LAWS OF SOUTH SUDAN

LABOUR ACT, 2017

Act No. 64

Juba, 24th October 2017

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Arrangement of Sections

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LAWS OF SOUTH SUDAN

LABOUR ACT, 2017

In accordance with the provisions of Articles 55(3) and 85(1) read together with 101(f) of the Transitional Constitution of the Republic of South Sudan, 2011, (Amended 2015), the Transitional National Legislative Assembly, with the assent of the President hereby enacts the following**.**

CHAPTER I

PRELIMINARY PROVISIONS

1. Title and Commencement

This Act shall be cited as the "Labour Act, 2017" and shall come into force on the date of its signature by the President.

2. Repeal and Saving

Subject to Section4(3) of this Act, any provisions of existing legislation governing a subject of this Act are hereby repealed; provided that all proceedings, orders and regulations and appointments taken or made under the repealed provisions, except to the extent they are cancelled by or otherwise inconsistent with the provisions of this Act, shall remain in force and effect, until repealed or amended in accordance with the provisions of this Act.

3. Purpose

The purpose of this Act is to establish a legal framework for the minimum conditions of employment, labour relations, labour institutions, dispute resolution and provision for health and safety at the workplace, in accordance with the Constitution of the Republic of South Sudan, 2011, and in conformity with the international and regional obligations of South Sudan.

4. Authority and Application

(1) This Act is drafted in accordance with the provisions of Article 52, paragraphs (36) and (39) of Schedule A, and paragraph (1) of Schedule C of the Transitional Constitution of the Republic of South Sudan, 2011, (Amended 2015) which grant the Government the legislative and executive competence to enact legislation establishing non-discriminatory standards for labour relations and occupational safety and health at all levels of government in South Sudan.

(2) The provisions of this Act shall not apply to the following:
   (a) Army
   (b) Organized forces;
   (c) National security service;
   (d) Judges;
   (e) Government Legal Counsels;
   (f) Diplomatic service; and
   (g) Constitutional post holders.

(3) Except where the context requires otherwise, this Act applies to all employers and employees, other than the categories mentioned under sub-section (2) above.

(4) To the extent that the Civil Service Act, 2011 or other national law establishes conditions of employment more favourable to employees than are established under this Act, the relevant provisions of that Act or other national law shall apply to any employee so covered.

(5) For the purposes of this Act, a person who works for or renders services to any other person is presumed to be an employee of such other person, until the contrary is proven, regardless of the form of the contract stipulated between such parties, if at least one condition below is satisfied**.**

(a) The performance of the person is subject to the control or direction of the other person;

(b) Working hours of the person are subject to the control or direction of the other Person;

(c) The person has worked for an average of forty or more hours per month over the last three months for the other person;

(d) The person is economically dependent on the person for whom that person works or renders services;

(e) The person is provided with any working tools or equipment by the other Person; or

(f) The person only works for or renders services to one person.

5. Interpretations

In this Act, unless the context otherwise requires:

"Affiliated Union"	means any Labour Union affiliated to a Federation of Labour Unions;
"Arbitration"	means a formal process in a collective bargaining where the Office of the Labour Commissioner listens and investigates the demands and counter demands of both parties to the disputes and decides on a final settlement known as arbitration award;
"Basic Salary"	means the salary plus the cost of living allowance excluding other allowances.
"Bargaining Unit"	means any unit of employees in relation to which a registered trade union is recognized, or is entitled to be recognized, as the exclusive bargaining agent and may include employees engaged by more than one employer;
"Business"	includes any trade, profession, undertaking, operation or establishment, whether public, corporate or private;
"Calendar days"	Means regular days including Saturdays and Sundays;

“Casual employee”	means a person who works on a daily or hourly basis where payment of wages is due at the completion of each day’s work;
"Civil Servants"	means any civil servant who occupies a position at national or state levels of government and paid from a public budget of South Sudan;
“Collective Agreement”	means a written agreement concerning terms and conditions of work or any other matter of mutual interest concluded by one or more registered trade unions with their respective employers;
“Commission”	means the Commission for Conciliation, Mediation and arbitration referred to in section 22 of this Act;
“Competent Authority”	means the national Minister of Labour and the corresponding Ministers at the state level;
“Conciliation”	means a hearing process where the office of the Labour Commissioner or a panel meets with parties to the dispute and explores ways to settle the dispute by mutual agreement;
“Continuous Service”	means the period during which an employee is or was bound by an employment contract with an employer, regardless of absence from work by reason of paid leave entitlement, accrued and taken in accordance with sections 60, 61, 62, 63, 65, 66 and 67 of this Act;
“Contract of Service”	means any contract, whether oral or in writing, whether express or implied, where a person in turn agrees for remuneration, to work for an employer and includes a contract of apprenticeship;
“Council”	means the Labour Advisory Council referred to inSection20 of this Act;
"Dependent family"	means those members of the family of the worker who are wholly or partly dependent upon his earning.
“Employee”	means a person who works in the service of another person under an express or implied contract of hire for pay;
“Employer”	means any person who employs an employee under a contract of employment, verbal or written;
"Employers’ Association”	means any organization of employers established by employers, the principal purposes of which are the representation and promotion of employers’ interests and the regulation of relations between employers and workers;
“Essential Service"	means areas in an establishment where an action could result in a particular or total loss of life or pose a danger to public health, safety and such other services as may be determined by regulations;

"Employment Contract" means a contract of service whether expressed or implied, and expressed orally or in writing;

"Family Member" includes the spouse, child, father, mother, grandfather grandmother, grandchild, step-father, step-mother, daughter-in-law, son-in-law, step-daughter, step-son or anyone who is economically dependent on the employee;

"Forced Labour" means any work or service which is:

(a) Exacted from any person under the threat of a penalty, including the threat of loss of rights or privileges; and

(b) Not being offered voluntarily by such Person.

"Foreign employee" means a non-South Sudanese employee who has been granted work permit in South Sudan;

"Government" means the Government of the Republic of South Sudan;

"Harassment" Is unfair discrimination/act meted against any one or a combination of grounds of unfair discrimination that is prohibited by law.

"Hazardous Work" means any type of employment or work, which by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of the persons performing that work.

''Good faith'' shall have the meaning assigned to it in the penal code.

"Industrial dispute" means any dispute between an employer and one or more workers; or between workers and workers which relates to the terms and conditions of employment, the physical condition in which workers are required to work, the employment and non-employment or termination or suspension of employment of one or more workers and the social and economic interests, of the workers but does not include any matter concerning the interpretation of this Act, a collective agreement or contract of employment or any matter which by agreement between the parties to a collective agreement as stated in section 88of this Act or contract of employment does not give cause for industrial action or lockout.

"Labour Commissioner" means any person appointed by a Competent Authority as Labour Commissioner underSection16of this Act;

"Labour Court" specialized division of the high court set up to deal with matters of labour in nature as referred to in section **108** of this Act;

"Labour Inspectorate" means the Labour Inspectorate referred to, under section21of this Act;

“License” means a certificate of competence issued by the office of the Labour Commissioner to a Private Employment Agency permitting the agency to engage in any employment service activity;

"Licensing" means obtaining license in the prescribed form for erecting a new factory or an extension to an existing one or carrying out other industrial operations and it includes also obtaining a license for making alterations relating to the arrangement, erection or organisation of machinery.

“Lockout” means the exclusion by an employer of employees from the employer's workplace, for the purpose of resolving a dispute regarding any matter of mutual interest between an employer and employees, whether or not the employer breaches those employee contracts in the course of or for the purpose of that exclusion;

“Matter of Mutual Interest” means a matter involving the introduction or proposed introduction of new or changed conditions of employment, benefits or rights of employee, or the introduction or proposed introduction of new or changed relations between one or more employers or Employers’ Associations and one or more trade unions;

“Mediation” means an intervention to resolve or settle dispute between employee(s) and employer

“Minister” means the Minister of Labour, Public Service and Human Resource Development;

“Ministry” means the Ministry of Labour, Public Service and Human Resource Development;

“Night Work” means work, which is performed between the hours of 10 PM and 6 AM the following day;

“Person” means any natural or legal person, and includes the Government at any level;

“Personal Data” means any information or stored/retrievable data on the private and personal lives of employees, such as their family lives, personal relationships, sex lives, state of health, their political and religious convictions;

“Picketing” means the action whereby employees outside a place of work intend to persuade or prevent other employees from entering the place of employment during labour unrest;

“President’’ means President of the Republic of South Sudan

"Private Employment Agency" means any corporate body/recruitment firm/agent, which acts as an intermediary for the purpose of procuring employment for the employee or recruiting an employee for an employer;

"Protected Strike" means a strike that complies with the provisions of this Act;

"Protected Lockout" means a lockout that complies with the provisions of this Act;

"Redundancy" means the loss of employment, occupation, job or career by voluntary means through no fault of any employee, involving termination of employment at the initiation of the employer, where the services of an employee are superfluous and the practice commonly known as abolition of office, job or occupation and loss of employment;

"Registrar" means the person appointed as Registrar of Trade unions and Employers' Association under Section 8 of Workers Trade union Act, 2013;

"Sexual harassment" Deliberate sexual comments and gestures of any conduct of sexual nature that is unwanted, embarrassing, demeaning or compromising. It can be implicit or explicit and may be a single incident or occur over a period of time. It may consist of any or all of the following acts:

(a) Sexual or insensitive jokes, lewd suggestions, whistling, foul language, slurs, innuendos, leering and obscene gestures;

(b) Belittling comments on a person's anatomy or persistent demands for dates;

(c) Asking for sexual favours, asking about personal/sex life, explicit sexual suggestions in return for "rewards".

(d) Unwanted physical contact of any sort, including touching, brushing and kissing.

(e) Display of pornographic and sexually suggestive pictures and/or sexual objects.

(f) Offensive written, telephonic or electronic communications.

(g) Indecent exposure or dressing.

(h) Sexual assault and rape

(i) Unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature also constitute sexual harassment.

"Trade dispute" means any dispute between employers and employees, between employees and employees, between employers and employers

respecting the employment or non- employment or the terms and circumstances of employment of any person

"Strike" means a total or partial stoppage of work by employees if the stoppage is to compel their employer or any other employer to accept, modify or abandon any demand that may form the subject matter of a dispute of interest;

"Summary Termination" means the discharge of an employee by an employer without any notice or hearing in advance, which immediately ends the employment contract;

"Trade union" means any organisation of employees, the purpose of which is to regulate relations between employees and employers or Employers' Association and to further and defend the interests of employees;

"Wages/Salaries": means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable under an order or a written contract of service for work done or to be done, or for services rendered or to be rendered but excluding any contribution made or to be made by the employer in respect of his or her employee's insurance, medical care, welfare, education, training, invalidity, retirement pension, post-service gratuity or severance allowance;

"Work Place" means any place where an employee needs to be or to go by reason of his or her work which is under the direct or indirect control of the employer;

"Work Policy or Practice" means any policy or practice relating to selection and recruitment procedures, advertising and selection criteria, appointments and appointment process, job classification and grading, remuneration, employment benefits, terms and conditions of employment, job assignment, the working environment and facilities, training and development, performance evaluation systems, promotion transfer, demotion, termination of employment and disciplinary measures;

"Worst Forms of Child Labour" means a dangerous and hazardous work, which exposes children to physical, psychological or sexual abuse, and unhealthy environment.

CHAPTER II

FUNDAMENTAL RIGHTS AT WORK PLACE

6. Non-Discrimination

(1) No person shall discriminate, directly or indirectly, against an employee or job applicant in any work policy or practice.

(2) No trade union, Employers' Association or federation shall discriminate, directly or indirectly in any:

(a) admission, representation or termination of membership;
(b) work policy or practice;
(c) Collective Agreement.

(3) For the purpose of this section, discrimination includes any distinction, exclusion or preference with the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, based on any of the following grounds:

(a) race;

(b) tribe or place of origin;

(c) national extraction;

(d) colour;

(e) sex;

(f) pregnancy or childbirth;

(g) marital status;

(h) family responsibilities;

(i) age;

(j) religion;

(k) political opinion;

(l) disability or persons with special needs;

(m) Health and HIV/AIDS; or

(n) Membership in a trade union or participation in Trade union activities.

(4) The ground of discrimination set out in sub-section (3) (n) above does not apply to the prohibition on discrimination under sub-section (2) above.

(5) Any distinction, exclusion or preference in respect of a particular job shall not constitute discrimination for the purposes of this section if it is:

(a) based on the inherent requirements of the particular job; or

(b) In accordance with special measures adopted by the government to assist persons generally recognized as requiring special assistance.

(6) Where, in proceedings relating to an alleged contravention of this section:

(a) it is alleged that a person took, or is taking, action for a particular reason; and

(b) taking that action for that reason would constitute a contravention of this section,

(c) It is presumed that the action was, or is being, taken for that reason, unless the person against whom the allegation is brought proves otherwise.

7. Sexual Harassment

(1) No person shall sexually harass an employee or an employer. This shall be an offense against an employee and which by its nature has a detrimental effect on that employee's job performance or satisfaction.

(2) An employer shall ensure that no person shall sexually harass an employee in the course of such employee's work for the employer.

(3) An employer who employs twenty or more employees shall, after consulting with the employees' representatives, issue a policy statement on sexual harassment.

(4) The policy statement shall contain, at a minimum:

(a) the definition of sexual harassment as specified in section 5 above; and

(b) a statement:

(i) that every employee is entitled to work that is free of sexual harassment;

(ii) that the employer shall take steps to ensure that no employee is subjected to sexual harassment;

(iii) that the employer shall take such disciplinary measures as the employer deems appropriate against any person under the employer's direction who subjects any employee to sexual harassment;

(iv) that provides the process for bringing complaints of sexual harassment to the attention of the employer;

(v) that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purpose of investigating the complaint or taking disciplinary measures in relation thereto; and

(vi) that an employee who brings a complaint of sexual harassment in good faith shall not be disciplined, demoted, dismissed or otherwise prejudiced in such employee's employment with the employer as a consequence.

(5) Sexual harassment does not refer to behaviour that is mutually acceptable to the parties involved. Friendships, whether sexual or otherwise, are a private concern and should be kept out of the workplace.

(6) An Employer shall make rules and regulations against sexual harassment to govern employer and employees in the place of work.

(7) The employer shall bring the policy statement to the attention of each person under the employer direction.

8. Equal Remuneration for Work of Equal Value

(1) Every employee shall be entitled to equal remuneration for work of equal value.
(2) Every employer shall take steps to guarantee equal remuneration for every employee for work of equal value.
(3) Work of equal value is work, which requires of workers a comparable amount of knowledge attested to by a qualification, or work experience, capacities derived from acquired experience, responsibilities and physical or intellectual effort.
(4) Any unilateral decision by an employer or group of employers and any provisions of any agreement of whatever nature, which contravenes the provisions of this section shall be deemed null and void.
(5) The rate of remuneration of employees who have been prejudiced by any discriminatory decision or agreement shall be replaced by the rate of remuneration attributed by virtue of that decision or agreement to the other employees.
(6) An employee who has been paid remuneration at less than the rate to which such employee is entitled in keeping with the equal pay rule, shall have the right to recover from the employer the amount by which such employee has been underpaid.
(7) The Ministry of Labour, Public Service and Human Resources Development has the right to apply this section without prejudice to sub-section (6) above.

9. Freedom of Association

(1) All employees and employers, without restriction whatsoever, shall have the right to establish and, subject only to the rules of the trade unions or Employers' Association concerned, join trade unions or Employers' Association of their own choosing.

(2) Trade unions, or Employers' Associations shall have the right to:

(a) draw up their constitution, rules, regulations and circulars~~;~~

(b) establish rules and regulations for election of their officers and representatives and hold such elections in full freedom;

(c) organise their administration and activities;

(d) Establish, join federations and affiliate with regional, continental and International Organizations of employees and employers.

(3) Any provision of employment contract or Collective Agreement that contravenes or limits this provision shall be deemed, null and void.

10. Prohibition of Forced Labour

(1) No person shall engage in the recruitment or use of forced labour or assist any other person to engage in such activities.

(2) For the purpose of this sub-section, the following shall not constitute forced labour:

(a) any work or service exacted by virtue of compulsory military service laws or for work of a purely military character, provided that the recruitment of children for use in armed conflict shall be deemed to be forced labour;
(b) any work or service which forms part of the normal civic obligations of citizens in South Sudan;
(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the work or service is carried out under the control and supervision of a public authority and that the person is not hired out to or placed at the disposal of any private person, company or association;
(d) any work or service exacted in case of emergency, such as in the event of war, natural disaster or threat of natural disaster or calamity, or any other circumstance that may endanger the existence or the wellbeing of the population or part of it; or
(e) Minor community service performed by any member of a community in the direct interest of the community, provided that the members or the representatives of such community are consulted.

(3) Without prejudice to sub-section (1) above, it is forbidden to make use of any form of forced labour as a means of:

(a) political coercion;

(b) economic development;

(c) labour discipline;

(d) punishment for participation in Strikes; and

(e) Discrimination based on any ground listed inSection6 of this Act.

11. Illegal Movement of Employees

(1) No person shall organize, or assist in the organization of, illicit or clandestine movement of one or more Employees into or out of South Sudan for the purposes of having the Employee perform work for:

(a) the person who organized or assisted in the organization of the illicit or clandestine movement; or

(b) a third party.

(2) An employer shall not employ, or engage for the purposes of performing work an employee whom the employer knows to be illegally present in South Sudan.

12. Minimum Working Age

(1) This section shall apply to all forms of work performed by children, whether or not the child is an employee.

(2) Subject to the provisions of **sub-section (3)** this section, no person shall engage or permit the engagement of a child under the age of 14 years to perform works defined under section 13 as worst forms of work in this Act.

(3) The prohibition established under sub-section (2) above shall not apply to children's work in school or in other training institution for educational or vocational purposes, if such work is carried out in accordance with conditions prescribed by the Minister, after consultation with the Council, and is an integral part of:

(a) a course of education or training for which a school or training institution is primarily responsible;

(b) aprogramme of training approved by the Minister; or

(c) aprogramme of orientation designed to facilitate the choice of an occupation or of a line of training.

(4) Without prejudice to the provisions of section 25 of the Child Act, 2008, and in line with this section, a child who has attained the age of twelve years may be engaged to perform light work, provided that such work:

(a) is not harmful to the child's health or safety, or the child's moral or material welfare or development; and

(b) does not interfere with the child's attendance at school, participation in vocational orientation or training programmes approved by the Minister or the child's capacity to benefit from instruction received.

(5) Following consultation with registered trade unions and Employers Association and on advice from the Council, the Minister shall determine the activities in which employment or work may be permitted under sub-section (4) and shall prescribe the number of hours and the conditions of such work.

(6) No person shall engage or permit the engagement of a child under the age of eighteen years to perform hazardous work.

(7) Following consultation with registered trade unions and Employers Association and on advice from the Council, the Minister may issue regulations authorizing the engagement

of children who have attained the age of sixteen years to perform specified categories of Hazardous Work, provided that:

(a) special measures are taken to ensure that the child safety and health, and the child moral and material welfare and development, are protected;

(b) thechild receives adequate specific instructions or vocational training for the work to be performed;

(c) the number of hours and conditions of such hazardous work shall be as prescribed by regulations.

(8) Following consultation with registered trade unions and employers Association and on advice from the Council, the Minister may establish a system by which a person might obtain a permit to engage a child under the age of fourteen years for such purposes as participation in artistic performances.

(9) The permits provided for in sub-section (8) shall be granted on an individual basis and shall prescribe the conditions and limited number of hours under which the employment is to be allowed.

13. Worst Forms of Child Labour

(1) No person shall engage or permit the engagement of a child under the age of eighteen years in any hazardous work, which constitutes the worst forms of child labour.

(2) The worst forms of child labour shall include:

(a) all forms of slavery or practices similar to slavery, such as sale and trafficking of children, debt bondage and serfdom, forced or compulsory labour, and forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procurement or offer of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procurement or offer of a child for illicit activities, in particular for the production and trafficking of drugs as defined in international treaties as ratified by the government;

(d) Work, which by its nature or circumstances in which it is carried out, is likely to harm the health, safety or morals of the child.

(3) Following consultation with registered trade unions and Employers' Association and on advice from the Council, the Minister shall issue regulations establishing a complete list of types of the worst forms of child labour.

(4) The Government shall design and implement programmes to eliminate the worst forms of child labour, prevent the engagement of children in such labour and:

(a) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
(b) ensure access to free basic education, and wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
(c) identify and reach out to children at risk; and
(d) take account of the special situation of girls.

(5) Complaints of alleged contraventions of this section may be made to the Labour Inspectorate or the police.

14. Right to Privacy

(1) During the course of selecting, appointing, engaging or employing an employee, or following the termination of an employee's contract, an employer or Private Employment Agency shall not:

(a) collect any personal data that is irrelevant to the inherent requirements of the position;

(b) cause or permit any personal data collected to be accessed or disseminated for reasons other than those for which it was originally collected or as otherwise provided by law; or

(c) store any Personal data related to an employee for a longer period than is required for the specific purpose for which such data was collected.

(2) An employer shall have the right to access personal data pertaining to that employee that is held by another employer or Private Employment Agency and to request removal or correction of irrelevant or inaccurate data.

(3) An employer may establish rules and limits on, or prohibit the use of the employer's information technology for personal purposes.

(4) The use of remote surveillance facilities at the workplace for the purposes of monitoring is prohibited.

(5) Without prejudice to sub-section (4) above, the employer may use remote surveillance facilities at the workplace for the protection and safety of persons and property, or as part of the productive process, in which case the employer shall inform employees of the existence and the purpose of such facility.

15. Disputes regarding Fundamental Rights at Work

(1) If there is a dispute about the interpretation or application of any provision of this chapter, any party to the dispute may report the dispute in writing to the Commission for Conciliation in accordance with Section102 of this Act.

(2) If the dispute remains unresolved following conciliation, any party to the dispute may appeal to the Labour Court for adjudication.

CHAPTER III

LABOUR INSTITUTIONS

Administration of the Act

16. The office of the Labour Commissioner

(1) There shall be established by a competent authority, an Office to be known as the Office of the Labour Commissioner;

(2) The Undersecretary for Labour and Industrial Relations shall be recommended by the competent authority to be appointed by the President as the Labour Commissioner.

(3) The office of the Labour Commissioner, on behalf of the Ministry of Labour, Public Service and Human Resource Development, shall be responsible for the administration of this Act.

(4) The Competent Authority shall determine the required human resources for the Labour Office at the national level;

(5) The Office of the Labour Commissioner shall prepare and publish an annual report on the administration of this Act.

17. Functions of the Office of Labour Commissioner

The Office shall have the following functions:

(1) Responsibility for administration of this Act on behalf of the Competent Authority;
(2) Resolution through conciliation of any dispute between an employee and an employer;
(3) Co-ordination of the activities of the executive organs concerned with human resources in accordance with the prescribed general policy;
(4) Compiling and maintaining up to date statistics and submission of all information and recommendations as it thinks fit to the Competent Authority for submission to the Council of Ministers;
(5) Overseeing and prescribing human resource and labour programmes as may be compatible with the government development plans;
(6) Performing any other functions in the field of human resource, which the Competent Authority may assign to it.

18. Labour Offices at the State Level

(1) There shall be established by Gubernatorial Order at the state level, an office to be known as Office of the Labour Commissioner;
(2) The Director for Labour and Industrial Relations shall be appointed by the Governor with recommendation of the State Minister of Labour, Public Service and Human Resource Development to be the Labour Commissioner;

(3) The Labour Commissioner, on behalf of the Ministry of Labour, Public Service and Human Resource Development, shall be responsible for the administration of this Act;
(4) The Labour Commissioner at the state level shall have the same functions as his/her counterpart at the national level;
(5) The Competent Authority shall determine the required human resources for the Labour Offices at the state level;
(6) The office of the Labour Commissioner shall prepare and publish an annual report on the administration of this Act.

19. Financial Resources

The Office of the Labour Commissioner shall be funded through appropriation of the Legislature as recommended by the Ministry of Finance.

20. Labour Advisory Council

(1) There shall be established, by an order of a Competent Authority, a Labour Advisory Council at the national and state level as the case may be.

(2) The Council shall consist of 7 members to be appointed by the Competent Authority on the recommendation of the concerned institutions and constituted as follows:

(a) 2 representatives of the relevant government institutions;
(b) 2 representatives from Workers' Trade Unions;
(c) 2 representatives from Employers' Associations; and
(d) 1 independent expert in labour related matters who shall be Chairperson.

(3) The employee and employer representatives on the Council shall be appointed from nominees of the most representative trade unions and Employers' Association.

21. The Functions and Quorum of the Council

The Council shall have the following functions:

(1) Advise the Office of the Labour Commissioner on any matter falling under this Act;
(2) Formulate and review codes of good practices relating to any matter falling under this Act;
(3) Consult with stakeholders in the labour market on key social or economic matters;
(4) Advise the Office of the Labour Commissioner on periodically fixing, reviewing and adjusting minimum wages in accordance with section 50 of this Act;
(5) Advise the Office of the Labour Commissioner on issues arising from the activities of the International Labour Organization;
(6) Report annually to the office of the Labour Commissioner on its activities and on information received on the activities of the Labour Inspectorate; and
(7) The Council may request experts as it considers necessary for the effective and efficient performance of its functions.

(8) Following consultation with registered trade unions and Employers' Association and any other relevant Government institution, the Minister may issue Ministerial orders on any of the following matters:

(a) the establishment of the Council;

(b) the criteria for determining the most representative of trade unions and Employers' Association;

(c) the required expertise or qualifications of the independent experts;

(d) the terms of appointment, tenure and conditions of service of the members of the Council;

(e) the procedures to be followed in the exercise of the Council's functions; and

(f) Such other matters as the Competent Authority may deem fit.

(9) To perform such other functions as the Office of the Labour Commissioner may request for the promotion of labour stability and employment development.

(10) Quorum of the council shall be 5, and decisions shall be by simple majority.

COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION

22. Establishment of the Commission for Conciliation, Mediation and Arbitration

(1) There shall be established, by the Competent Authority, a commission to be known as Commission for Conciliation, Mediation and Arbitration;

(2) The commission shall have offices in the states, established by the Governor on the recommendation of the Competent Authority at the state level;

(3) The Commission shall be funded through public funds, donations and contributions and shall prepare and execute its budget and fully comply with the public financial management and accountability law of the Republic of South Sudan.

23. Governance of the Commission

(1) The governing body shall consist of:

(a) Chairperson to be appointed by the Competent Authority;

(b) 2 representative from relevant government institutions;

(c) 3 representatives from Workers' Trade Unions; and

(d) 2 representatives from Employers' Associations.

(2) The employee and employer representatives to the governing body shall be appointed from nominees of the most representatives of trade unions and Employers' Association.

(3) The governing body shall appoint, as director of the Commission, a person who:

(a) is skilled and experienced in labour relations and dispute resolution; and

(b) has not been convicted of any offence involving dishonesty.

(4) The director of the Commission shall:

(a) perform the functions conferred on him or her in accordance with provisions of this Act or delegated to him or her by any other law;

(b) manage and direct the activities of the Commission;

(c) supervise the Commission staff and,

(5) Following consultation with registered trade unions and Employers Association, the Minister may issue regulations relating to:

(a) the constitution, terms of appointment and conditions of service of the members of the governing body, including the election, terms and responsibilities of a chairperson;

(b) the procedures to be followed in the exercise of the governing body's functions;

(c) the terms of appointment, conditions of service and specific responsibilities of the director; and

(d) Such other matters as the Minister may deem fit.

24. Functions of the Commission

(1) Subject to the provisions of chapters IX and X and any other relevant provisions of this Act or relevant law, the Commission shall:

(a) resolve through conciliation a dispute reported to it under this Act;

(b) upon agreement of the parties, resolve through arbitration a dispute submitted to it under this Act;

(c) upon application, order a party to negotiate in good faith;

(d) upon request, provide a party to a dispute advice on the procedure to be followed for the resolution of the dispute;

(e) upon request, provide any employee, employer and registered Trade union or registered Employers Association with advice and training relating to the prevention and settlement of any dispute; and

(f) conduct and scrutinize any election or ballot of a registered trade union or Employers' Association if:

(i) requested by the trade union or Employers Association concerned; or

(ii) required by the Labour Court;

(g) publish guidelines related to matters dealt with under chapters VIII, IX and X and

(h) conduct and publish research into matters relevant to its functions.

(2) Nothing in this section is intended to impinge on the functions of, or the rights of the employee who is subject to the civil service law in existence to seek assistance from the Employees Justice Chamber, Public Grievances Chamber or the Civil Service Commission in accordance with respective relevant law.

25. Powers of the Commission

(1) The Commission shall have such powers as are necessary to perform its functions in accordance with this Act, including but not limited to the powers in Chapter X.

(2) The Commission may make procedures necessary to implement the below mentioned powers:

(a) practice and procedure in connection with the resolution of dispute through conciliation or arbitration;

(b) process by which conciliation or mediation is initiated and the form, content and use of that process;

(c) process by which arbitration is initiated and the form, content and use of that process;

(d) joinder of any person having an interest in the dispute subject of conciliation or arbitration;

(e) intervention of any person as an applicant or respondent in conciliation or arbitration;

(f) amendment of any citation or party to conciliation or arbitration;

(g) hours during which offices of the Commission shall be open to receive any process related to conciliation or arbitration;

(h) any period not to be counted for purpose of calculating time or periods for delivering any process or notice related to proceedings of any conciliation or arbitration;

(i) forms to be used by parties and the Commission;

(j) basis on which a Labour Commissioner may make any order as to costs in any arbitration;

(k) right of any person or category of persons to represent any party in any conciliation or arbitration proceedings;

(l) circumstances in which the Commission may charge a fee in relation to any conciliation or arbitration proceedings or for any services the Commission provides; and

(m) all other matters incidental to performing the functions of the Commission.

Labour Inspectorate

26. Establishment of Labour Inspectorate

(1) Offices of the Labour Inspectorate shall be established in each State of South Sudan by the Competent Authority;

(2) The Competent Authority shall appoint and assign inspectors of Labour in accordance with the employment needs;

(3) The Competent Authority shall through regulations determine the strength and terms of service of Labour Inspectors

27. Functions of Labour Inspectors

Subject to the law, the labour inspectors shall exercise the below powers:

(1) supervise in compliance with this Act and any legal instrument, collective agreement or arbitration award made under this Act;

(2) inform and advise employers and employees on effective means to comply with this Act and with any other legal instrument, collective agreement or arbitration award made under this Act;

(3) investigate complaints received by the Labour Inspectorate from employees or Employers regarding matters regulated by this Act or any other legal instrument, collective agreement or arbitration award made under this Act;

(4) investigate administrative proceedings to enforce this Act and any other legal instrument, collective agreement or arbitration award made under this Act; and

(5) Perform such other functions as may be prescribed under this Act or by the regulations.

28. Powers of Labour Inspectors

For the purposes of performing their functions under this Act, any labour inspector shall:

(1) enter freely, without prior notice during working hours by day or night, a workplace;

(2) enter by day any premises he or she has reasonable cause to believe to be a workplace;

(3) direct that the workplace or any part of it not be disturbed as long as it is reasonably necessary to search or inspect such a workplace;

(4) search for and examine books, documents, objects or substance he or she reasonably believes to be relevant to the investigation or other function he or she is conducting;

(5) examine, make a copy of or seize any book, document, object or substance produced in pursuant to this section;

(6) take a sample of any object or substance found during search or investigation in pursuant to this section;

(7) take a sample of the atmosphere or of any material or object he or she finds;

(8) take measurements, readings, recordings or photographs;

(9) inspect or view any work, material, machinery or appliance;

(10) question any person at the workplace but without requiring such Person to give self-incriminating information;

(11) require any person who has control over any book, document, object or substance, whether held at the workplace or not, and believed to be reasonable relevant to the investigation or other function he or she is conducting:

(a) to produce such book, document, object or substance; and

(b) to explain any entry in such book, document or an object;

(12) advise and, if necessary, assist any person in initiating or instituting any application, report or complaint under this Act or settling any application, report or complaint under this Act;

(13) obtain assistance where necessary from a member of the police service, an interpreter or such other person with appropriate technical expertise as may be required by him or her; and

(14) make such orders, issue such notices, and perform such other functions as are provided for in this Act or by the regulations or any other law.

29. Power to Issue Compliance Notice

(1) If a labour inspector reasonably believes that a person:

(a) is violating a provision ofthis Act and of any other legal instrument, collective agreement or arbitration award made under this Act; or
(b) has violated such provision in circumstances which makes it likely that the contravention will continue or be repeated, then the labour inspector shall issue to

the person a written compliance notice requiring such person to stop and to remedy the contravention or likely contravention.

(2) A compliance notice shall:

(a) state the basis of the belief the labour inspector has for issuing the notice;
(b) specify the provisions that the labour inspector considers being or ~~have~~ having been contravened or threatened;
(c) specify a date not exceeding thirty days within which the person is required to remedy the contravention from the date of the compliance notice; and
(d) set out the procedures under this Act to enforce compliance with the notice.

30. Review of Compliance Notice by the Office of the Labour Commissioner

(1) An employer issued with a compliance notice may object to any part of the compliance notice by written application to the office of the Labour Commissioner within fifteen days of its issue.

(2) After considering any representations made by the employer under sub-section (1) above and any other relevant information, the office of the Labour Commissioner may:

(a) confirm, vary or set aside the compliance notice; and

(b) specify the date by which the employer is required to comply with any part of the notice that has been confirmed or varied.

(3) The information the office of the Labour Commissioner shall consider under sub-section (2) above includes:

(a) any evidence of the employer compliance record;

(b) the likelihood that the employer was aware of the relevant provisions; and

(c) the steps taken by the employer to comply with the relevant provisions.

(4) The office of the Labour Commissioner shall issue a written decision under sub-section (2) above to the employer and the affected employees or, where this is impractical, the representative of such employees.

31. Review of Compliance Notice by Labour Court

(1) An employer may object to a decision of the office of the Labour Commissioner under section30 of this Act by writing to the Labour Court within fifteen days from the date on which the office of the Labour Commissioner issued his or her written decision under section 30(4) of this Act.

(2) On filing objection against any decision of the office of the Labour Commissioner, such decision shall remain ineffective pending final determination by the Labour Court.

32. Enforcement of Compliance Notice

(1) A Labour Inspector may apply to the Labour Court to have a Compliance Notice issued under section 29 of this Act made into an order of the Labour Court if the person issued with the Compliance Notice has not complied with the notice or has not applied for a review of the notice under Section 31 of this Act.

(2) A Labour Inspector may apply to the Labour Court to have a compliance notice confirmed or varied by the office of the Labour Commissioner under section30 of this Act made into an order of the Labour Court under section 108 (12) of this Act, if the person issued with the compliance notice has not complied with the notice and has not applied for a review of the decision under section31 of this Act.

33. Obstruction and Non-compliance

Obstruction, hindering, offer **of a** bribe or other inducement, neglect or failure to comply with compliance notice issued by a Labour Inspector pursuant to powers conferred upon him or her under this Act or regulations issued under this Act shall constitute an offence provided for each of the stated acts in the penal code in force.

34. Annual Report

(1) The Labour Inspectorate shall prepare an annual report on the work of the inspection services and submit it to the Competent Authority; and the report should include:

(a) statistics on places of work inspected, including numbers of employees employed by such places;

(b) statistics on inspection visits undertaken and information on related findings;

(c) statistics on industrial accidents and occupational diseases;

(d) statistics on employees with disabilities and information on assistance provided by the employer;

(e) statistics on court proceedings, violations and penalties imposed; and

(f) Statistics on stoppages of work in various sectors of the economy.

(2) The Labour Inspectorate shall provide a copy of its annual report to the Council upon written request.

CHAPTER IV

ORGANIZATION OF EMPLOYMENT AND PRIVATEEMPLOYMENT AGENCIES

35. Establishment of Employment Exchanges

(1) The Competent Authority shall establish employment exchanges and determine their areas or groups for the service of which such exchanges are concerned.
(2) The employment exchange shall be subject to the supervision of the Office of the Labour Commissioner.
(3) Every unemployed person willing and unable to work or desirous of changing his/or her work, may apply for registration of his/her name for such purpose at the employment exchange concerned, presenting all the necessary particulars and documents in proof thereof;
(4) The employment exchange Centre shall register every application presented to it, which satisfies the conditions needed by the exchange upon which the exchange shall give a certificate free of charge within a maximum period of 3 days from the time of presenting the application provided that the validity of such certificate shall not exceed one year.
(5) No person shall register his or her name at one time in more than one employment exchange or furnish false particulars at the time of registration.

36. Regulation of Employing Unregistered Persons

(1) Without prejudice to the provisions of this Act, no person or body shall employ any person falling within the jurisdiction of any of the employment exchanges unless such person or body has obtained a certificate of registration in accordance with the provision of section 35(4)
(2) Every employing agency shall furnish the competent authority or the Office of the Labour commissioner with any particulars required within 14 days from the date of request.
(3) No notice for any post for the purpose of employment shall be issued by any means of publication except after obtaining a written permission from the concerned employment exchange; and there shall be mentioned in the notice the serial number of the permission issued by the employment exchange.
(4) Every employer which desires to employ any person with required qualifications shall apply to the concerned employment exchange to nominate a person who possesses the required qualifications for the post and the appointment shall be made from those nominated by the exchange.
(5) If the employment exchange notifies the employer that there is no person satisfying the qualifications required by the employer, or the employment exchange has failed to submit a suitable nominee within fourteen working days from the date of receipt of the

application, the employer may notify the concerned employment exchange of the name of a qualified candidate chosen for the post by the employer.

(6) Every employer appointing a person registered at an employment exchange shall return the certificate of registration of such a person to the exchange after recording the required particulars within 14 working days from the date of appointment.

(7) The Competent Authority shall make sure that the following categories of work shall be reserved for nationals only:

(a) Vending;

(b) Hawking;

(c) Driving;

(d) Office support staffing and any other manual works.

37. Private Employment Agencies to be Licensed

(1) No Person or firm shall operate a Private Employment Agency without having obtained a License from the Office of the Labour Commissioner.

(2) The Office of the Labour Commissioner shall issue a licence to the applicant if the Office is satisfied that:

(a) the applicant is qualified to own and manage an employment agency; and

(b) the premises where the employment agency will carry out its business are suitable for use of an employment agency.

(3) The Office of the Labour Commissioner shall provide written grounds for refusal to issue a licence.

(4) The Minister may issue regulations establishing further requirements for obtaining a licence under this section, including:

(a) application fee;

(b) provision of financial security;

(c) the applicant must have attained age of majority

(d) a declaration as to whether the applicant and, if the applicant is incorporated, any person involved in the management of such applicant, has been convicted of such crimes as the regulations may specify as prohibiting an applicant from obtaining a licence;

(e) a declaration summarizing the nature of the applicant activities;

(f) a declaration as to any other countries in which the applicant has activities, and as to whether the applicant has associated businesses incorporated in any of those countries;

(g) a declaration stating the nature of benefits and the legal protection provided to foreign nationals to be recruited by the applicant;

(h) particular experience and qualifications;

(i) capital;

(j) evidence of ability to market and promote the business of a private employment agency; and

(k) Demonstrated knowledge of the legal framework for the protection of employees' basic rights in South Sudan, including the protections in this Act.

38. Grant of Licence

(1) A Licence shall specify:

(a) name of the Private Employment Agency to which the licence is issued;

(b) premises at which the Private Employment Agency is to be conducted;

(c) area, including any foreign country, in respect of which the business of the Private Employment Agency may be conducted;

(d) class or classes of person or employment in respect of which the private employment agency may be conducted;

(e) any conditions subject to which the Private Employment Agency shall operate.

(2) A licence shall be valid for two years and may be renewed according to procedures established in the regulations issued by the Minister.

(3) A private employment agency shall display the licence on its business premises.

(4) The office of the Labour Commissioner shall keep a registry of private employment agencies licenced under this Act.

39. Cancellation, Variation or Suspension of Licence

The office of the Labour Commissioner may:

(1) cancel or vary the terms or conditions of any licence granted in accordance with this Chapter, if a representative of the Private Employment Agency has committed an offence under this Act or is guilty of any misconduct that renders the Private Employment Agency unfit to engage in recruitment or

(2) suspend a licence granted in accordance with this chapter, pending the result of any inquiry by the Labour Inspectorate into the fitness of the Private Employment Agency to continue performing the services for which the licence was issued.

40. Objection to Decision of Labour Commissioner

Any Person aggrieved by decision of the office of the Labour Commissioner under this chapter may object to the Labour Court within 30 days from the date on which notice of the relevant decision was received.

41. Employment of South Sudanese Abroad

Every South Sudanese willing to work abroad shall register with the Office of the Labour Commissioner at the national level according to the regulations made under this Act without prejudice to any other condition, procedure, which shall be required to be fulfilled under any other Law.

CHAPTER V

EMPLOYMENT CONTRACTS

42. Basic Requirements of Employment Contracts

(1) Subject to this section, an employment contract may be oral or written and may be for:

(a) a definite period;

(b) an appropriate period or

(c) The performance of a specific task.

(2) An employer may require an employee to serve a probationary period, provided that such probationary period shall not exceed 3 months.

(3) If, upon the expiration of a contract for a definite period, an employee continues working without the express dissent of the employer, the contract shall be deemed to be renewed on the same terms and conditions as the expired contract.

(4) Where an employee's employment continues in accordance with sub-section (3) of this section for a total period of two years, the employee shall be deemed to be employed under an employment contract for an indefinite period.

43. Terms of Employment Established by Employment Contracts

(1) Every employment contract shall contain all such particulars as necessary to define the rights and obligations of the parties including:

(a) name of the employer and place of employment;

(b) name of the employee, place of employment and, place of origin and any other particulars necessary for identification;

(c) nature of the employment and position to be held;

(d) duration of the employment;

(e) appropriate period of notice to be given by the party wishing to terminate the contract, which shall not be less than the minimum period of notice provided for in section 72 of this Act;

(f) rates of remuneration and method of calculation, the manner and periodicity of payment of wages and advances of wages, if any and the manner of payment of any such advances;

(g) measures to be taken to provide for the welfare of the employee and any member of family accompanying the employee under the terms of contract;

(h) conditions of repatriation, where applicable; and

(i) any special conditions of the contract.

(2) Where there is no written contract between the employer and the employee, this section shall be deemed to be the contract between them.

(3) No employment contract shall provide less favorable conditions for the employee than those provided for under this Act and any applicable law, regulation or Collective Agreement.

(4) Except as expressly provided under this Act, a provision of an employment contract that purports to exclude or nullify any provision of this Act shall be null and void.

44. Statement of Terms of Employment

(1) An employer shall provide an employee with information in a form an employee can understand:

(a) fundamental rights of employment as set out in chapter II of this Act;

(b) particulars of the employment contract as set out in section 43 of this Act; and

(c) other minimum conditions of employment as provided in this Act.

(2) The Minister may prescribe the information or types of information that an employer shall give to an employee for the purposes of sub-section (1) above.

(3) Notwithstanding the preceding provisions, the employer may comply with this section by:

(a) making a written employment contract with an employee and providing an employee with a copy of the contract or

(b) making an oral contract with an employee and:

(i) providing an employee with a written statement that contains the required information or

(ii) if the terms of the oral contract are the same as those applying to other employees, posting a notice in the workplace which contains the required information in such languages as may be appropriate for an employee concerned.

(4) The employer shall keep a copy of the written contract or the written statement referred to in sub-section (3) above throughout the employee's employment and for a period of three years after the termination of the employment.

(5) The Employer shall make a copy of the written contract or the written statement referred to in sub-section (3) above accessible to employees at the workplace.

(6) If in any legal proceedings, an employer fails to produce a copy of a written contract or written statement referred to in sub-section (3) above, the burden of proof to the contrary shall be on such employer.

(7) If an employee is illiterate or cannot understand the language or provisions of the information to be provided under this section, the employer shall explain the information, or have it explained to him or her in the presence of a witness chosen by the same. Failure by the employer to explain the provisions of the employment contract shall result in the invalidity of provisions unfavorable or contested by such employee.

45. Transfer of Employment Contract

(1) Except as provided for in sub-section (2) above, an employment contract shall not be transferred from one employer to another without prior written consent of the employee.

(2) Unless agreed to otherwise between the transferee and transferor in writing, if a trade or business is transferred in whole or in part, all employment contracts in force on the date of such transfer shall automatically be deemed to be transferred to the transferee with all rights and obligations contained in such contracts and to continue as if concluded between an employee and the transferee.

46. Foreign Employers and Employees

(1) Any foreign employer shall give priority of employment, at least 80% at different levels of management, to nationals, especially where necessary skills are available;

(2) All foreign employers shall after employing, notify and present their lists of employees to the office of the Labour Commissioner;

(3) Any foreign employer shall not employ any Foreigner unless:

(a) Qualifications, skills and experiences required are not locally available;

(b) such employee has been issued a valid work permit by the Ministry; and

(c) The office of the Labour Commissioner has duly approved an employment contract of such employee.

(4) The office of the Labour Commissioner shall only approve an employment contract under sub-section(2)(b) above unless he or she is satisfied that:

(a) The employee informed consent to the contract has been obtained;

(b) there is no any fraud, coercion or undue influence, mistake of fact or misrepresentation which might have induced an employee to enter into the contract;

(c) the contract is in the prescribed form;

(d) the terms and conditions of employment contained in the contract comply with the provisions of this Act and have been understood by an employee;

(e) an employee is medically fit for the performance of the duties under the contract; and

(f) an employee is not bound to serve under any other employment contract during the period of the employment.

47. Security for Employment of Foreigners

(1) The Office of the Labour Commissioner may require an employer that employs foreigners to provide security by bond in the prescribed form to the office of the Labour Commissioner.

(2) The amount of the security payable under sub-section (1) of this section shall be such sum as is reasonably determined by the office of the Labour Commissioner.

48. Disputes regarding Employment Contracts

(1) If there is a dispute about the interpretation or application of any provision of this Chapter, any party to the dispute may refer the dispute in writing to the Commission for conciliation in accordance with Section102 of this Act.

(2) If the Commission fails to resolve the dispute within a period of one month from the date of reference, any party to the dispute may apply to the Labour Court for adjudication.

CHAPTER VI

WAGES/SALARIES

49. Payment of Wages/Salaries

(1) All employers shall pay the wages/salaries of their employees without discrimination on the bases of nationality and in the same legal tender and as stated in Section 8 (1) and (2) of this Act.

(2) Payment of wages/salaries shall be made during working hours of working days at or near the place of employment or to bank account advised in writing by employee to employer.

(3) Employers shall pay wages/salaries of employees as follows:

(a) for employees employed on an hourly or daily basis, at the end of each day;

(b) for employees employed for a period of up to one month, at the end of each month; and

(c) for employees employed to perform a specific task, at the end of completion of the task.

(4) Without prejudice to this section, the Minister may, after consultation with the Council, by regulation, provide for the partial payment of wages/salaries in form of allowances or in kind for the personal use and benefit of an employee.

(5) No employer shall limit, or attempt to limit, the right of an employee to dispose of wages/salaries of such employee in a manner an employee deems fit, nor by the employment contractor otherwise seek to compel an employee to dispose of his or her wages/salaries or a portion of such wages/salaries in a particular place or for a particular purpose in which the employer has a direct or indirect beneficial interest.

50. Minimum Wage/Salary

(1) The Council may recommend to the competent authority the review, adjustment and fixing **of** the minimum wage/salary, taking into account:

(a) the basic needs of employees;

(b) the general level of wages/salaries in the country;

(c) the cost of living and changes in such cost;

(d) the level of productivity; and

(e) any other factor that the Council may deem fit.

(2) The minimum wage shall be periodically reviewed in accordance with the provisions of sub-section (1) provided that the review shall each time not take more than two years.

(3) Notwithstanding the principle of equal pay for work of equal value, the Council may recommend to the competent authority fixing different minimum wages/salaries for different occupations or for special categories of employees.

(4) The hourly minimum wage shall constitute one eighth of any daily minimum wage fixed or adjusted according to sub-section (3) of this section.

(5) The Minister shall publish the minimum wage, as adjusted and fixed following recommendation by the Council, in the official gazette or in any public media as the Minister may determine.

(6) The minimum wage shall take effect from the date specified in any publication issued under sub-section (5) above.

(7) An employer who fails to pay an employee in accordance with the minimum wage as adjusted, fixed and published in accordance with this section commits an offence**.**

51. Deductions from Wages/salaries

(1) An employer shall pay the net due to the employee;

(2) Notwithstanding sub-section (1) above, following deductions from the wage/salary of an employee shall be made:

(a) taxes, rates, subscriptions or contributions provided by law;

(b) alimony or child-care payments ordered by a competent court;

(c) an amount due from an employee as a contribution to a pension scheme, or other scheme established or maintained by the employer or any other person, provided that such scheme has been approved by the office of the Labour Commissioner and that an employee has agreed to contribute;

(d) a reasonable amount by way of rent for any accommodation provided by an employer to an employee, or for goods sold by the employer to the employee; provided that prior consent of the employee has been obtained to the deduction;

(e) an amount on account of monies lent or advanced by the employer to an employee, subject to prior written agreement;

(f) an amount for damage or loss to the property of employer provided that:

(i) the damage or loss has been proven on reasonable grounds to have been negligently caused by an employee;

(ii) the total amount deducted does not exceed the value of the damage or loss actually suffered by the employer

(g) Subscriptions or levies payable by an employee to a registered trade union on account of membership of such trade union, subject to the requirements of 86 of this Act.

(3) With the exception of amounts deducted in accordance with sub-section(2) (a) and (b) of this Section, the total monthly deductions from wages/salaries shall not exceed:

(a) twenty percent of an employee remuneration, if such employee is paid less than three times the minimum wage/salary; and

(b) thirty percent of an employee remuneration exceeding the ceiling referred to in paragraph(a) of this sub-section.

(4) An employee shall be informed of any deductions to be made in accordance with this section, and any conditions under which such deductions may be made.

(5) An employer shall not deduct from the wages/salaries of an employee the cost of any equipment, material, or tool or protective gear or any other tool that the employer has provided to an employee for the purposes of performing the duties under the employment contract.

(6) Any employer who deducts an amount from the wage/salary of employee other than in accordance with this Section violates the provisions of this section.

52. Written Pay Statement

(1) An employer shall provide employee, with each payment of wages/salaries, with a written pay statement in writing in form and language that an employee understands.

(2) The written pay statement shall indicate:

(a) the gross amount of wages/salaries of an employee;

(b) the amount of any deduction in accordance with Section 51 of this Act and the purpose for which such deduction is made;

(c) if any part of the net amount of wages/salaries is paid in a different method, the mode of payment of such part shall be stated; and

(d) any accrued entitlements owing to an employee.

(3) An employer who fails to provide an accurate pay statement in accordance with this section shall be held liable and punishable by law.

53. Final Settlement of Wages/salaries

(1) An employer shall pay an employee all wages/salaries and any other accrued entitlements and benefits to which such employee is entitled within 30 days from the date on which employment of such employee was terminated, regardless of the cause of such termination.

(2) In the event that the termination of employment is due to insolvency of the employer, the wages/salaries and any other accrued entitlements and benefits to which any employee is entitled shall be privileged against the creditors of the employer under Insolvency Act, 2011.

54. Wage/salary Register

(1) An employer shall maintain a wage/salary register in which all particulars of an employee wages/salaries, deductions from wages/salaries and net wages/salaries paid to an employee have been noted regularly.

(2) The wage/salary register under sub-section (1) above shall not contain blanks, erasures or additions and be subject to verification upon inspection.

(3) An Employer shall not be discharged in respect of outstanding wages/salaries owed to an employee until the employee has signed the wage/salary register.

(4) Notwithstanding sub-section (3) above signature of the employee unaccompanied by any stated reservations shall not constitute waiver of any rights on the part of the employee to recover wages/salaries payable under his or her employment contract.

55. Disputes regarding Wages/Salaries

(1) If there is a dispute about the interpretation or application of any provision of this chapter, any party to the dispute may report the dispute in writing to the Commission for Conciliation in accordance with section102 of this Act.

(2) If the dispute remains unresolved following conciliation, any party to the dispute may apply to the Labour Court.

CHAPTER VII

GENERAL CONDITIONS OF EMPLOYMENT

56. Normal Working Hours

(1) The normal working hours for an employee shall not exceed 8 hours per day and 40 hours per week.

(2) An employer may require employee to perform more than eight normal working hours for one or more days per week, provided that the normal working hours of employees not engaged in shift work shall:

(a) not exceed nine hours in a day;

(b) proportionately reduced on other days in the week such that the working hours of an employees do not exceed forty hours in a week.

(3) The normal working hours of an employee engaged in shift work shall not exceed forty hours when averaged over a three-week period.

57. Overtime

(1) Subject to sub-section (2), where an employee works beyond the maximum normal working hours as provided in section 56 of this Act, the extra working hours shall be considered overtime.

(2) Overtime shall not apply to employees employed:

(a) in position classified by an employer as senior management position;

(b) incase of employees subject to the Civil Service Act, 2011, in position classified as Leadership or Super Grade Category position;

(c) an employee may be granted leave in lieu of overtime.

(3) An employer may agree with an employee to work more than three hours of overtime in a day or ten hours of overtime in a week.

(4) An employee may be required to work beyond the limits of over time work provided in section 56(2) in the following emergency situations:

(a) Actual or imminent disaster or accident in order to avert a peril to life or health, or to prevent serious damage to property, or to ensure the continued operation of the undertaking;

(b) Urgently required work to be done to the plant, equipment, machinery, or other property to maintain the undertaking;

(c) Prevention of damage to perishable goods; or

(d) Performance of work of vital public importance.

(5) An employer shall pay an employee for overtime on the date of the payment of wages and not later than a month from the date on which the overtime work was performed, at the rate of at least:

(a) one and one-halftimes an employee regular hourly rate, if the overtime work was performed on an ordinary working day; and

(b) two times an employee regular hourly rate, if the overtime work was performed on a weekly holiday.

58. Break Rest

(1) An employer shall give an employee who works continuously for more than five hours, a break rest of meal for at least one continuous hour with pay.

(2) For the purposes of this section, work is continuous unless it is interrupted by an interval of at least sixty minutes.

(3) Any rest period for an employee of less than one half hour shall be considered part of working time.

59. Weekly Holiday

(1) An employee shall be entitled for a weekend holiday not less than twenty-four consecutive hours.

(2) An employer shall permit an employee to take the weekly rest entitlement in sub-section (1) on such day as is customary or on a different day as agreed between the employer and the employee.

60. Annual Leave

(1) An employee is entitled to annual leave with full pay as follows:

(a) after continuous service of one year or more but less than three years, twenty-one working days per year;

(b) after continuous service of three years or more but less than fifteen years, twenty-five working days per year; and

(c) after continuous service of fifteen years or more, thirty working days per year.

(2) An employee may take annual leave at such time or times as agreed between an employee and employer, provided that the employer shall not unreasonably refuse an employee request for annual leave.

(3) Untaken annual leave entitlement shall accumulate from year to year.

(4) Where an employee has accumulated two years of untaken annual leave in accordance with sub-section (3) above, he or she may, by written agreement with the employer, accept financial compensation for half of the untaken annual leave entitlement.

(5) An employee shall receive financial compensation for any annual leave not taken by or paid out to an employee upon termination of employment, irrespective of the cause of such termination.

61. Public Holidays

(1) All public holidays shall be observed on calendar days.

(2) An employee is entitled to paid leave on such days as are declared by the Ministry to be public holidays.

(3) An employee who is required to work on a public holiday shall be entitled to:

(a) two times that employee regular hourly rate for all time worked on the public holiday or

(b) One day paid leave by way of compensation.

62. Leave for vocational and union training or functions

(1) The employer shall grant leave of absence with full pay to an employee who is a member of a union to attend training, workshop, seminar or function sponsored by the union internal or external bodies;

(2) The union shall furnish the employer with a list of its officials in appropriate time.

63. Sick Leave

(1) An employee is entitled to 12 days of sick leave on full pay per year of continuous service.

(2) An employee may take paid sick leave where the employee is unable to work due to incapacity arising from illness or injury.

(3) An employee shall notify his or her employer of the need to take sick leave, and the anticipated duration of such sick leave, as soon as the employee becomes aware of his or her incapacity to work.

(4) An employer may require an employee to provide a medical certificate from a government hospital or clinic or private clinic, verifying the employee incapacity arising from illness or injury and the anticipated duration of employee incapacity to work.

64. Maternity Leave

(1) A female employee is entitled, on each occasion she is pregnant, to 90 days maternity leave with full pay; and 45 days for breastfeeding while working for half day as stipulated in subsection 7 below.

(2) An employee who takes maternity leave in accordance with sub-section (1) above shall take at least 90 days of that leave entitlement immediately following childbirth.

(3) An employee who intends to take maternity leave in accordance with this section shall give her Employer at least fourteen day notice of her intention to proceed on maternity leave.

(4) A period of maternity leave taken before the anticipated date of childbirth shall be extended by the time, if any, between the anticipated and actual date of childbirth, and the period of compulsory maternity leave following childbirth shall not be reduced on that account.

(5) An employee who has a miscarriage or a stillborn child, is entitled to leave for six weeks after the miscarriage or stillbirth.

(6) Following a period of maternity leave taken in accordance with this section, an employee shall have the right to return to the position that she held immediately before the maternity leave.

(7) An employee who returns to work after maternity leave and is nursing her child is entitled to a period of at least six months from the date of her return to the following:

(a) two breaks of thirty minutes each during working day;

(b) a reduction of sixty minutes from her daily hours of work or

(c) provision of a clean space for baby-seaters in workplace for lactating mothers to breastfeed their babies regularly.

(8) The entitlement to nursing breaks in sub-section (7) above:

(a) is in addition to any other rest periods to which an employee may be entitled; and

(b) Shall be considered as working time with pay accordingly.

(9) An employer shall not require or permit an employee who is pregnant or nursing a child to perform work that is hazardous to her health or the health of the child.

65. Paternity Leave

(1) An employee is entitled, on each occasion that his wife is pregnant, to two weeks of paternity leave on full pay, to be taken:

(a) within three days after the birth of his child or

(b) immediately following miscarriage by his wife.

(2) An employee shall, after paternity leave, have the right to return to the position that he held immediately before his paternity leave.

66. Compassionate Leave

(1) An employee who is employed to work more than four days a week, and has completed at least three months of continuous service for the employer, is entitled up to three days compassionate leave on full pay each year.

(2) An employee may take any part of his or her entitlement to compassionate leave in any of the following circumstances:

(a) Illness or injury of the employee's child or spouse;

(b) Death of a family member of the employee or

(c) Untaken compassionate leave entitlements shall not accumulate from year to year.

67. Unpaid Leave

(1) An employee is entitled to request a period of unpaid leave for any reason, including for the purposes of:

(a) Observing or attending to religious or cultural ceremonies or practices;

(b) caring for a family member who is suffering from a serious illness or injury and who depends on the employee for essential care;

(c) undertaking study relevant to the work performed by the employee for the Employer; and

(d) Accompanying an employee's spouse, in circumstances where an employee's spouse is required to move outside South Sudan for work.

(2) Unpaid leave requested by an employee under sub-section (1)above shall:

(a) not be unreasonably refused by the employer; and

(b) be subjected to such terms and conditions as are agreed in writing between the employer and the employee.

68. Night Work

(1) An employer who requires Night Work to be performed shall:

(a) Obtain an employee written agreement to perform such work;

(b) Take special measures to ensure the health, safety and security of employees who perform night work.

(2) An employer shall not require or permit an employee who is under the age of eighteen years to perform night work.

(3) An employer shall not require or permit an employee who is pregnant or who has recently given birth to perform night work during:

(a) the eight weeks leading up to the anticipated date of childbirth;

(b) the eight weeks immediately following childbirth;

(c) Any other period specified by a medical certificate from a government hospital or clinic or private clinic stating that night work may endanger the health of the employee or her child.

69. Work Away from Place of Recruitment

(1) An employer shall not allow an employee to leave the work place to another location in or outside South Sudan without written agreement with such employee;

(2) If an employee is recruited for employment in a place which is more than one hundred kilometers from the place of recruitment, or is required to move to such a place during the course of employment, the employee shall be entitled to:

(a) an additional four day paid leave each year; and

(b) Repatriation of an employee and any family members residing with the employee, upon termination of the employment.

(3) The entitlement in paragraph(b) of sub-section (2)of this section shall not apply in circumstances where the employment was terminated:

(a) On an employee initiative;

(b) In accordance with Section76 of this Act;

(c) With adequate and sufficient time notice of such transfer;

(d) with appropriate travel arrangement costs for his/her family and belongings from current work station to the new work station;

(e) with subsistence allowance of equivalent to 90 days of his/her consolidated salary/wage.

70. Employees with Special Needs

The Minister may promulgate regulations governing employment of apprentices, persons with disabilities and any other category of employee he/she may deem necessary to be protected under this Act.

71. Disputes regarding General Conditions of Employment

(1) If a dispute arises regarding interpretation or application of any provision of this Chapter, any party to such dispute may report the dispute in writing to the Commission for conciliation in accordance with Section104of this Act.

(2) If the dispute is unresolved following conciliation, any party to the dispute may apply to the Labour Court for adjudication.

CHAPTERVIII

TERMINATION OF EMPLOYMENT CONTRACT

72. Notice of Termination

(1) An employment contract may be terminated by either party:

(a) after continuous service by the employee for one year or more, one month notice to the other party;

(b) aftercontinuous service by the employee for six months or more, but less than one year on two week notice to the other party;

(c) after continuous service by the employee for less than six months, one week notice to the other party.

(2) Subject to sub-section (3) (d) an employment contract for a definite period or for a specified task shall come to an end upon expiry of the defined period or completion of the specified task without either party giving notice to the other party.

(3) Notwithstanding the provisions of this section nothing shall prevent:

(a) The parties agreeing to a longer period of notice of termination;

(b) The employer waiving the right to receive notice of termination upon the request of an employee;

(c) The employee accepting payment, instead of notice of termination, equivalent to the total wages/salaries and other entitlements to which the employee shall have been entitled for the period of notice required;

(d) Termination without notice for gross misconduct in accordance with section 76 of this Act.

73. Reason(s) for Termination by Employer

(1) An employer may terminate an employment contract based on any or more of the following reasons:

(a) incapacity of an employee to perform work as required by the employment contract;

(b) repeated failure by an employee to perform work as required by the the employment contract to a satisfactory standard;

(c) gross misconduct of an employee at work or in circumstances which have a real and substantial connection to the employment with the employer; or

(d) changes in the operational requirements of the employer of which the employee has no capacity to operate.

(2) An employment contract shall not be terminated for the following reasons:

(a) If an employee is a member of or participant in any activity of trade union outside working hours or with the consent of the employer within working hours;

(b) If an employee is seeking office as or acting or having acted as representative of other employees at workplace of the employer;

(c) If employees are filing a complaint or grievance or participating in proceedings against the employer involving an alleged violation of this Act, other laws or regulations or the terms of a Collective Agreement or award;

(d) any of the grounds of discrimination prohibited by section 6 of this Act;

(e) absence of an employee from work for reasons acceptable according to the provisions of this Act or authorization by the employer or

(f) Failure by the employer to provide an employee with any entitlements provided for under this Act or any other applicable law, Collective Agreement or arbitration award.

(3) An employer shall provide an employee with a written statement of the reason for termination:

(a) at the time of giving notice of termination to an employee; or

(b) in circumstances where no notice can be served at the time of termination of the employment contract.

74. Termination for Incapacity

An employer may terminate employment contract where an employee is incapable of performing work required by his or her employment contract due to an illness or injury certified by the South Sudan Medical Commission to be permanent.

75. Termination for Unsatisfactory Performance

(1) An employer shall not terminate employment contract for reasons relating to the repeated failure by an employee to perform work as required by the employment contract to the satisfactory standard, unless the employer has:

(a) Notified an employee of the possibility of termination for such a reason;

(b) explained the way or ways in which the performance of an employee s not meeting the standard of work required;

(c) provided an employee with a reasonable opportunity to make defence relating to the reasons for failure to meet the standards and given due consideration to defence so made; and

(d) Provided an employee with a reasonable opportunity to improve employee's performance.

(2) For the purposes of meeting the requirements of paragraph (d) of sub-section (1) above, an employer shall provide an employee with such time, training and support as is reasonable in light of all relevant circumstances, including:

(a) the extent to which an employee has failed to meet the standard of work required and the consequences of that failure for the employer;

(b) the length of employment contract with an employee; and

(c) Any reason or reasons given by an employee for his or her unsatisfactory performance in accordance with paragraph (c) of sub-section (1) above.

76. Termination for Gross Misconduct

(1) An employer shall not terminate the employment of an employee for reasons relating to misconduct of an employee at work, or in circumstances which have a real and substantial connection to the employment contract, unless:

(a) The employee misconduct constitutes gross misconduct;

(b) The employer has previously notified an employee of the possibility of termination in the event of gross misconduct by the employee; and

(c) The employer has established that the employee has committed an act of gross misconduct, having first:

(i) explained the grounds on which an employee is alleged to have committed an act of gross misconduct;

(ii) provided the employee with the evidence on which the allegation is made;

(iii) allowed the employee an opportunity to consider and respond to the allegation and evidence on which the allegation is based;

(iv) Given due consideration to all circumstances and available evidence relevant to the allegation, including any response given by an employee under clause (iii) of paragraph (c) above.

(2) Employee misconduct shall constitute gross misconduct where it is of such gravity as to make it impossible to continue or to resume the necessary relationship of mutual trust between:

(a) The employee and the employer or

(b) The employee and other employees.

(3) Notwithstanding sub-section (2) above, an employee commits gross misconduct for the purposes of this section if the employee is found to have:

(a) been rendered unable to perform his or her work effectively due to the consumption of alcoholic drinks, narcotics, psychotropic substances or addictive substances in workplace;

(b) been absent from work for a period of more than 72 hours without cause or satisfactory explanation;

(c) violated the fundamental rights of another employee as set out in chapter II of this Act, including, but not limited to, having sexually harassed another employee within the meaning of section7of this Act;

(d) assaulted or battered any co-employee or the employer at workplace or in circumstances which have a real and substantial connection to the employment contract with the employer;

(e) negligently or intentionally destroyed or let property of the employer be destroyed, resulting to losses to the employer;

(f) negligently or intentionally exposed any of employee's-employees or other personal place of work to risks in contravention of any section of chapter XI of this Act;

(g) breached employee's obligation to protect and keep secure confidential information of the Employer unless such breach has been obliged by law upon an employee or caused by the employer or to protect public interest.

(4) An employee shall be entitled to have a representative present during any discussions regarding an allegation of gross misconduct.

(5) Where the employer has established the grossmisconduct of an employeein accordance with this section, the employer may terminate the employment contract without giving notice as required by section 72 of this Act.

77. Termination for Redundancy

(1) This section shall apply when an employer intends termination of not less than ten employees within a period of three months for reasons of redundancy due to changes in the operational requirements of the employer.

(2) An employer may not terminate an employment contract on account of redundancy unless the employer has:

(a) notified the Ministry, not less than two months prior to the intended date of termination, of the intention to reduce the number of employees, disclosing all relevant information including:

(i) reasons for the intended redundancy;

(ii) any measure adopted or to be adopted in order to minimize the intended retrenchment;

(iii) the method for selection of employees to be retrenched;

(iv) schedule for the reduction; and

(v) severance pay in respect of the reduction;

(b) if an employee to be affected by the reduction is a member of a registered trade union, notified that trade union, and any workplace representatives of that trade union, of the reasons for and the extent of such reduction not less than a (30) days prior to the intended date of termination on account of redundancy.

(3) Subject to sub-section (4) below, an employee whose employment is terminated on account of redundancy, after continuous service of one year or more, shall be entitled to receive, in addition to any other entitlements due to such employee upon termination, severance pay equal to two week wages/salaries for each completed year of continuous service with the employer.

(4) In the event of redundancy due to the insolvency of the employer, the Insolvency Act 2011 shall govern an employee claim for wages/salaries, severance pay and other entitlements.

(5) Following consultation with registered trade unions and Employers' Association, the Minister may issue regulations establishing additional requirements, or detailing the procedures to be followed, in cases of redundancy.

78. Termination due to Death

(1) The death of an employee shall cause the termination of an employment contract.

(2) An employment contract shall come to end one month from the date of the death of an employee, unless it is otherwise legally determined.

(3) If, on the death of an employer, an employee continues to be employed by the legal representative or trustee of the deceased, an employee shall be deemed to continue with the same employment contract uninterrupted.

(4) Upon coming to an end of an employment contract due to death of an employee, the heirs or legal representatives of such employee shall be entitled to wages/salaries and any other remuneration due to the employee before employee's death.

79. Summary Termination

(1) If an employee leaves employment because the conduct of the employer made it no longer reasonable to continue in employment, the employer is taken, in the absence of proof to the contrary, to have terminated an employee's employment contract.

(2) Summary termination shall take place when an employer terminates the service of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

(3) An employer is entitled to dismiss summarily an employee and the dismissal shall be termed justified, where the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the employment contract.

(4) Subject to this section, no employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual terms.

80. Severance Pay

(1) Subject to this Act, an employer shall pay severance allowance where an employee has been in his or her continuous service for a period of six months or more and where any of the following situations apply:

(a) the employee is unfairly dismissed by the employer;

(b) the employee dies in the service of his or her employer;

(c) the employee terminates his or her contract because of physical incapacity;

(d) the contract is terminated by reason of the death or insolvency of the employer; and

(e) such other circumstances as the Minister may by regulations provide.

(2) No severance allowance shall be paid in circumstances where an employee:

(a) is summarily dismissed with justification;

(b) abandons his or her employment, or absconds from his or her place of work without leave for a period of more than seven days without any explanation being provided to the employer; and

(c) contract which is terminated is a probationary contract.

(3) Calculation of severance pay shall be negotiable between the employer and the employees or the trade union that represents them.

81. Gratuity Pay

(1) An employee who completes a period of not less than one year of continuous service shall be entitled to a gratuity pay to be calculated as follows;

(a) if he or she has completed a period of not less than one year, and not more than ten years, he or she shall be entitled to one month gross salary in respect of each year of service;

(b) if he or she has completed more than ten years, he or she shall be entitled to one and a half of month's gross salary in respect of each year; and

(c) if he or she has completed more than fifteen years, he or she shall be entitled to one and three quarters of a month's gross salary in respect of each additional year of service, provided that the gratuity shall not exceed 36 months gross salary.

(2) Notwithstanding sub-section (1) above, gratuities shall be calculated on the basis of the last month gross salary.

(3) After the service, gratuity for the production employee shall be calculated on the basis of the average gross income during the last three years.

82. Cancellation of Termination

If, after the day on which a notice of termination expires, the employer requests an employee to remain in employment, or an employee continues working without the express dissent of the employer, the notice of termination shall be deemed to be null and void and the employment contract shall still be valid.

83. Disputes regarding Termination of Employment Contract

(1) If there arises any dispute about termination of employment contract, employee may report the dispute in writing to the Commission for conciliation in accordance with Section102 of this Act;

(2) A dispute under this section shall be reported to the Commission within thirty days from the date of the termination or, if it is a later date, within thirty days of the employer making a final decision to overturn or uphold the termination.

(3) On application by an employee, the Commission may extend the time for reporting a dispute regarding termination of employment where a genuine impediment prevented the employee from reporting the dispute in the time limit set by sub-section (2) above.

(4) Where an employment contract is terminated by notice, an employee may report the dispute to the Commission once the employee has received that notice.

(5) If the dispute remains unresolved following conciliation, an employee may apply to the Labour Court.

(6) An application to the Labour Court under sub-section (5) above shall be made within 30days from the date on which the Labour Commissioner issues a certificate under section**103** of this Act.

(7) The reporting of a dispute to the Commission shall be free of charge.

(8) This section shall not apply to employees serving under probationary period in accordance with Section 42(2) of this Act.

84. Burden of Proof in Disputed Termination Proceedings

(1) In proceedings before the Labour Court concerning a dispute under this chapter in which an employee alleges that the termination was for an invalid reason, the employee shall establish the existence of a termination.

(2) If the existence of the termination is established, the employer shall prove that the termination was effected:

(a) in accordance with the requirements of this Chapter or

(b) for a valid reason and in accordance with fair procedure, taking into account all relevant circumstances.

(3) Where the employer fails to satisfy the requirements of sub-section (2) above, the employee may apply to the Labour Court.

(4) In other cases, the Labour Court shall make decision of unfair termination if:

(a) an employee establishes that a termination was effected other than in accordance with the requirements of this Chapter; and

(b) the employer fails to prove that the termination was otherwise effected for a valid reason and in accordance with fair procedure.

85. Remedies for Unfair Termination

(1) Where the Labour Court makes a decision on unfair termination, the Court may order the Employer:

(a) to reinstate an employee in the position held by an employee or relocate an employee in a reasonably comparable position and on the same terms and conditions enjoyed by an employee prior to the termination;

(b) to treat the employment contract as having continued without interruption on an employee period of continuous service, where reinstatement or re-engagement is ordered;

(c) to pay an employee an amount equivalent to any wages/salaries lost by such employee as a result of the termination, where reinstatement or re-engagement is ordered;

(d) to pay an employee an amount by way of compensation as determined by the Labour Court in accordance with sub-section (3) below.

(2) The Labour Court shall order reinstatement or re-location under paragraph (a) of sub-section (1) above, unless the employer proves that:

(a) It is not possible to resume the necessary relationship of mutual trust and confidence between the:

(i) employee and the employer; or

(ii) employee and other employees of the employer.

(b) The organisation of work in the enterprise has so substantially changed that:

(i) the position held by an employee prior to the termination no longer exists;

(ii) There is no reasonably comparable position available for the employee.

(3) For the purposes of determining the amount of an order for compensation under paragraph (d) of sub-section (1) above, the Commissioner or Labour Court shall determine, a fair and equitable amount taking into account:

(a) the circumstances in which the termination took place, including the extent to which an employee caused or contributed to the termination;

(b) the length of service by an employee with the employer;

(c) the reasonable expectation of an employee as to the length of time for which employment might have continued but for termination;

(d) any opportunity available to an employee for securing comparable or suitable employment with another employer;

(e) any reasonable expense incurred by an employee as a consequence of the termination;

(f) any failure by an employee to mitigate the losses attributable to the unfair termination and abscondment;

(g) Any compensation, including ex-gratia payment, in respect of termination paid by the employer and received by an employee.

(4) No order shall be made for the recovery of costs incurred by a party to an unfair termination arbitration or adjudication, unless the Labour Court is satisfied that the dispute was reported, pursued or defended by the other party in a manner that was frivolous or vexatious.

86. Deduction of Registered Trade union Subscriptions

(1) Any registered trade union shall authorise the employer in writing to deduct subscriptions from its employee's wages/salaries.

(2) Notwithstanding sub-section (1) above, the employer shall remit total deduction to the trade union.

(3) With each monthly remittance, the employer shall give the registered Trade union:

(a) a list of names of every member from whose wages the employer has made the deduction and remittance;

(b) Details of the amounts deducted and remitted and the period to which such deductions relate.

87. Recognition as Exclusive Bargaining Agent of Employees

(1) A registered trade union that represents the majority of employees in an appropriate bargaining unit is entitled to recognition as the exclusive bargaining agent of employees in that bargaining unit for the purpose of negotiating a Collective Agreement.

(2) An employer orEmployers' Association shall not recognise a trade union as an exclusive bargaining agent under this Act unless it is a registered trade union under the Workers Trade unions Act, 2013.

(3) A registered trade union may seek recognition as an exclusive bargaining agent of an appropriate bargaining unit by delivering a request to:

(a) an employer to recognise it as the exclusive bargaining agent of a bargaining unit consisting of employees or some of its employees;

(b) An Employers' Association to recognise it as the exclusive bargaining agent of a bargaining unit consisting of employees of its members.

(c) Within thirty days after the receipt of the request, the employer or theEmployers' Association shall notify the trade union in the prescribed form either that:

(i) It recognises the trade union as the exclusive bargaining agent of employees in the bargaining unit as proposed by the trade union or agreed to by the trade union and the employer;
(ii) It refuses to recognise the trade union because it disputes the appropriateness of the proposed bargaining unit or that the Trade union does not represent the majority of employees as proposed to be the bargaining unit.

(4) If the employer or theEmployers' Association fails or refuses to notify the trade union as required under sub-section (4) above or notifies its refusal to recognise the trade union, the trade union may apply to the Commission for an order recognising the trade union as the exclusive bargaining agent.

(5) If, upon application by a registered trade union, the Commission is satisfied that the trade union represents the majority of the employees in the agreed bargaining unit or that the Commission considers the bargaining unit to be appropriate, the Commission may make an order declaring the trade union to be recognised as the exclusive bargaining agent of the employees in the agreed or appropriate bargaining unit.

(6) In determining the appropriateness of a bargaining unit for the purposes of sub-section (6) above, the Commission shall:

(a) take the organisational structure of the employer into account; and

(b) Promote orderly and effective collective bargaining with a minimum division of Employers' Association structure.

(7) If an employer orEmployers' Association has recognised a registered trade union as an exclusive bargaining agent and the trade union no longer represents the majority of an employees in the bargaining unit, the employer orEmployers' Association shall:

(a) give the trade union notice in the prescribed form to acquire a majority within three months;

(b) Withdraw recognition from that trade union if it fails to acquire that majority at the expiry of the three-month period.

(8) On application by a trade union affected by action taken under sub-section (8) above, the Commission may, subject to the principles set out in sub-sections (6) and (7) above, make an order:

(a) declaring that the trade union represents a majority of employees in the bargaining unit;

(b) giving the trade union a further opportunity to acquire a majority;

(c) altering the bargaining unit;

(d) Withdrawing recognition of the trade union as the exclusive bargaining agent of the employees in the bargaining unit.

(9) A registered trade union, which has been recognised as an exclusive bargaining agent in respect of the bargaining unit in question has a duty to represent the interests of every employee falling in that bargaining unit, whether or not employees are members of that trade union.

CHAPTERIX

COLLECTIVE BARGAINING

Collective Agreements

88. Initiation of Collective Agreement Negotiations

(1) Negotiation of a Collective Agreement shall be initiated by submitting a written list of demands to the party or parties with whom the initiating party wishes to conclude a Collective Agreement.

(2) A party who receives a list of demands under this section shall, within fourteen days:

(a) acknowledge receipt of the demands;

(b) Nominate a date, time and place to commence negotiations not later than thirty days from the date of the acknowledgement.

(3) Paragraph (b) of sub-section (2) above shall not apply if the list of demands is submitted by or on behalf of one or more trade unions not:

(a) registered under the Workers Trade unions Act, 2013;

(b) an exclusive bargaining agent, in circumstances where an exclusive bargaining agent has been recognised under Section 87 of this Actin relation to employees covered by the list of demands.

89. Duty to Negotiate in Good Faith

(1) Parties to the negotiations of a Collective Agreement shall negotiate in good faith and make every effort to conclude a Collective Agreement.

(2) The duty to negotiate in good faith includes, but not limited to:

(a) attending and participating in meetings at working hours;

(b) disclosing relevant information at the right time;

(c) responding to proposals made by other parties to the negotiations at the right time;

(d) giving acceptable consideration to the proposals of other parties to the negotiations, and giving reasons for responding to those proposals;

(e) refraining from unfair conduct that undermines freedom of association or collective bargaining; and

(f) Recognising and bargaining with the other parties to the negotiation of the Collective Agreement.

(3) If any party refuses to participate in the negotiation of a Collective Agreement, the affected party may apply to the Commission for an order directing the other party to negotiate in good faith.

(4) Upon application under sub-section (3) above, the Commission may issue an order either:

(a) requiring one or more parties to attend and participate in the negotiation process;

(b) prohibiting an unlawful strike or lockout;

(c) Determining a procedure to be followed to ensure good faith negotiations.

(5) The Commission shall make any order under sub-section (4) above within 14 days of the conclusion of the proceedings in which the application was heard.

90. Content of Collective Agreements

(1) A Collective Agreement shall contain provisions establishing:

(a) a procedure for settlement of a dispute regarding the interpretation and application of such agreement, involving a requirement that the parties to the dispute first attempt to resolve the dispute through conciliation and, if the dispute remains unresolved, to resolve it through arbitration; and

(b) where the Collective Agreement is for a definite period, the initial term of the Collective Agreement and any procedures to be followed for the purposes of renewing the Collective Agreement upon expiry of that term.

(2) A Collective Agreement may contain provisions regulating any matter of mutual interest to the parties.

(3) Any provision of a Collective Agreement that purports to exclude or nullify any provision of this Act or has the effect of prejudicing any entitlements of an employee under this Act shall be null and void.

91. Registration of Collective Agreement

(1) A copy of a Collective Agreement, signed by every party to the Agreement, shall be lodged with the Office of the Labour Commissioner within thirty days of its conclusion.

(2) The Office of the Labour Commissioner shall register a Collective Agreement lodged under sub-section (1) above, unless the Office is of the view that the Collective Agreement does not comply with any provision of this Act, or has the effect of prejudicing Employee's entitlements under this Act.

(3) The Collective Agreement shall be taken to be registered within thirty days of lodgment with the Office of the Labour Commissioner, unless the Office notifies the parties that registration has been refused.

(4) Where notice of refusal has been received under sub-section (3) above, a party to the Collective Agreement may appeal to the Labour Court within thirty days from the date on which notice was received.

(5) Registration of a Collective Agreement does not prejudice the effect of section90 of this Act.

92. Legal Effect of Registered Collective Agreements

(1) A Collective Agreement shall take legal effect upon the date of registration.

(2) A registered Collective Agreement shall bind:

(a) the parties to the Agreement;

(b) each party to the Collective Agreement and the members of every other party to the Agreement, in so far as the provisions are applicable between them;

(c) the members of a registered trade union and the employers who are members of a registered Employers' Association are parties to the Collective Agreement if the Agreement regulates:

(i) terms and conditions of employment;

(ii) the conduct of the employers in relation to their employees or the conduct of the employees in relation to their employers.

(d) Employees who are not members of the registered trade union or trade unions are parties to the agreement if:

(i) The employees are identified in the agreement;

(ii) the agreement expressly binds the employees;

(iii) the registered trade union or trade unions have as their members the majority of employees employed by the employer in the workplace.

(3) A registered Collective Agreement binds for the whole period of the Collective Agreement every person bound under paragraph (c) of sub-section (2) above who was a member at the time it became binding, or who becomes a member after it became binding, whether or not that person continues to be a member of the registered trade union or registered Employers' Association for the duration of the Collective Agreement.

(4) Where applicable, a registered Collective Agreement varies with any contract between employee and employer bound by the Collective Agreement.

(5) Unless the Collective Agreement provides otherwise, any party to a Collective Agreement concluded for an indefinite period may terminate the Collective Agreement by giving reasonable notice in writing to the other parties and the Office of the Labour Commissioner.

93. Notification of Collective Agreement

An employer shall display Collective Agreements binding on that employer in a conspicuous place that is accessible to all employees bound by the Collective Agreement.

94. Disputes Regarding Matters of Mutual Interest

(1) Any party to a dispute about a matter of mutual interest may report the dispute in writing to the Office of the Labour Commissioner for conciliation in accordance with Section 102 of this Act.

(2) If the dispute remains unresolved following conciliation, any party to the dispute may request that the dispute be resolved by arbitration in accordance with Section 102 of this Act.

95. Disputes Regarding Collective Agreements

(1) If there is a dispute regarding interpretation or application of a Collective Agreement, any party to such dispute may report the dispute in writing to the Commission for conciliation in accordance with Section104of this Act if:

(a) the Collective Agreement does not provide for a procedure as required under paragraph (a) of sub-section (1) of section 90 of this Act;

(b) the procedure provided for in the Collective Agreement is not operative;

(c) Any party to the Collective Agreement has frustrated the resolution of the dispute in terms of the Collective Agreement.

(2) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration in accordance with Section 102 of this Act.

STRIKES AND LOCKOUTS

96. Right to Strike and Recourse to Lockout

(1) Subject to the provisions of this chapter, every employee has the right to Strike and every employer has the right to Lockout action for the purposes of seeking to resolve a dispute regarding any matter of mutual interest to which an employee or employer is a party.

(2) Before exercising the right under sub-section (1) above, an employee or employer shall:

(a) take all reasonable steps to resolve the dispute in good faith;

(b) take all reasonable steps to resolve the dispute through conciliation and arbitration in accordance with chapter X of this Act;

(c) give the other party or parties to the dispute not less than seven-day written notice of the intended strike or lockout.

(3) The requirements of sub-section (2) above shall not apply to a strike or a lockout if the:

(a) strike or lockout conforms to the procedures in a Collective Agreement;

(b) strike is in response to a lockout that does not comply with the provisions of this chapter;

(c) lockout is in response to a Strike that does not conform with the provisions of this chapter, or

(d) employer fails to comply with the requirements of sub-section (4) of this section below.

(4) Where a dispute concerns a unilateral change to the terms and conditions of employment, the employee or trade union party may, upon reporting the dispute to the Commission in accordance with chapter X of this Act, request the employer not to unilaterally implement the change or to restore any change so implemented, until such time a certificate is issued in accordance with section 103(7) of this Act.

97. Limitations on the Right to Strike and Recourse to Lockout

(1) No person may take part in a strike or a lockout or in any conduct in contemplation or furtherance of a strike or a lockout if that person is:

(a) bound by a Collective Agreement that prohibits a strike or lockout in respect of the issue in dispute;

(b) bound by a Collective Agreement that requires the issue in dispute to be referred to arbitration; or

(c) is engaged in an essential service.

(2) Subject to the terms of a Collective Agreement, no person may take part in a strike or a lockout, or in any conduct in contemplation or furtherance of a strike or a lockout, if any arbitration award or Collective Agreement that regulates the issue in dispute binds that person.

98. Strike or Lockout in Compliance with this Act

(1) Taking part in a protected Strike or a protected lockout or any conduct in contemplation or in furtherance of a protected strike or a protected lockout shall not constitute a defect or a breach of contract.

(2) Subject to sub-section (1) above, the employer is not obliged to remunerate an employee for services that an employee does not render during a protected strike or protected lockout, as the case maybe, save:

(a) if an employee remuneration includes payment in kind in respect of accommodation, the provision of food and other basic amenities of life, the employer, at the request of an employee, shall not discontinue payment in kind during the strike or lockout; and

(b) after the end of the strike or lockout, the employer shall recover the monetary value of the payment in kind made at the request of the employee during the strike or lockout on the usual as per earlier agreement for deduction of cost for such accommodation food or other basic amenities of life between the Employer and the employee.

(4) An employer may not terminate employment contract for the participation of an employee in a protected strike or for any conduct in contemplation or in furtherance of a protected strike.

(5) Notwithstanding sub-section (4) above an employer shall not be precluded from terminating the employment contract of an employee in accordance with the provisions of chapter VIII of this Act for reasons related to the misconduct of an employee during the strike or for reasons based on the employer operational requirements.

(6) Civil proceedings may not be instituted against any party for:

(a) participating in a protected strike or a protected lockout or

(b) any conduct in contemplation or in furtherance of a protected strike or a protected lockout.

(7) The failure by a registered trade union or a registered Employers' Association to comply with the provisions in its constitution requiring it to conduct a vote of those of its members in respect of whom it intends to call a strike or lockout may not give rise to, or constitute a ground for, any litigation that will affect the legality of, and the protection conferred by this section on, the strike or lockout.

(8) The provisions of sub-sections (1) and (5) above shall not apply to any act in contemplation or in furtherance of a strike or a lockout, if that act is an offence under any law.

99. Strike or Lockout Not in Compliance with this Act

(1) In case of any strike or lockout or any conduct in contemplation or in furtherance of a strike or lockout that does not comply with the provisions of this chapter, the Commission may, on application by an affected party, make an order for restraining:

(a) Any party from participating in a strike or any conduct in contemplation or in furtherance of a strike; or

(b) Any party from participating in a lockout or any conduct in contemplation or in furtherance of a lockout.

(2) In case of any strike or lockout, or any conduct in contemplation or in furtherance of a strike or lockout, that does not comply with the provisions of this chapter, the Labour Court shall have jurisdiction, on application by an affected party:

(a) To confirm, vary or set aside an order made by the Commission under sub-section (1) above or

(b) to order the payment of just and equitable compensation for any loss attributable to the strike, lockout or conduct having regards to:

(i) Attempts have been made to comply with the provisions of this Chapter and the extent of such attempts;

(ii) whether the strike, lockout or conduct was premeditated;

(iii) whether the strike, lockout or conduct was in response to unjustified conduct by another party to the dispute;

(iv) whether compliance with an order granted in accordance with paragraph (a) of this sub-section has been made;

(v) interests of negotiation of Collective Agreements;

(vi) the duration of the strike, lockout or conduct; and

(vii) The financial position of the employer, trade union or employees respectively.

(3) The Commission or Labour Court may not grant any order in accordance with paragraph (a) of sub-section (1) or (2) above unless forty-eight hour notice of the application has been given to the respondent.

(4) The Commission or Labour Court may permit a shorter period of notice for the purposes of sub-section (3) above if:

(a) the applicant has given written notice to the respondent of intention to apply for the granting of an order;

(b) the respondent has been given an opportunity to be heard before a decision concerning that application is taken or

(c) the applicant has shown good cause why a period shorter than forty-eight hours should be permitted.

(5) Notwithstanding sub-sections (3) and (4) above, if a written notice of the commencement of the proposed strike or lockout was given to the applicant at least fourteen days before the commencement of the proposed strike or lockout, the applicant shall give at least five-day notice to the respondent of an application for an order in accordance with sub-section (1) above.

(6) Participation in a strike not complying with the provisions of this chapter or conduct in contemplation or in furtherance of that strike may constitute a valid reason for termination of employment contract.

100. Striking Employee Not to be Replaced

(1) An employer shall not employ or otherwise engage any person to perform the work of any employee participating in a protected strike or during lockout.

(2) An employee may refuse to perform the work of another employee engaged in a protected strike or during lockout.

101. Picketing

(1) A registered trade union may authorise a picket by its members and supporters for the purposes of peaceful demonstration:

(a) in support of any protected strike; or

(b) in opposition to any lockout.

(2) Notwithstanding any law regulating the right of assembly, a picket authorised in accordance with sub-section (1) above may be held:

(a) at any place to which the public has access but outside the premises of the employer or

(b) with permission of the employer, inside the premises of such Employer.

(3) The permission referred to in paragraph (b) of sub-section (2) above may not be unjustly withheld.

(4) If requested to do so by registered trade union or employer, the Commission shall attempt to secure an agreement between the parties to a dispute on rules that apply to picket in relation to strike or lockout.

(5) If there is no agreement, the Commission shall establish picketing rules taking into consideration of the following:

(a) particular circumstances of the workplace or other premises where it is intended that the right to picket is to be exercised and

(b) any relevant code of good practice.

(6) The rules established by the Commission may provide for picketing by employees on their employer premises if the Commission is satisfied that the employer permission has been unjustly withheld.

(7) Any party to a dispute about any of the following issues may report such dispute in writing to the Commission:

(a) an allegation that the effective use of the right to picket is being undermined;

(b) an alleged material contravention of sub-section (1) or (2) above;

(c) an alleged material breach of an agreement concluded in accordance with sub-section (4) above or

(d) an alleged material breach of a rule established in accordance with sub-section (5) above.

(8) The party reporting a dispute to the Commission shall satisfy the Commission that a copy of the report has been served on all the other parties to such dispute.

(9) The Commission shall attempt to resolve the dispute through conciliation.

(10) If the dispute remains unresolved, any party to such dispute may apply to the Labour Court.

CHAPTER X

DISPUTE RESOLUTION

102. Reporting of Disputes

(1) A party reporting a dispute in accordance with the provisions of this Act shall lodge with the Commission a written report specifying:
   (a) parties to the dispute;
   (b) party by whom or on whose behalf the report is made;
   (c) matter under dispute;
   (d) status of the negotiations of any matter under dispute; and
   (e) Any additional information required by the Commission.

(2) The party who reports the dispute to the Commission shall satisfy the Commission that a copy of the report has been served on each party to the dispute.

(3) The Commission may resolve the dispute or refer it for conciliation to a Labour Commissioner under section (103) of this Act.

103. Conciliation of Disputes

(1) The Commission **may** request the Office of the Labour Commissioner to appoint a Labour Commissioner to attempt to resolve a dispute through conciliation where such dispute is reported to the Commission in accordance with this Act.

(2) The appointed Labour Commissioner shall attempt to resolve the dispute through conciliation within thirty days from the date of receipt of the report, unless the parties to such dispute agree to a longer period for conciliation.

(3) The Labour Commissioner shall determine procedure to resolve the dispute, which may include:

   (a) mediation of the dispute;

   (b) conducting a fact-finding; and

   (c) making a recommendation to the parties for advisory arbitration.

(4) If a labour commissioner has been appointed in accordance with sub-section (1) above, in respect of more than one dispute involving the same parties, such Labour Commissioner may consolidate the conciliation proceedings so that all the disputes may be dealt with in the same proceedings.

(5) Without prejudice to sub-section (1) above, if the parties to a dispute are engaged in an Essential Service they may agree within seven days of the date the Commission received the report to:

   (a) the appointment of a specific Labour Commissioner by the Commission to attempt to resolve the dispute through conciliation; and

(b) Terms of reference set by the Labour Commissioner.

(6) If the parties to a dispute under sub-section (5) above agree to either of those matters within the seven-day period, the Commission shall as soon as possible:

(a) appoint a Labour Commissioner to attempt to resolve the dispute; and

(b) Determine the Labour Commissioner's terms of reference.

(7) At the end of the thirty-day period referred to in sub-section (2) above or such further period as agreed between the parties the:

(a) Labour Commissioner shall issue a certificate stating whether or not the dispute has been resolved;

(b) Commission shall serve a copy of that certificate on each party to the dispute or the person who represented a party in the conciliation proceedings; and

(c) Labour Commissioner shall file the original of that certificate with the Commission.

104. Arbitration of Disputes

(1) The Commission **may** request the Office of the Labour Commissioner to appoint a Labour Commissioner to arbitrate a dispute if:

(a) a certificate has been issued stating that the dispute has not been resolved through conciliation;

(b) within ninety days of the issue of that certificate, a party to the dispute requests that the dispute be resolved by arbitration; and

(c) All parties to the dispute agree in writing to arbitration under the auspices of the Commission.

(2) Unless a party to a dispute provides written notice to the Commission and other parties of his or her objection, a labour commissioner appointed under sub-section (1) above may be the same Labour Commissioner who attempted to resolve the dispute through conciliation.

(3) The Labour Commissioner may conduct arbitration in a manner that the Labour Commissioner considers appropriate in order to determine the dispute fairly by dealing with substantial issues of the dispute within minimum legal formalities.

(4) Subject to discretion of the Labour Commissioner as to appropriate form of the proceedings, a party to a dispute may give evidence, call witnesses, question witnesses of any other party and make concluding arguments before the Labour Commissioner.

(5) If all the parties consent, the Labour Commissioner may suspend the arbitration proceedings and attempt to resolve the dispute through conciliation.

(6) Within fourteen days of conclusion of arbitration proceedings the:

(a) Labour Commissioner shall issue a signed arbitration award with brief reasons;

(b) Commission shall serve a copy of that award on each party to the dispute or the representative of a party in such arbitration proceedings;

(c) Commission shall keep in its custody the original copy of the arbitration award.

(7) Any aggrieved party by the decision of the Labour Commissioner in arbitration award shall have the right to object within thirty days from the date of the award to the Labour Court.

(8) The Labour Commissioner may make any appropriate arbitration award in accordance with provisions of this Act, including but not limited to, an award that:

(a) gives effect to Collective Agreement;

(b) gives effect to the provisions and primary objects of this Act; and

(c) Includes or is in the form of a declaratory order.

105. Special Provisions for Disputes Involving Essential Services

(1) If a certificate has been issued stating that a dispute involving parties engaged in an Essential Service has not been resolved through conciliation, the Commission shall request the Office of the Labour Commissioner to appoint a Labour Commissioner to arbitrate the dispute within thirty days of the issue of such certificate, without request or consent of any party to the dispute.

(2) The office of the Labour Commissioner may not include an order for costs in the arbitration award made in relation to a dispute involving parties engaged in an essential service unless a party or his or her representative in the arbitration proceedings acted in a frivolous or vexatious manner during the arbitration proceedings.

106. Powers of Labour Commissioner Appointed to Resolve Disputes

(1) Subject to any requirements set by the Commission under Section25of this Act, the Labour Commissioner who has been appointed to attempt to resolve a dispute under this Act may:

(a) Summon for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute;

(b) Summon any person believed to have possession or control of any book of records, document or object relevant to the resolution of the dispute to appear before him or her for questioning or to produce the book of records, document or object;

(c) call and if necessary summon an expert to appear before him or her to give expert opinion relevant to the resolution of the dispute;

(d) call any person present at the conciliation or arbitration proceedings or who was or could have been summoned for any purpose set out in this section to be questioned about any matter relevant to the dispute;

(e) administer an oath or an affirmation from any person called to give evidence or be questioned;

(f) at any time, but only after obtaining necessary written authorization:

(i) enters and inspects any premises on or in which any book of records, document or object relevant to the resolution of the dispute is believed or likely to be found;

(ii) examines, demands production of and seizes any book of records, document or object that is found on the premises and is relevant to the resolution of the dispute; and

(iii) takes a statement in respect of any matter relevant to the resolution of the dispute from any person on the premises willing to make a statement

(g) Inspect, retain for a reasonable period any book of records, document or object produced to or seized by the Commission.

(2) A person commits violation of the Commission order:

(a) if, after having been summoned to appear before the Labour Commissioner, he or she without good reason refuses to appear at place and time stated in the summon;

(b) if, after having appeared in response to a summon, that person fails to remain in attendance until excused by the Labour Commissioner;

(c) by refusing to take oath or to make an affirmation as a witness when the Labour Commissioner so requires;

(d) subject to any rights the person under the law related to privilege as it applies to a witness summoned to give evidence or to produce any book of records, document or object before a court of law, by refusing to answer any question fully and to the best of that person's knowledge and belief;

(e) if the person, without good cause, fails to produce any book of records, document or object specified in summons to the Labour Commissioner;

(f) if the person willfully hinders the Labour Commissioner in performing any function conferred upon him or her under this Act;

(g) if the Person insults, disparages or belittles the Labour Commissioner or prejudices or improperly influences the proceedings or improperly anticipates the Labour Commissioner award;

(h) by willfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings or by doing

107. Review of Arbitration Awards

Any party to a dispute may within six weeks from the date the award has been made by the Labour Commissioner file an application for review of such award by the labour court in case of not being satisfied with the proceedings or the award or both; provided that such party shall provide in his or her application the reasons for the review and the remedy being sought from the court.

108. Establishment and Jurisdiction of Labour Court

(1) The Competent Authority, in consultation with the chief justice, shall constitute a Labour Court of arbitration as follows:

(a) A judge whose grade is not less than a judge of the High Court to be appointed by the Chief Justice, Chairperson;
(b) In case of private sector an employer who has no connection with the dispute to be nominated by the employer, in case of public sector a representative of government institutions related to and dealing with labour matters;
(c) A representative of a trade Union which has no direct connection with the dispute to be nominated by the trade union party to the dispute;
(d) A representative of the Ministry of Public Service, Labour and Human Resource Development;
(e) A person experienced in industrial relations.

(2) The Labour Court shall follow normal legal procedures used by formal courts when addressing and litigating on labour disputes.

(3) The Chairperson of the Labour Court shall within a period not exceeding one week from the date of reference of a dispute for arbitration, fix a date for hearing thereof.

(4) Presence of 3 members including the Chairperson shall constitute a quorum for the tribunal.

(5) An arbitration tribunal shall consider and decide a dispute within a period not exceeding 4 weeks.

(6) A party to a dispute may engage an advocate at the court.

(7) The decision of the Tribunal shall be final and the award if any binding.

(8) The Labour Court shall follow normal legal procedures used by other specialised courts when addressing and litigating on labour disputes.

(9) The Labour Court shall deal with all labour related disputes, and shall have jurisdiction over the application, interpretation and implementation of the provisions of this Act and to decide:

(a) appeals from the decisions of the Labour Commissioner made under Chapter III of this Act;

(b) reviews and revisions of the arbitrator's award made under this chapter;
(c) reviews of decisions, rules or regulations made by the Minister under this Act;
(d) complaints, other than those that are to be decided by arbitration under the provisions of this Act;
(e) any dispute reserved for decision by the Labour Court under this Act;
(f) application including a declaratory order or an injunction in respect of any provision of this Act

(10) The Labour Court may refuse to hear a complaint if:
(a) the complaint has not been referred to conciliation by the Commission under section 103;
(b) the provisions of that section have not been complied with; and

(11) Where a party refers a dispute to the Labour Court, the Court may:

(a) if it is a dispute that is required to be referred to the Labour Court in terms of this Act:
(i) decide the dispute; or
(ii) Refer the dispute to the Commission to be decided by arbitration.
(b) if it is a complaint that is required to be referred to arbitration:
(i) refer the complaint to the Commission for it to be dealt with under section 102 or 103
(ii) Decide the complaint provided that it may make an appropriate order as to costs.

109. Lapse of Right by Prescription

(1) The right of the worker to raise a claim in respect of acquired entitlement according to the provisions of this Act shall lapse:
(a) In case of claims for gratuity, after the expiry of 3 years from the termination of the contract of service; and
(b) In case of claims for wages or other entitlements after the expiry of 2 years after the termination of the contract of service.
(2) The Competent Authority shall determine the remuneration of the Chairperson and members of the court.

CHAPTER XI

SAFETY, HEALTH AND WELFARE AT WORKPLACE

110. Duty to Ensure Safety, Health and Welfare at Workplace

(1) An employer shall ensure safety, health and welfare at workplace for all the employees.

(2) Without prejudice to the generality of sub-section (1) above, an employer shall be responsible for:

(a) provision and maintenance of good order of any plant, system or procedure of work by ensuring that such plant, system and procedure are safe to the employees at the workplace;

(b) taking reasonably practicable measures to ensure safety and the absence of risk to health in connection with the use, handling, storage and transport of any article and substance;

(c) provision of such information, instruction, training and supervision as is necessary to ensure the safety and health at work of every employee, including regular training on the requirements of safety, health and welfare policy adopted in accordance with provisions of Section 111 of this Act;

(d) prevention of contamination at workplace by protection of any employee from toxic gas, noxious substance or material likely to cause risk to safety or health;

(e) taking reasonable practicable measures to provide and maintain a safe working environment for employees or other persons present at workplace and provision of clean drinking water;

(f) informing and educating employees of any risk from new technologies;

(g) ensuring that employees participate in the application and review of safety and health measures; and

(h) Generally inform and consult employees and their representatives on all questions related to workplace health and safety.

(3) When determining what is reasonably practicable for the purposes of the employer duty under sub-section (1) above, the following shall be taken into consideration:

(a) the likelihood of occurrence of any hazard or risk at workplace;

(b) harm that may result if such hazard or risk occurred;

(c) what the employer knew or ought to have known about the hazard or risk and any ways of eliminating or reducing such hazard or risk; and

(d) The availability, suitability and cost of ways to eliminate or reduce the hazard or risk.

(4) An employer who fails to comply with a duty imposed under this section violates the provisions of this Act.

111. Duty to Implement Safety, Health and Welfare Policy

(1) An employer shall, in consultation with employees and such other persons as the employer considers necessary, carry out a risk assessment in relation to the safety, health and welfare of employees and other persons present at the workplace.

(2) An employer shall develop, in consultation with employees and such other persons as the employer considers necessary a safety, health and welfare policy, setting out measures the employer shall take to comply with the requirements of this chapter and any other applicable law or regulation in force.

(3) The employer shall take practicable steps to implement and ensure compliance with the safety, health and welfare policy developed in accordance with sub-section (2) above.

(4) The safety, health and welfare policy developed in accordance with sub-section (2) above shall be reviewed by the employer, in consultation with employees and such other persons as the employer considers necessary, on a regular basis and at any time a change is made to the place or processes of work.

(5) An employer shall make a copy of the safety, health and welfare policy available to all employees to whom such safety, health and welfare policy applies.

(6) An employer shall maintain a copy of the risk assessment and safety, health and welfare policy at workplace or place of business for review by a labour inspector.

112. Employee Duty to Comply with Safety, Health and Welfare Measures

(1) An employee shall comply with all measures implemented by the employer in accordance with the employer duties under Sections110 and 111 of this Act.

(2) The requirements of sub-section (1) above include but not limited to, using such safety appliances, fire-fighting equipment and personal protective equipment provided by the employer in compliance with employer instructions.

(3) Repeated failure by an employee to comply with the requirements of sub-section (1) above may be grounds for termination of employment contract in accordance with provisions of Section 72 and 73 of this Act.

113. Duty of other person to Ensure Safety, Health and Welfare at Workplace

(1) Any person who has to some extent is in control of a workplace or means of access to a workplace or egress from workplace or any plant or substance provided for the use or operation of persons at workplace shall ensure, that such premises, means of access to workplace or egress from such premises or plant or substance, as the case may be, is safe and without risks to health.

(2) Any person who designs, manufactures, imports or supplies any plant or substance for use at a workplace shall:

(a) ensure that the plant or substance is safe and without risk to health when properly used;

(b) carry out or arrange for the carrying out of such research, testing and examination as may be necessary for the purpose of the discovery and the elimination or minimization of any risks to safety or health to which the plant or substance may give rise to such risk;

(c) take such steps as are necessary to make available in connection with the use of the plant or substance at work adequate information about;

(i) the use for which the plant is designed;

(ii) any conditions necessary to ensure that, when put to such use, the plant shall be safe and without risk to health;

(iii) the results of any relevant tests carried out on or in connection with such substance

(iv) Any conditions necessary to ensure that the substance shall be safe and without risks to health when properly used.

(3) Any person who erects or installs any plant for use for work at any workplace where that plant is to be used by employee sat such workplace shall ensure, as far as is reasonably practicable, that nothing about the way the plant is erected or installed makes such plant unsafe or risky to health when properly used.

(4) A person who fails to comply with this section violates the provisions under this chapter.

114. Exposure to Imminent Hazard

(1) An employer shall take immediate steps to stop any operation or activity and evacuate all employees present, if there is an imminent and serious danger to safety and health of employees.

(2) If an employee has reasonable grounds to believe that there is an imminent and serious danger to life, safety or health at workplace, such employee shall immediately report the fact to the immediate supervisor and depart from the situation of hazard.

(3) An employer shall not dismiss or take disciplinary action with regards to an employee who has departed from a situation of hazard as provided in sub-section (2) above.

(4) An employer shall not require an employee to resume work in circumstances where there is a continuing imminent and serious danger to life, safety or health of such employee.

115. Duty of Employer to Notify Labour Inspector

(1) An employer shall notify the Labour Inspectorate of any accident, dangerous occurrence or occupational poisoning which has occurred at workplace no later than forty-eight hours from the moment of the occurrence.

(2) If any of the events stated in sub-section (1) above, causes death of an employee, the employer shall notify the Public Prosecution Attorney immediately.

(3) The report shall be in a written form by the Labour Inspectorate, if the incident causes:

(a) death of an employee or other person at workplace;

(b) fire or explosion;

(c) a serious injury to an employee or other person at workplace or

(d) Incapacity of an employee to perform work for one day or more.

(4) An employer shall keep record of all workplace injuries as follows:

(a) a copy of record of injuries for at least five years and

(b) Make such copy available for inspection by a labour inspector or a person or the representative of the person injured in the incident or whose health and safety was exposed to immediate risk by the incident, or representative of a person whose death was caused by the incident.

(5) If a person injured in an accident dies after the accident is notified under this section, the employer shall send a notice of the death in writing to the Labour Inspectorate as soon as the employer is informed of the death.

(6) If an accident occurs to an employee and the occupier of the workplace is not the employer of an employee injured or killed, the employer of such employee shall immediately report the accident to the occupier and the Labour Inspectorate.

(7) The Minister may, on the advice of the Council, prepare a list with all dangerous occurrences to which this section shall apply.

116. Medical Examination

(1) The Minister may, by regulations, require any person seeking employment involving hazardous work or night work to undergo a medical examination before beginning such employment and continue with medical examination at regular intervals during employee's employment.

(2) Any medical examination shall be carried out by a qualified medical practitioner at the expense of the employer.

(3) The results of the medical examination shall be kept confidential and not disclosed to any person, other than the person examined, except upon order of competent authority.

(4) Notwithstanding any medical examination required under sub-section (1) above, an employer may not require a pregnancy test or a certificate of such test, when a woman is applying for employment, except if the work is:

(a) prohibited or restricted for pregnant women under this Act or any applicable law or

(b) If there is a recognized or significant risk to the health of the pregnant woman.

(5) Notwithstanding any medical examination required under sub-section (1) above, an employer shall not require HIV/AID screening for an employee or any person applying for work.

117. Medical Attention

An employer shall ensure provision of first aid treatment and appropriate medical care for any employee injured or becomes seriously ill at workplace.

118. Amenities at Workplace

(1) An employer shall provide sufficient supply of wholesome water for use of any employee at the workplace.

(2) An employer shall provide such other amenities as are required to ensure the safety, health and welfare of employees and other persons at workplace.

119. Additional regulations of Safety, Health and Welfare at Workplace

After consultation with General Trade union and Employers' Association and upon advice from the Council, the Minister may issue regulations, codes of practice and guidelines establishing additional requirements or guidance for compliance with the duties set out under this Chapter, including but not limited to requirements or guidance related to:

(1) Representation and consultation of employee son matters of safety, health and welfare at workplace;

(2) Particular types of work, including work:

(i) at height;

(ii) in confined spaces;

(iii) with hazardous substances;

(iv) with heavy machinery; and

(v) With electricity.

(3) To particular types of workplaces, including:

(i) construction sites;

(ii) major hazard facilities; and

(iii) Mines.

(4) Testing and notification requirements of persons with duties under Sections 115 and 116of this Act;

(5) Notification of incidents in accordance with Section115of this Act; and

(6) Provision of medical attention or amenities at workplace in accordance with Sections117 and 118 of this Act.

120. Establishment of the Industrial Safety Inspection

(1) For the purpose of implementation of the provisions of this Act, the Competent Authority shall establish an Industrial Safety Inspection, and appoint industrial Safety inspectors.

(2) The whole of these sections 121,122, 123 and 124 shall apply to all industries and factories;

(3) The Competence Authority shall have supervision over all factories and other industrial operations set out in schedule N0.1 to this Act.

121. Powers of industrial safety inspectors

(1) An industrial safety inspector shall have the power to enter the factory premises during working hours, by day or at night in order to inspect, inquire into accidents, examine the equipment and materials and take samples thereof or to verify any other particulars he or she thinks necessary.

(2) The factory owner, his, deputy or agent shall furnish the industrial safety inspector with all the particulars and information he or she requires.

122. The Central Advisory Committee for industrial safety

(1) There shall be established a committee to be known as The Central Advisory Committee for industrial safety, which shall have regional committees under it in such counties as the Minister, may specify.

(2) The Minister shall specify the functions, powers and remuneration of the Central Advisory Committee for Industrial safety and of the regional and states committees under it.

(3) The Central Advisory Committee may constitute sub-committees in the states and it may delegate any of its functions to such sub-committees.

123. Appointment of Industrial safety officers

(1) Every factory owner employing not less than ten and not more than 150 employees, shall appoint a part time industrial safety officer, and if the number of workers in the factory exceed 150, he or she shall appoint a full time industrial safety officer.

(2) The Minister may specify the qualifications of industrial safety officers.

124. Industrial Safety Committee

(1) There shall be established in every factory, the number of workers wherein is 500 or more, an industrial safety committee which shall be constituted of the factory managers as chairperson, heads of productive sections in the factory and two representatives of the workers trade union as members;

(2) The industrial safety committee shall be responsible for planning the industrial safety policy in the factory and supervising the implementation thereof in accordance with the provisions of this Act and decisions there under. The Committees shall notify the Competent Authority and the employer with everything relating to industrial safety conditions within the factory and its recommendations in this respect;

(3) The industrial committee shall hold a meeting on the occurrence of a serious accident or within a week of the discovery of any of occupational disease and forward the findings to the Central Advisory Committee for action.

125. Disputes regarding Safety, Health and Welfare at Workplace

If there arises any dispute involving interpretation or application of any provision of this Chapter, any party to such dispute may report the dispute in writing to the Commission for conciliation in accordance with Section 102 of this Act.

CHAPTER XXII

PENALTIES AND REGULATIONS

126. In case of any contravention of this Act, the offender shall be punished by one or more of the following:

(1) Imprisonment for a prison term of up to five years;
(2) A fine commensurate with the offence;
(3) Both of the above;
(4) Confiscation of any instrument used in such contravention;
(5) Cancellation of a license; or
(6) Closure of the premises for a period of up to 2 years.

REGULATIONS

127. Regulations

The Competent Authority shall issue regulations for efficient and effective implementation of the provisions of this Act.

SCHEDULE A

Factories and Industrial Operations

1. Factories
2. Electrical works
3. Building operations, which are carried out on commercial basis. The same includes construction, demolition, maintenance of premises and making of barricades, excavation and macadamizing of roads;
4. Works and operations done in Boats, steamers, docks where mechanical power is used;
5. Loading and unloading, transport of goods or work inside a warehouse;
6. Agricultural or forestry works etc.
7. Mining and quarries works;
8. Land, river or air transport works;
9. Office, shops or places of amusement works;
10. Occupational health works.

APPENDIX B

Employment Contract

Term and Conditions

1. Parties to the Contract of Employment

a. Employer/Employer's Representative: ----------

b. Employee Name:----------

c. Date When these details are current:----------

d. Date of issue of this Contract:----------

e. Date of commencement of employment:----------

f. Date when continuous employment begun:----------(No previous employment with any previous employer counts as continuous employment.)

2. Post Title:----------

2.0 Normal place/location of Work:----------

2.1 When considered necessary or appropriate, your Job Description (see attached sheet), may from time to time be amended and in addition to the duties set out in it you may be required to undertake such other reasonable duties as are within your skill and competence and consistent with your post title.

2.2 The Supervisor referred to in this contract is… **(in his absence, you will report to …)** or such other post holder as may from time to time be notified you by or on behalf of your employer.

3. Probation Period

Confirmation of your appointment shall be subject to satisfactory completion of a period of probationary service of three (**3**) months. During your probationary service you will be expected to establish your suitability for the post. This period of probationary service may be extended if your employer feels that you have not achieved a satisfactory level, but have the potential to do so. If you or the ... decides that your suitability for the work is not established during the probationary period, ... may terminate your appointment at the end of the first or second month.

4. COMPENSATION PACKAGE

4.1 Salary

4.1.1 Your basic pay is---------- per month, with---------- as housing allowance, and---------- as Cost of Living Allowance (COLA); making a total of--------per month

4.1.2 Your salaries are reviewed annually to take effect from June 1st each year. This review shall include a ------% increment to your basic pay following a successful performance appraisal and if recommended by the supervisor and advised by Executive Director.

4.1.3 Salaries are paid monthly by cash/cheque/bank credit transfer. If monthly, on the 30th. Your pay advice will show your basic pay, any deductions for Income Tax/Pension, Social Insurance, and amount of Net Pay.

4.1.4 If you have any queries about your salary these should be raised in the first instance with the Director for human resources directly or through your respective supervisors.

4.2 EXPENSES

You will be reimbursed for all agreed expenses necessary incurred in the performance of your duties.

5. HOURS OF WORK

5.1 Your normal working weeks are 52 beginning Monday through to Friday, and 40 hours per a week starting from **8 A.M to 5 P.M** everyday or as agreed between you and your supervisor. Where necessary you are expected to be cooperative in working outside the stipulated weeks, and hours.

6. PERSONAL PREPARATION, IN-SERVICE TRAINING, STUDY LEAVE AND PERSONAL DEVELOPMENT

In addition to time for study and preparation you are encouraged to consider in-service opportunities for training, study leave when permitted, and personal development. Such opportunities should be discussed with your Supervisor. Consideration will be given to meeting the costs in whole or in part.

6.1 Time Off in Lieu: If you are required and need to work hours in excess of your normal working week, you will be entitled to time off in lieu on an equal time basis, as agreed with your supervisor.

6.2 Overtime: All junior employees are entitled to overtime, but this should be agreed and endorsed before hand by the immediate supervisor. There is **NO** overtime for senior employees. Senior employees may be entitled to some form of incentives on limited and on individual basis.

7. SOCIAL INSURANCE SCHEME

A contracting-out certificate with the social insurance company shall be in force unless ... senior management decides for an alternative.

You will be contracted into a locally established Social Insurance Scheme (SIS) for which deductions shall automatically be made by ... Finance Unit. Other pension arrangements may be made at the discretion of ... and for the good of the employee.

8. ANNUAL LEAVE ENTITLEMENTS

8.1 The Holiday Year is from June 1st to 31st of May of the following year.

8.2 Your Annual Leave entitlement is----------days. (This cannot be less than 20 days.)

8.3 If less than 12 months service has accrued by the last day of (month) ----------in any year, then a proportionate holiday entitlement is calculated i.e. 1/12th of the Annual Leave entitlement for each completed calendar month of service.

8.4 No leave should be taken before the completion of the probationary period, unless otherwise authorized by your Supervisor.

8.5 Your holiday entitlement is to be taken in the holiday year in which it has accrued, unless it has been deferred by agreement with your Supervisor.

8.6 Your holidays must be agreed with your Supervisor as early as possible and at least one month in advance, except in exceptional circumstances.

8.7 On termination of employment you may be required to take annual leave during the period of notice. You will not be paid for any holiday that has accrued but which it has not been possible to take prior to the effective date of termination. You will be required to refund any salary paid in respect of holiday taken in excess of that which has accrued by the effective date of termination.

9. COMPASSION LEAVE

9.1 If you suffer bereavement of a close relative, you may be granted bereavement leave of up to seven days.

9.2 Your Supervisor may also grant bereavement leave in other appropriate cases.

10. MATERNITY LEAVE

10.1 A ... cadre or employee irrespective of her length of service or hours of work in ... is entitled to:

10.1.1 3 months or 90 days of maternity leave, and

11.1.2 Return to work in the same or similar post without any prejudice.

10.2 A ... cadre or employee with two years service at the beginning of the eleventh week before the expected week of childbirth (EWC), shall also have the right to return to work at any time, within the specified weeks from the date of confinement.

10.3 A ... cadre or employee is also entitled to time off for antenatal care, irrespective of their length of service.

11. PATERNITY LEAVE

In consultation with your supervisor a ... male employee shall be offered two weeks paid leave for either of the following purposed subject to the following requirements:

11.1 Paternity Leave

That the leave is taken within the six months after the expected date of confinement or childbirth.

12. SICKNESS AND SICK PAY

12.1 Notification of Absence

If you are unable to attend work for any reason whatsoever you must contact your Supervisor as soon as possible [preferably before noon] on the first day of absence so as not to lose part of your sick pay.

12.2 Evidence of Incapacity to Work

If you are ill seven days or less, you should obtain and complete a self-certificate form obtainable from either your employer or from the local Benefits Agency and forward it to your Supervisor. On the first day of your return to work you should report to your Supervisor, or, if your Supervisor is unavailable, the most senior officer or member of staff available, and explain in full the reason for the absence. If you have not already completed a self-certification form for the first seven days of absence, including days on which you would not normally work, you will then be required to complete a self-certification form.

If sickness absence continues for more than seven days you must obtain a medical certificate from your doctor and forward it without delay to … Human Resource unit. Further certificates must be submitted to cover each week for as long as the illness lasts.

In cases of persistent absences for whatever reason ... reserves the right to request medical evidence for periods of absence of less than seven days.

... also reserves the right, when considered appropriate, to request you to attend a medical examination by a medical practitioner of ...'s choice.

13. MEDICAL TREATMENT

Appointments for visiting the Doctor, Dentist etc., should, whenever possible, be made outside working hours.

Where an appointment can only be arranged in working time, authorization to attend must be obtained from your Supervisor, or, if your Supervisor is unavailable, the most senior officer or member of staff available. In these circumstances you will be expected to request an appointment in the early morning or late afternoon.

14. PUBLIC DUTIES

14.1 Time off for Public Duties

Any arrangements for this, other than to comply with statutory requirements, are at the discretion of ... Executive Director.

If the duties entail the payment of allowances to you, then, if your salary has continued to be paid by ..., any such allowances are to be paid over to ... finance unit.

ASSENT OF THE PRESIDENT OF THE REPUBLIC OF SOUTH SUDAN

In accordance with the provisions of Articles 55(3) and 85(1) read together with Article 101(f), of the Transitional Constitution of the Republic of South Sudan, 2011, (amended 2015), I, General Salva Kiir Mayardit, President of the Republic of South, do hereby assent to this Labour Act, 2017 and sign it into law.

Signed under my hand in Juba, this 12th day of the month of DEC. in the year 2017.

