (3) the SPLA recruitment may be gender sensitive.

Section 32. Number and Qualifications of Civilian Employees

- (1) The number and qualifications of civilian employees required to be employed in the SPLA, shall be determined by the Minister on the recommendation of the Chief of General Staff.
- (2) Appointment of civilian employees shall be subject to the following considerations:-
 - (a) availability of a vacancy in the establishment of the SPLA and the need to fill that vacancy;
 - (b) availability of funds for the remuneration and entitlements of the civilian to be employed; and
 - (c) such other considerations as the SPLA Command Council may determine.

Section 33. Manner of Employment

- (1) Civilian employees who work in the SPLA shall be employed and governed in accordance with Public Service law, Rules and Regulations.
- (2) Without prejudice to the provisions of sub-section (1) above, the SPLA may, by contract, employ services of internal or external experts and any other personnel when necessary and the relationship between the parties shall be governed by the terms and conditions of the contract.

CHAPTER VI MILITARY JUSTICE SYSTEM

Section 34. Nature of Military Justice

- (1) There shall be established in the SPLA a system of Military Justice that shall cater for both criminal and disciplinary offences.
- (2) Criminal offences shall be dealt with by Military Courts in accordance with the provisions of this Act and the provisions of the Penal Code Act, 2008.
- (3) Disciplinary offences shall be handled by the command structure in accordance with the SPLA rules and regulations.
- (4) The proceedings of the court martial shall be guided by The SPLA rules of procedure and the Criminal Procedure Act, 2008.

Section 35. Structure and Composition of Military Courts

- (1) There shall be two levels of military courts, a District Court Martial and a General Court Martial.

- (2) A District Court Martial shall be composed of not less than three and not more than five officers and shall be presided over by the most senior officer.
- (3) A General Court Martial shall be composed of not less than five and not more than seven officers and shall be presided over by the most senior officer, who shall be referred to as the Court President..
- (4) In all cases, the presiding officer shall be senior in rank to the accused and all members of the panel shall be at least equivalent in rank to that of the accused.

Section 36. Power to Convene Military Courts

- (1) A District Court Martial shall be convened by the Deputies of the Chief of General Staff, Directors, Service and Division or Specialized Unit commanders.
- (2) A General Court Martial shall be convened by the Commander-in-Chief when the trial is in respect of a Brigadier and up wards, and by the Chief of General Staff when the trial is in respect of other Officers and other ranks.

Section 37. Jurisdiction of Military Courts

- (1) A General Court Martial shall have the power to try any SPLA personnel subject to the provisions of this Act for any offence made punishable therein, and to pass any sentence authorized by this Act.
- (2) A District Court Martial shall have power to try any SPLA personnel for any offence made punishable by this Act except murder, mutiny, desertion, cowardice during combat and any other offence punishable with death.
- (3) Any person who is subject to the provisions of this Act, who commits any offence against it may be tried and punished for such offence in the place prescribed by the convening order of the court.
- (4) Whenever a military personnel commits an offence against a civilian or civilian property, the civil court shall assume jurisdiction over such an offence.

Section 38. Procedures in Respect of Concurrent and Other Jurisdictions

- (1) Subject to the provisions of this Act, where a criminal court other than by virtue of this Act and a Court-Martial by virtue of this Act both have jurisdiction in respect of an offence, the procedures to be followed in deciding before which court the offence shall be tried, shall be prescribed by the rules and regulations made under this Act.

- (2) Without prejudice to the provisions of subsection (1) above, any SPLA personnel shall be liable in respect of non Military, Civil or Criminal proceedings for any offence or civil claim against him or her in accordance with the provisions of Code of Criminal Procedure Act, 2008 or Civil Procedure Act,2008.
- (3) Any SPLA personnel charged with an arrestable offence shall be kept in the custody of his or her unit, provided that he or she is brought for investigation pre-trial proceedings as shall be requested by the Public Prosecution Attorney or the Police, as the case may be.
- (4) Any SPLA personnel convicted of an offence and sentenced to imprisonment for any term by a Court Martial or Civil Court, shall be deemed to have been dismissed from the service and shall immediately be sent to the prisons, authorities for service of his or her term of imprisonment.

CHAPTER VII

PROCEEDINGS OF MILITARY COURTS

Section 39. Principles of Civil Court to be Observed Generally

Except as otherwise expressly provided in this Act and any rules and regulations made here under, the rules of evidence and the procedures to be observed in proceedings before a court martial shall, as far as practicable, be the same as those observed in proceedings before a civil court.

Section 40. Oath by the Presiding Officer and Members

An oath or affirmation, shall be in the prescribed form, and shall be administered to the presiding officer and members of the court martial, by the Judge Advocate General or any other person whom he or she may authorise.

Section 41. Objection to Membership of the Court

- (1) At all trials by General or District Court Martial, as soon as the Court is assembled, the names of the presiding officer and members shall be read over to the accused, who shall thereupon be asked whether he or she objects to being tried by any officer sitting as part of the court.
- (2) Where the accused objects to the presiding officer or any member his or her objection and also the reply thereto of the member objected to, shall be heard and recorded and the un-objected to members of the court shall decide on the validity of the grounds for objection.
- (3) Objection shall be allowed by not less than half of the votes of the members entitled to vote and in case of a tie the most senior member voting shall have a casting vote.

- (4) If the members of the Court vote in favour of the objection, the member objected to shall retire and be replaced by another member by the convening authority.
- (5) When no objection is made or when an objection has been made but is rejected or when an objection is made and allowed and the objected member is replaced with a new member the court shall proceed with the trial.

Section 42. Public Trials

- (1) Subject to the provisions of sub-sections (2) and (3) below, military courts shall be public and to the extent that the place can accommodate the public.
- (2) Whenever a military court considers that it is expedient in the interest of public safety, security, defence or public morals that the public shall be excluded during the whole or any part of the trial, the court may make an order to that effect, and any such order shall be recorded in the proceedings of the military court.
- (3) A witness shall not be admitted to a trial until he or she is called upon to give evidence or by specific leave of the military court and the court may at any time, require the witness to withdraw after having given his or her statement.
- (4) Any accused person under this Act shall be entitled to defence by a lawyer or a friend.

Section 43. View by Military Court

A military court may, where it considers it necessary, view any place, thing or person.

Section 44. Summoning Witnesses and Production of Documents

- (1) The presiding officer of the court shall by summons, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or any other thing.
- (2) In the case of a witness subject to military authority, the summons shall be sent to the officer commanding the service, division, unit, directorate or department or detachment to which the witness belongs, and such officer shall serve it upon him/her and release him or her accordingly.
- (3) In the case of any other witness, the summons shall be sent to a Magistrate within the local limits of whose jurisdiction he or she is

present or resides, and such Magistrate shall give effect to the summons as if the witness were required in the court of such Magistrate.

- (4) When a witness is required to produce any particular document or any other thing in his or her possession or power, the summons shall describe it with convenient certainty.
- (5) Nothing in this section shall be deemed to affect the rules of evidence applied by the courts under the Criminal Procedure Act, 2008 in relation to “evidence as to affairs of Southern Sudan and “official communication”, or to apply to any letter, post card, telegram, or other document in the custody of the postal or telecommunication authorities.
- (6) Where any document in the custody of the postal or telecommunication authorities, is, in the opinion of the magistrate, wanted for the purpose of any Court-Martial, such Magistrate may require the postal or telecommunication authorities, as the case may be, to deliver such document or, in his or her discretion, a certified copy thereof to such person as he or she may direct.
- (7) Where any document in the custody of the postal or telecommunication authorities, is, in the opinion of any magistrate wanted for the purpose of any court-martial such Magistrate may require the postal or telecommunication authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of a magistrate empowered to make an order in respect of such document.

Section 45. Commission and Power to Investigate

- (1) Wherever, in the course of any trial by a court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expenses or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Judge-Advocate-General to order that a commission to take the evidence of such witness may be issued and shall forward therewith a statement of the circumstances which appear to render the examination or commission necessary together with a list of any questions which it may desire to be put to the witness.
- (2) The Prosecutor and the accused person in any case in which a commission is issued may respectively submit any interrogatories in writing and so far as the court shall deem the same to be relevant, such interrogatories shall be added to the list of questions mentioned in subsection (1) above.
- (3) The Judge-Advocate-General so addressed may, if he or she deems it necessary, issue a commission to any magistrate within the local limits

of whose jurisdiction such witness resides, to take the evidence of such a witness.

- (4) The Judge-Advocate-General, issuing such commission shall send any list of questions submitted by the court together with any interrogatories added thereto under subsection (2) of this section to the magistrate to whom the commission is directed and the magistrate shall examine the witness upon such questions and interrogatories.
- (5) The prosecutor and the accused person may appear before the examining magistrate by advocate or except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine, as the case may be, the said witness.
- (6) After the witness has given his or her answers to such questions and interrogatories and the examination, cross-examination and re-examination under subsection (5) above, has been completed, the examining magistrate may put to the witness such supplementary questions incidental to or arising out of such answers as may appear to him or her to be necessary in the interest of justice.
- (7) After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined there-under to the Judge-Advocate-General addressed by the court-martial, who shall forward the same to the court at whose instance the commission was issued, or if such court has been dissolved, to any other court convened for the trial of the accused person, and the commission, the return thereto, and the deposition shall be open to the inspection of the prosecutor and the accused person and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.
- (8) In every case in which a commission is issued under this section the trial may be adjourned for a specified period reasonably sufficient for the execution of the commission.

Section 46. General Rules as to Evidence

The provisions of the Criminal Procedure Act, 2008 and Evidence Act, 2006, as to the nature and admission of evidence shall, subject to the provisions of this Act, apply to all proceedings before a court-martial.

Section 47. Oath by Witnesses

Every person, other than the accused, giving evidence at a court-martial shall be examined on oath or affirmation, and shall be duly sworn or affirmed in the prescribed form.

Section 48. Prohibition of Second Trial

When any person, subject to the provisions of this Act has been acquitted or convicted of an offence by a Court-Martial or by a criminal court for an offence under this Act, he or she shall not be retried for the same offence by a court-martial or any other civil or criminal court.

Section 49. Trial by Court-Martial is no Bar to Subsequent Civil Proceedings

Notwithstanding anything contained in the provisions of the Criminal Procedure Act, 2008, a person convicted or acquitted by a court-martial may afterwards be liable for civil proceedings and claims lodged against him or her before a civil court.

Section 50. Decisions of Court-Martial

- (1) Every decision of a District or General Court-Martial shall be passed by simple majority of votes of members of the court; and where there is a tie, as to either finding or sentence, the decision shall be deemed to be in favour of the accused.
- (2) Where in matters, other than a challenge or the finding or sentence there is a tie, the presiding officer shall have a casting vote.
- (3) No sentence of death shall be passed by any court-martial without the concurrence of at least two thirds of the members of the court, sitting and deliberating.

Section 51. Judge-Advocate

Every General or District Court-Martial shall be attended by a Judge-Advocate or a Legal Counsel appointed by the Judge-Advocate General nominated on his or her request by the Ministry of Legal Affairs and Constitutional Development.

Section 52. Dissolution of Courts

- (1) A military court martial established under this Act shall be an *ad hoc* body convened to settle specific case or cases and shall be dissolved upon accomplishment of its task.
- (2) If a court-martial, after the commencement of the trial is reduced below the simple majority of which it is, by this Act, required to consist, it shall be dissolved.
- (3) If, on account of illness of the accused before the finding, it is impossible to continue with the trial, the court-martial shall be dissolved.

- (4) Where a court-martial is dissolved in accordance with the provisions of sub-sections (2) and (3) above, the accused may be tried again by another court martial to be convened for the purpose as soon as the grounds for dissolution are resolved.

CHAPTER VIII

OFFENCES OF MILITARY NATURE

Section 53. Cowardice in Action

- (1) Cowardice in action means:-
- (a) running away or inciting others to run away from the enemy;
 - (b) surrendering to the enemy;
 - (c) delaying or discouraging any action against the enemy;
 - (d) failing to carry out an operation when ordered to do so;
 - (e) abandoning or delivering up a defence establishment, garrison, place, material, post or guard;
 - (f) talking or behaving in a manner, that is likely to instil fear in others.
 - (g) premature unauthorized firing; or
 - (h) casting away or abandoning of any material under enemy attack.
- (2) Any SPLA personnel who commits the offence of cowardice in action, where it results in failure of operation or loss of life, shall on conviction be sentenced to death or, in any other case, to imprisonment for a term not exceeding ten years.

Section 54. Breaching Concealment

- (1) Breach of concealment in operations means:-
- (a) unauthorized making of any noise;
 - (b) unauthorized talking;
 - (c) unauthorized walking;
 - (d) unauthorized smoking, lighting or any other form of exposure;
 - (e) unauthorized contact with other people;
 - (f) premature or unauthorized shooting;
 - (g) premature or unauthorized withdrawal;
 - (h) choosing bad ground for concealment;
 - (i) giving premature orders that can compromise concealment; or
 - (j) any other similar act or omission that results in breach of concealment.
- (2) Any SPLA personnel who commits the offence of breach of concealment in operation, where it results in loss of life, shall on

conviction be sentenced to death or, in any other case, to imprisonment for a term not exceeding ten years.

Section 55. Failure to Protect War Material and Equipment

- (1) Failure to protect war material and equipment means:-
 - (a) failing to guard arms or ammunition;
 - (b) malicious damage to arms or ammunition;
 - (c) tampering with or mishandling of arms or ammunition resulting in damage;
 - (d) giving or allowing arms or ammunition to be handled by unauthorized person;
 - (e) losing arms or ammunition or parts of them;
 - (f) unauthorised disposal of arms or ammunition; or
 - (g) failing to do any other similar act necessary for the protection of any war material and equipment.
- (2) Any SPLA personnel who fails to protect war material or equipment, commits an offence and shall on conviction be sentenced to imprisonment for a term not exceeding fourteen years.
- (3) Any SPLA personnel in command of any vessel, aircraft, defence establishment or unit of the SPLA who does not supervise the war materials under his or her command, commits an offence and shall on conviction be sentenced to imprisonment for a term not exceeding ten years.

Section 56. Failure to Brief or Prepare for Operations

- (1) Failure to brief or to prepare for an operation means, failure to:-
 - (a) ensure that soldiers are thoroughly briefed before an operation;
 - (b) carry out de-briefing after an operation;
 - (c) ensure unit or group preparation for an operation;
 - (d) ensure combat readiness of the force;
 - (e) ensure thorough reconnaissance and intelligence collection;
 - (f) give correct or reliable information about reconnaissance; or
 - (g) train military personnel for specific operation.
- (2) Any SPLA personnel who fails to brief or prepare for an operation as provided for under sub-section (1) above, commits an offence and shall on conviction be sentenced to imprisonment for a term not exceeding ten years.

Section 57. Offences Relating to Operations

- (1) Any SPLA personnel who:-
 - (a) exposes operational plans to unauthorized persons;

- (b) commits an act of violence to any person bringing material to the SPLA or to any forces co-operating with SPLA;
- (c) irregularly detains or diverts any material being conveyed to any unit of the SPLA or of any forces co-operating with the SPLA;
- (d) without orders from his or her superior officer, destroys or damages any property;
- (e) breaks into any house or other place with the intention, to plunder;
- (f) commits any offence against the property or person of any inhabitant or resident of a country in which he or she is serving;
- (g) steals from or with intent to steal, searches the body of any person killed or wounded in the course of war-like operations;
- (h) carelessly shoots any person or handles arms or ammunition in such a manner to endanger lives of other persons in operation;
- (i) steals any money or property which has been left exposed or unprotected in consequence of war-like operations;
- (j) takes, otherwise than for the service of the Government of Southern Sudan, any money or property abandoned by the enemy;
- (k) being a person in command of a unit or detachment of the SPLA , uses military personnel of his or her unit or permits or suffers to be used for carriage of merchandise for sale to soldiers of the unit or detachment for his or her own or another person's personal gain; or
- (l) being drunk during an operation,

commits an offence.

- (2) Any SPLA personnel who commits an offence under sub-section (1) above, shall on conviction be sentenced to imprisonment for a term not exceeding seven years.

Section 58. Offences Relating to Prisoners of War

- (1) Any SPLA personnel who:-
 - (a) by want of due precaution through disobedience of orders or wilful neglect of duty, is made a prisoner of war;
 - (b) having been made a prisoner of war, fails to rejoin the SPLA when able to do so; or
 - (c) having been made a prisoner of war, serves with or aids the enemy; commits an offence.
- (2) Any SPLA personnel, who commits an offence under sub-section (1) above, shall on conviction be sentenced to imprisonment for a term not exceeding seven years.

Section 59. Offences by Persons in Command When in Action

- (1) Any person in command of a vessel, aircraft, defence establishment or unit of the SPLA who:-
- (a) when under orders to carry out an operation or coming into contact with an enemy which is his or her duty to engage, does not use his or her utmost exertion to bring the officers and militants under his or her command or his or her ship, vessel, aircraft or his or her material into action;
 - (b) when capable of making a successful defence, surrenders his or her ship, material or unit to the enemy; or
 - (c) gives premature orders to attack resulting in failure of operation,
- commits an offence.
- (2) Any SPLA personnel who commits an offence under sub-section (1) above, shall on conviction be sentenced, where such offence results in failure of operation or loss of life, to death or in any other case to imprisonment for a term not exceeding ten years.

Section 60. Treachery

- (1) Any SPLA personnel who, for any purpose prejudicial to the security or interests of Southern Sudan:-
- (a) goes over to the enemy;
 - (b) assists the enemy with material;
 - (c) does or omits to do anything with intent to imperil the success of the SPLA ;
 - (d) infiltrates the SPLA or is an agent of a foreign power or of any force engaging in war or war-like activities against the Government of Southern Sudan;
 - (e) consciously gives classified information to a foreign power or any force engaging in war or war-like activities against the Government or solicits information with the view to giving it to such a power or force;
 - (f) consciously gives confidential information to anyone without the knowledge and approval of the proper authority; or
 - (g) consciously withholds vital information from the proper authority,
- commits an offence.
- (2) Any SPLA personnel who commits an offence under sub-section (1) above, shall on conviction, be sentenced to death or life imprisonment.

Section 61. Offences Relating to Security

- (1) Any SPLA personnel who:-
 - (a) discloses by word of mouth or by document any confidential information to the enemy or to unauthorized members of the SPLA or the public;
 - (b) talks afloat or discusses any confidential information in unauthorized places or with authorized persons within hearing distance of unauthorized persons;
 - (c) gives a parole, watchword password, countersign or identification signal different from that which he or she received or without authority, alters or interferes with any identification or other signal;
 - (d) improperly occasions false alarm;
 - (e) forces a safeguard or forces or strikes a sentinel; or
 - (f) does or omits to do anything with intent to prejudice the security of the SPLA or forces co-operating with the SPLA ;commits an offence.

- (2) For the purposes of this section, “confidential information” means:-
 - (a) intelligence information;
 - (b) information relating to the members positions, material movements, preparations for operations of the SPLA or of any forces co-operating with the SPLA ;
 - (c) information relating to radio cryptographic system, process, procedure, publication or document of SPLA or of any forces co-operating with SPLA ;
 - (d) parole, watchword, password, countersign or identification signal; or
 - (e) any other information material as maybe prescribed.

- (3) Any SPLA personnel, who commits an offence under sub-section (1) above, shall, on conviction, be sentenced to imprisonment for a term not exceeding fourteen years.

Section 62. Mutiny

- (1) Any person subject to the provisions of this Act, who commits any of the following acts:-
 - (a) begins, incites, causes or conspires with any other person to cause or joins in any mutiny; or
 - (b) being present at any mutiny and does not use his or her utmost endeavours to suppress the same; or
 - (c) knowing or having reason to believe in the existence of any mutiny, or of any intentions to mutiny, or of any conspiracy

against the SPLA or the Government of Southern Sudan and does not without delay give information thereof to his or her commanding or any other superior officer,

commits the offence of mutiny.

- (2) Any SPLA personnel who commits mutiny shall, on conviction, be sentenced to death or life imprisonment.

Section 63. Desertion

- (1) Any SPLA personnel who deserts or attempts to desert his or her unit, or who persuades or procures any person subject to the provisions of this Act to desert the SPLA, commits the offence of desertion.
- (2) Any SPLA personnel who commits the offence of desertion shall, on conviction, be sentenced to imprisonment for a term not exceeding seven years.

Section 64. Harboursing Deserters

- (1) Any SPLA personnel who:-
 - (a) intentionally harbours any deserter;
 - (b) knowingly or having reason to believe, that any other person has deserted but does not without delay give information thereof to his or her own or some other superior officers; or
 - (c) does not endeavour to cause such deserter to be apprehended,commits an offence
- (2) Any SPLA personnel who commits the offence of harboursing a deserter, shall on conviction, be sentenced to imprisonment for a term not exceeding five years.

Section 65. Criminal Force Against Superior

Any SPLA personnel who uses or attempts to use criminal force to, or commits an assault on his or her superior officer whether on or off duty, knowingly or having reason to believe him or her to be such, commits an offence and shall, on conviction, be sentenced to imprisonment for a term not exceeding five years.

Section 66. Ill-Treatment of Subordinates

Any SPLA personnel who uses or attempts to use criminal force to, or commits an assault on or ill treats any person likewise subject to the provisions of this Act, being his or her subordinate in rank or position, commits an offence and shall, on conviction, be sentenced to imprisonment for a term not exceeding five years.

Section 67. Disobedience of Lawful Orders

- (1) Any SPLA personnel who:-
 - (a) disobeys in such manner as to show a wilful defiance of authority, any lawful command, given personally by his or her superior officer in the execution of his or her office whether the same is given orally, or in writing, or by signal, or otherwise; or
 - (b) disobeys any lawful command given by his or her superior officer; commits an offence of disobedience of lawful orders.
- (2) Any SPLA personnel who commits the offence of disobedience of lawful orders shall on conviction be sentenced to imprisonment for a term not exceeding five years.

Section 68. Insubordination and Insolence

- (1) Any SPLA personnel who:-
 - (a) being concerned in any quarrel, affray, or disorder, refuses to obey any officer, though of lower rank, who orders his or her arrest, or uses criminal force to or offers violence to any such officer;
 - (b) uses or attempts to use criminal force to, or commits an assault on any person, whether subject to the provisions of this Act or not, in whose custody he or she is lawfully placed, and whether or not he or she is his or her superior officer; or
 - (c) uses insubordinate or insolent language to his or her superior officer,

commits the offence of insubordination and insolence.
- (2) Any SPLA personnel who commits the offence of insubordination and insolence shall on conviction be sentenced to imprisonment for a term not exceeding five years.

Section 69. Standing Orders

Any SPLA personnel who neglects to obey any general or other standing orders, commits an offence and shall on conviction be sentenced to imprisonment for a term not exceeding three years.

Section 70. Fraudulent Enrolment or Enlistment

- (1) Any SPLA personnel who:-
 - (a) without having first obtained a regular discharge from the corps, unit or directorate or department to which he or she

- belongs, enrolls or enlists himself or herself in any other corps unit or directorate or department, or
- (b) knowingly or having reason to believe that a person is a deserter, procures or attempts to procure the enrolment or enlistment of such person; commits an offence.

- (2) Any SPLA personnel who commits the offence of fraudulent enrolment or enlistment shall on conviction be sentenced to imprisonment for a term not exceeding three years.

Section 71. False Answer on Enrolment or Enlistment

Any SPLA personnel who is discovered to have wilfully made a false answer to any question set forth in the prescribed form of enrolment or enlistment which has been put to him or her by the officer before whom he or she appeared for the purpose of being enrolled or enlisted; commits an offence and shall on conviction be sentenced to imprisonment for a term not exceeding three years.

Section 72. Conduct Unbecoming of an Officer

Any SPLA officer, who behaves in a scandalous manner unbecoming of his or her position as such, commits an offence and shall on conviction be dismissed from the force.

Section 73. Nepotism and Corrupt Practices

- (1) Any SPLA personnel who:-
 - (a) promotes, recruits, employs or rewards any person on grounds of personal relationship;
 - (b) misappropriates or converts to his or her own use any public property or military stores of any kind or the property of any military formation, unit or department entrusted to him or her;
 - (c) receives or retains any property in respect of which an offence under paragraph (a) has been committed, knowingly or having reason to believe the same to have been misappropriated or converted;
 - (d) wilfully destroys or injures any public property or; of any military formation, unit or department entrusted to him or her;
 - (e) commits theft in respect of any public property, or of any military formation, unit or department, or of any person subject to the provisions of this Act or serving with or attached to the force;
 - (f) dishonestly receives or retains any such property as specified under paragraph (d) herein knowingly or having reason to believe that it was stolen;
 - (g) does any other thing with the intent to defraud or to cause wrongful gain to one person, or wrongful loss to another person; or

(h) commits any other similar corrupt practices,
commits an offence.

(2) Any SPLA personnel who, commits the offence of nepotism and corrupt practices, and shall on conviction be sentenced to imprisonment for a term not exceeding fourteen years.

Section 74. Malingering

(1) Any SPLA personnel who:-

- (a) malingers or feigns or produces disease or infirmity in himself or herself, or intentionally delays his cure or aggravates his or her disease or infirmity; or
- (b) with intent to render himself or herself or any other person unfit for service, voluntarily causes hurt to himself or herself or any other person,

commits an offence.

(2) Any SPLA personnel who commits the offence of malingering shall on conviction be sentenced to imprisonment for a term not exceeding three years.

Section 75. Intoxication

Any SPLA personnel who gets intoxicated while on duty, irrespective of whether the said state was induced by the taking of liquor or drug, commits an offence and shall on conviction be sentenced to imprisonment for a term not exceeding one year.

Section 76. Possession or Smoking of Hashish, Bango or Drugs

Any SPLA personnel who distributes or is found in possession of or smoking hashish, bango or taking drugs, as defined in the Penal Code Act, 2008 commits an offence and shall on conviction be sentenced to imprisonment for a term not exceeding five years.

Section 77. Offences by and in Relation to Detainees

(1) Any SPLA personnel who being:-

- (a) in military custody, leaves such custody before he or she is set at liberty by proper authority; or
- (b) in command of a guard, piquet or patrol, refuses to receive any prisoner or person duly committed to his or her charge;
- (c) without proper authority releases any detainee or person placed under his or her charge, or negligently allows any such detainee or person to escape; or

(d) in charge of a detainee mistreats him or her,
commits an offence.

(2) Any SPLA personnel, who commits the offence stated under sub-section (1) (c) above, shall on conviction be punished with the same punishment that is expected to be imposed on the detainee or person wrongfully released by him or her; and for offences stated under sub-section (1) (a, b and d) above; he or she shall be sentenced to imprisonment for a term not exceeding three years.

Section 78. Offences in Relation to Property

- (1) Any SPLA personnel who intentionally or through negligence:-
- (a) causes damage or converts any property belonging to the force to his or her personal benefit;
 - (b) causes death, injury, converts, ill-treats or looses any animal belonging to the force;
 - (c) converts to his or her personal benefit or looses his or her arms, ammunition, equipment, instruments, clothing or regimental necessities;
 - (d) sells, pawns, or defaces any medal or decoration granted to him or her;
 - (e) misuses operational funds, food or other supplies for personal interest;
 - (f) without authority acquires possession of arms or ammunition;
or
 - (g) fails to report and hand in all goods captured from the enemy,
- commits an offence.
- (2) Any SPLA personnel, who commits an offence under sub-section (1) above, shall on conviction be sentenced to imprisonment for a term not exceeding seven years.

Section 79. False Accusation or Statement or Return or Report

- (1) Any SPLA personnel who:-
- (a) makes any complaint, intentionally makes any false statement affecting the character of any person subject to the provisions of this Act, or knowingly or intentionally suppresses any material facts; or
 - (b) intentionally furnishes a false return or report of the number or state of any personnel under his or her command or of any money, arms, ammunition, clothing, equipment, stores, or other property in his or her charge, whether belonging to such personnel or to the force, or to any person in or attached to the

force, or who through design or neglect, omits or refuses to make or send a return or report of any of the matters aforesaid, commits an offence.

- (2) Any SPLA personnel who commits any offence under sub-section (1) above shall on conviction be sentenced to imprisonment for a term not exceeding three years.

Section 80. Offences in Relation to Courts-Martial

- (1) Any SPLA personnel who:-
 - (a) when duly summoned to attend as a witness before a court-martial, intentionally omits to attend or refuses to be sworn or affirmed or to answer any question, or to produce or deliver any book, document or other thing for which he or she might have been duly warned and called upon to produce or deliver;
 - (b) Intentionally insults or causes any interruption or disturbance to, or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of a court-martial while sitting; or
 - (c) Having been duly sworn or affirmed before any court-martial or other military court competent to administer oath or affirmation, makes any statement which is false and which he or she either knows or believes to be false; commits an offence.
- (2) Any SPLA personnel who commits an offence under sub-section (1) above, shall on conviction be sentenced to imprisonment for a term not exceeding one year.

Section 81. Attempt

Any SPLA personnel who attempts to commit an offence punishable under this Act, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence may, on conviction, where no express provision is made by this Act for the punishment of such attempt, be punished with the punishment provided in this Act for such offence, but that sentence shall not amount to death or life imprisonment.

Section 82. Abetment

Any SPLA personnel who abets any offence punishable under this Act commits an offence and shall on conviction be sentenced, as provided for in this Act, for such an offence.

Section 83. Offences Punishable Under the Penal Code, 2008

- (1) Every person subject to the provisions of this Act, either within Southern Sudan, or at any other place beyond the Southern Sudan, who commits an offence punishable under the Penal Code, 2008 shall be

deemed to have committed an offence under this Act and if charged therewith under this section, shall subject to the provisions of this Act, be liable to be tried for the same offence by a court-martial and shall on conviction be liable to any punishment prescribed for such an offence by the Penal Code Act, 2008 or such punishment shall be imposed upon him or her in pursuance of the provisions of this Act in respect of an act prejudicial to good order and military discipline.

- (2) The powers of a court-martial to try and to punish any person under this section shall not be affected by reason of the fact that the offence against the said Penal Code, with which such person is charged, is also a military offence.

CHAPTER IX

PUNISHMENTS

Section 84. Type of Punishments.

There shall be two types of punishment for offences committed under this Act:-

- (a) general punishments for criminal offences triable by court martial; and
- (b) punishments for disciplinary offences as prescribed in the SPLA rules and regulations.

Section 85. General Punishments

- (1) The following punishments may be imposed on offenders by courts martial constituted in accordance with the provisions of this Act:-
 - (a) death which may be executed by a firing squad provided that the death sentence shall not be executed against a pregnant or suckling women; except after two years of lactation.
 - (b) imprisonment;
 - (c) dismissal;
 - (d) stripping of rank; and
 - (e) demotion.
- (2) Whenever an officer or any other rank is sentenced to imprisonment, the court martial imposing that punishment shall dismiss the said officer or any other rank.

Section 86. Pardons and Remissions

- (1) When any person, subject to the provisions of this Act, has been convicted by a court-martial of any offence, the President and the Commander-in-Chief, or the confirming officer in the case of a sentence which he or she could have confirmed or which did not require confirmation by the President, may:-

- (a) either without conditions or upon any condition which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment imposed; or
 - (b) mitigate the punishment imposed or commute such punishment for any less punishment mentioned in this Act.
- (2) If any condition on which a person has been pardoned or a punishment has been remitted is, in the opinion of the authority which granted the pardon or remitted the punishment, not fulfilled, such authority may cancel the pardon or remission and thereupon the sentence of the court-martial shall be executed as if such pardon had not been granted or such punishment has not been remitted.
- (3) Notwithstanding the provisions of subsection (2) above, in the case of a person sentenced to imprisonment, such person shall undergo only the unexpired portion of his or her sentence.

Section 87. Punishments for Infringement of Discipline.

Punishments for infringement of discipline in the SPLA, the authorities to impose them and the manner of their execution shall be as prescribed in the SPLA rules and regulations.

CHAPTER X

APPEALS AND CONFIRMATION OF SENTENCES

Section 88. Appeals

- (1) Appeals from District Court Martial shall lie to a General Court Martial.
- (2) Appeals from General Court Martial shall lie to the Southern Sudan Supreme Court.

Section 89. Confirmations

- (1) No finding or sentence of a General or District Court-Martial shall be valid unless confirmed in accordance with the provisions of this Act.
- (2) The findings and sentences of a general court martial shall be confirmed by the President and Commander-in-Chief or by any officer authorized in his or her behalf by warrant issued by the President and Commander-in-Chief, provided that no death sentence shall be confirmed unless reviewed and recommended by the Southern Sudan Supreme Court.

- (3) The findings and sentences of District Court Martial shall be confirmed by any officer having power to convene a General Court Martial or by any officer authorized in this behalf by warrant issued by any such officer.

Section 90. Limitation of Powers of Confirming Authority

- (1) A warrant issued in accordance with the provisions of sections 89 (2) above may contain such restrictions, reservations or conditions as the officer issuing it may think fit.
- (2) Subject to such restrictions as may be contained in any warrant issued under section 89 (3) above, a confirming officer when confirming the finding and sentence of a District Court Martial, may:-
 - (a) mitigate the punishment imposed, or commute such punishment for any lesser punishment to which the offender could have been sentenced by the court-martial;
 - (b) remit the whole or any part of the punishment imposed;
 - (c) suspend the execution of the whole or any part of such punishment; or
 - (d) refuse to confirm the finding and sentence of the court-martial and may, for reasons to be recorded in writing, order a fresh trial by another court-martial.

CHAPTER XI

MISCELLANEOUS PROVISIONS

Section 91. Complaints by and Against Officers

- (1) Any SPLA personnel who deems himself or herself aggrieved by his or her commanding officer or any superior officer and who on due application made to his or her commanding officer does not receive the redress to which he or she considers himself or herself entitled, may complain through the chain of command.
- (2) Every officer receiving any complaint under subsection (1) above, shall enquire into it, and when necessary refer it to superior authority, provided that a decision by an authority competent to dispose of the matter complained of, shall be final.

Section 92. Privileges of Persons Attending Court-Martial

- (1) No presiding officer or member of a court martial, no member of Directorate of Military Justice, sitting judge or Legal Counsel; no party to any proceedings before a court-martial, or his or her legal practitioner or agent, and no witness acting in obedience to a summons

to attend a court-martial shall, while proceeding to, attending or returning from a court-martial, be liable to arrest under any civil process on the same.

- (2) If any such person is arrested under any such process he or she shall immediately be discharged by order of the court-martial.

Section 93. Property Exempted from Attachment

Neither the arms, clothes, equipment, accoutrements nor necessities of any accused or convicted person subject to the provisions of this Act, nor any vehicle or animal used by him or her for the discharge of his or her duty, shall be seized or attached.

Section 94. Apprehension of Deserters

- (1) Whenever any person subject to the provisions of this Act deserts, the commanding officer of the unit to which the deserter belongs, shall give written information of the desertion to such civil authorities as in his or her opinion may be able to afford assistance towards the apprehension of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he or she were a person for whose apprehension a warrant had been issued by an Attorney or Magistrate and shall deliver the deserter, when apprehended, to military custody.
- (2) Any military police officer may arrest without warrant any SPLA personnel moving without a departure order and shall produce him or her, without delay, to the nearest military authority.

Section 95. Arrest by Military Authorities

- (1) Any person subject to the provisions of this Act who is charged with an offence may be taken into military custody.
- (2) Any such person may be ordered into military custody by any superior officer, provided that he or she files the charges against that person within 24 hours.
- (3) The charge against any SPLA personnel taken into military custody shall, without unnecessary delay, be investigated by the competent military authority.

Section 96. Arrest by Civil Authorities

Whenever any person who is subject to the provisions of this Act, is accused of any offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate or police officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his or her commanding officer.

Section 97. Restriction on Persons Who are Subject to this Act

- (1) No SPLA personnel shall:-
 - (a) be a member of, any political party, trade union or labour union, or any society, institution or association with political objectives;
 - (b) address any demonstration organized for any political or other purposes; or
 - (c) unless permitted by competent military authority, communicate with the press or publish or cause to be published any article, book, letter or any other document.
- (2) Any SPLA personnel who violates any of the restrictions stated under sub-section (1) above, shall be punished under the SPLA rules and regulations.

Section 98. Prohibition against Delegation

Except as expressly provided in this Act, no power conferred by or under this Act on any person, or body shall be delegated to any other person.

Section 99. Code of Conduct

All the persons subject to the provisions of this Act shall abide by the code of conduct as provided in the SPLA rules and regulations.

Section 100. Power to Make Rules, Regulations and Orders

1. The Minister shall in consultation with Chief of General Staff make rules and regulations consistent with the provisions of this Act, for effective and efficient operationalization of the provisions of this Act.
2. The Chief of General Staff shall issue operationalization orders and directives consistent with the provisions of this Act, rules and regulations.

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, 1st Lt. Gen. Salva Kiir Mayardit, President of the Government of Southern Sudan, hereby Assent to the Sudan People's Liberation Army Act, 2009 and sign it into law.

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

**H.E. 1st Lt. Gen. Salva Kiir Mayardit,
President of the Government of Southern
Sudan, Juba.**