

LAWS OF SOUTH SUDAN

THE NATIONALITYACT, 2011

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LAWS OF THE REPUBLIC OF SOUTH SUDAN

THE NATIONALITY ACT, 2011

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SCHEDULE 1

THE NATIONALITY ACT, 2011

In accordance with the provisions of Article 59 (2) (b) read together with the provisions of Article 85 (1) of the Interim Constitution of Southern Sudan, 2005, the Southern Sudan Legislative Assembly, with the assent of the President of the Government of Southern Sudan, hereby enacts the following-

CHAPTER I

PRELIMINARY PROVISIONS

1. Title and Commencement

This Act may be cited as “the Nationality Act, 2011” and shall come into force on the date of its signature by the President.

2. Repeal and Saving

Any provisions of existing legislation that are governed by the provisions of this Act are hereby repealed; provided that all proceedings, orders and regulations taken or made under the provisions of such existing legislation, except to the extent they are repealed by or are otherwise inconsistent with the provisions of this Act, shall remain in full force, until they are repealed or amended in accordance with the provisions of this Act.

3. Purpose

The purpose of this Act is to provide a legal framework governing the acquisition and loss of South Sudanese Nationality, and other matters related thereto.

4. Authority and Application

This Act was drafted in accordance with the provisions of Article 208 (7) of the Interim Constitution of Southern Sudan, 2005 which implicitly gives the Government legislative competence to legislate on nationality after the vote for secession. Its provisions

shall apply throughout South Sudan.

5. Interpretation

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

“Age of Maturity” means eighteen years;

“Alien” means a person who is not a South Sudanese National;

“Nationality Certificate” means the certificate granted to a South Sudanese National

who is eligible for national status in accordance with the provisions of Chapter III of this Act;

“Naturalization Certificate” means a Nationality certificate by naturalization issued to an Alien in accordance with the provisions of Chapter IV of this Act;

“Child” means a child as provided in the Child Act, 2008;

“Competent Court” means the court of the Judiciary of South Sudan with competent jurisdiction to hear appeals against administrative decisions of the institutions of the Government of South Sudan;

“Constitution” means the Interim Constitution of Southern Sudan, 2005 or as amended.

“Directorate” means the Directorate of Nationality, Passports and Immigration of the Ministry of Interior established in accordance with Chapter II of this Act;

“Domicile” means a place where a person ordinarily resides and or to which that person returns as a place of permanent abode, and does not mean a place where such a person resides for a special or temporary purpose;

“Government” means the Government of South Sudan;

“Guardian” means a person responsible for a child as provided in the Child Act, 2008;

“Minister” means the Minister of Interior;

“Ministry” means the Ministry of Interior;

“Minor” means a person who has not attained the age of maturity;

“Parent” means the father and/or mother of a Child as provided under the Child Act, 2008;

“President” means the President of Government of South Sudan;
“South Sudan” means the territory, including airspace and territorial waters, of the South Sudan as provided in the Constitution; and
“South Sudanese National” means a person who satisfies the eligibility criteria provided under Chapters III and IV of this Act.

CHAPTER II

THE DIRECTORATE OF NATIONALITY

6. Establishment of the Directorate of Nationality

- (1) There shall be established a Directorate of Nationality, Passports and Immigration within the Ministry and shall be headed by a Director.
- (2) The Director shall be appointed and removed by the Minister in consultations with the Inspector General of Police.

7. Functions and Duties

The Directorate shall have the following duties—

- (a) Maintain the register of South Sudanese Nationals;
- (b) Issue Nationality certificates either by birth or naturalization; and
- (c) Perform other functions or duties provided under the laws of South Sudan or delegated by the Minister.

CHAPTER III

NATIONALITY BY BIRTH

8. Eligibility Requirements

- (1) A person born before or after this Act has entered into force shall be considered a South Sudanese National by birth if such person meets any of the following requirements—
 - (a) any Parents, grandparents or great-grandparents of such a person, on the male or female line, were born in South Sudan; or
 - (b) such person belongs to one of the indigenous ethnic communities of South Sudan.
- (2) A person shall be considered a South Sudanese National by birth, if at the time of the coming into force of this Act—
 - (a) he or she has been domiciled in South Sudan since 1.1.1956; or
 - (b) if any of his or her parents or grandparents have been domiciled in South Sudan since 1.1.1956.
- (3) A person born after the commencement of this Act, shall be a South Sudanese National by birth if his or her father or mother was a South Sudanese National by birth or naturalization at the time of the birth of such a person.
- (4) A person who is or was first found in South Sudan as a deserted infant of unknown Parents shall, until the contrary is proved, be deemed to be a South Sudanese National by birth.

9. Certificate of Nationality

The Minister shall issue a Certificate of Nationality to an applicant who is a South Sudanese National by birth in accordance with the provisions of section (8) above. The form of the Certificate, its designation and procedures for its issuance shall be set forth in the regulations.

CHAPTER IV

NATIONALITY BY NATURALIZATION

10. Eligibility Requirements

- (1) With the recommendation of the Minister, the President may grant to an Alien a South Sudanese Nationality, provided that such Alien submits an application in accordance with the procedures set forth in the regulations, and provided that such person—
 - (a) has attained the age of maturity;
 - (b) is of sound mind;
 - (c) has been resident in South Sudan for a continuous and uninterrupted period of ten (10) years before the date of the application;
 - (d) intends, to continue to reside permanently in South Sudan; and
 - (e) has not been convicted of any offence related to honesty and moral turpitude or any other serious offences.
- (2) With regards to a person of unsound mind, the application shall be made by a guardian or parent as appropriate.

11. Nationality by Naturalization

- (1) The Minister may issue a nationality by naturalization to an Alien who meets the eligibility requirements provided under Section 10 above. The form of which and the procedures for its issuance shall be set forth in the regulations. The Alien shall have the status of a South Sudanese National with effect from the date of issuance of the Nationality.
- (2) Upon the application of an Alien, the Minister may include the names of any Minors for whom the applicant is the Parent or Guardian.

- (3) The President may, upon the recommendation of the Minister, issue a nationality by naturalization to an Alien who has served South Sudan in a capacity which is considered to have been in the national interest.

12. Oath of Allegiance

Before becoming a South Sudanese National by naturalization in accordance with Sections 10 and 11 above, each Alien must take the oath of allegiance in the form set forth in schedule 1 of this Act.

13. Married Alien

- (1) An alien married to a South Sudanese National may acquire a nationality by naturalization, upon the approval of the Minister on an application submitted in accordance with the procedures set forth in the regulations, if such an alien is a lawful wife or husband of a South Sudanese National and has been living with her husband or his wife in South Sudan for a continuous period of not less than five years before the date of his or her application.
- (2) An alien, who has become a South Sudan National in accordance with sub-section (1) above, shall not be required to renounce the nationality of his or her previous country.
- (3) Notwithstanding the provisions of sub-section (1) above, the President may upon the recommendation of the Minister, exempt any person married to a South Sudanese National from satisfying the requirements stipulated under the sub-section referred to herein.

14. Appeal Against the Decision of the Minister

The President may waive the period provided in section 13 (1) above, for any good or compelling reason.

CHAPTER V

LOSS OF NATIONALITY

15. Revocation of Nationality

- (1) The President may, upon the recommendation of the Minister, revoke the nationality of a South Sudanese National by birth after having proved that—
 - (a) the South Sudanese National has made a voluntary declaration renouncing his or her South Sudanese nationality; or
 - (b) the South Sudanese National has enlisted to serve or continues in the service of a foreign enemy country in violation of any provisions of any applicable law of South Sudan.

- (2) The President may, upon the recommendation of the Minister, revoke the nationality of a naturalized South Sudanese National, after having proved that the South Sudanese National—
 - (a) has obtained the nationality by naturalization through fraud, misrepresentation of any material fact, or intentionally provided false information;
 - (b) has been unlawfully trading or communicating with an enemy state, or any person affiliated with an enemy state, during any war in which South Sudan is or has been involved, with the knowledge that such transactions or communications may assist the enemy state in such a war;
 - (c) has been convicted in South Sudan of an offence related to espionage or any of the offences against the state provided under the provisions of the Penal Code, 2008, in the interest of an enemy state; or
 - (d) has been convicted of a serious offence under the provisions of the Penal Code, 2008 prior to the expiry of the first five years following the date of his or her naturalization.

- (3) The President, before issuing the order of revocation as provided in sub-sections (1) and (2) shall notify the aggrieved South Sudanese National of his or her right to request the referral of the matter to an Inquest Committee within a period of six months from the date of such notice.

16. Inquest Committee

- (1) If duly requested by an aggrieved South Sudanese National in accordance with subsection 15(3) above, the President shall request the Minister of Justice to appoint an inquest committee, to be presided over by a Senior Legal Counsel. The Inquest Committee shall investigate the matter referred to it by the President.
- (2) The aggrieved South Sudanese National shall appear before the Inquest Committee or be represented by a duly authorized advocate.
- (3) The Inquest Committee shall have the powers provided under the Code of Criminal Procedure, 2008 to —
 - (a) summon witnesses and examine their testimony on oath, or take their sworn affidavits, or delegate the hearing or examination of witnesses outside South Sudan to authorized representatives; and
 - (b) compel the production of documents.
- (4) After having duly conducted the investigation, the Inquest Committee shall submit its report and recommendations to the President for an appropriate decision.

17. Date of Revocation of Nationality

The order of the President for the revocation of South Sudanese Nationality by naturalization shall be effective from the date the President issue the order. The person affected by the order shall cease to be a South Sudanese National on that date and shall be either deported to Country of original nationality or may be allowed residence as an alien.

18. Effect of Loss of South Sudan Nationality

- (1) The revocation of South Sudanese nationality from any person under section 16 of this Act shall not relieve the person from his or her duties or obligations or deprive that person of any right that had arisen prior to the revocation of South Sudanese Nationality.
- (2) When the custodial parent or guardian of a minor ceases to be a South Sudanese National pursuant to the provisions of section 16 of this Act, the minor shall retain the South Sudanese nationality unless he or she subsequently becomes a national of another country in accordance with the applicable law of that country.

19. Publication of Revocation of Nationality

The Minister shall cause to be published in the Official Gazette the names and the addresses of those persons who have lost their South Sudanese nationality in accordance with the provisions of this Act.

CHAPTER VI

MISCELLANEOUS PROVISIONS

20. Register of South Sudan Nationals

The Directorate of Nationality, Passports and Immigration shall, maintain a register of South Sudanese Nationals with Nationalities either by birth or Naturalization, as provided in the regulations.

21. Delegation of Powers

- (1) The Minister may delegate all or some of his or her powers, other than those powers provided under Sections 10, 12, 13, 16, 21, and 25 of this Act.
- (2) The Minister may delegate all or some of his or her powers to heads of South Sudan Missions abroad.

22. Posthumous Children

- (1) Any reference in this Act to the status or description of the nationality of the father of a person at the time of that person's birth shall, in case of a person born after the death of his father, be construed as a reference to the status or description of the nationality of the father at the time of his death.
- (2) Where the death of the father occurred before the birth and after the entry of this Act into force, the status or description which would have been applicable to the father had he died after the entry into force of this Act, shall be deemed to be the status and or description applicable to him at the time of his death.

23. Immunity and Exemption From Liability

- (1) No Legal proceedings shall be instituted against the Director, Deputy Director, Officers and other personnel of

the Directorate for any action or omission made while performing and or in exercise of their official functions, duties or powers provided that such actions or omissions were performed in good faith.

- (2) The Director, Deputy Director, Officers or other personnel referred in sub-section (1) above, may be investigated, arrested or detained, if any of them has committed any criminal offence in the course of their official functions, duties and powers under the provisions of this Act.

24. Offences and Penalties

- (1) A person commits a criminal offence in accordance with the provisions of this Act, if he or she knowingly makes a false representation or false statement in reference to a material fact in an application for a certificate of nationality or certificate of naturalization.
- (2) Whoever commits any of the acts under the provisions of sub-section (1) above or
- (3) Whoever knowingly uses or permits the use of a certificate of nationality by birth and or naturalization to impersonate a South Sudanese National or;
- (4) Whoever fails to surrender his or her certificate of nationality by birth and or by naturalization, upon the request of the Minister, after having been deprived of South Sudanese nationality in accordance with section 16 above, shall upon conviction shall pay a fine not exceeding 1000 SSP or with imprisonment for a period not exceeding five years or with both or.

25. Authority to Institute Criminal Cases

A public prosecutor with jurisdiction has the authority to institute criminal proceedings on any offences committed under this Act.

26. The Competent Court

Appeals against the decisions of the Minister shall be before the Competent Court.

27. Regulations

The Minister may make such rules, regulations and procedures necessary for the effective implementation of the provisions of this Act.

Schedule 1

Oath of Allegiance

I do hereby swear by The Almighty God (or do so solemnly affirm) that I shall be faithful, diligent and shall abide by the Transitional Constitution of the Republic of South Sudan as its supreme law, and shall observe the laws of South Sudan and faithfully discharge my duties as a South Sudanese National.

Assent of the President of the Government of Southern Sudan

In accordance with the provision of Article 85 (1) of the Interim Constitution of Southern Sudan, 2005, I, Gen. Salva Kiir Mayardit, President of the Government of Southern Sudan, hereby Assent to the Passports and Immigration Act, 2011 and sign it into law.

Signed under my hand in Juba, this ~~-----~~^{7th} day of the month ~~-----~~^{July} of in the year 2011.

A handwritten signature in black ink, consisting of a large, stylized 'S' shape with a horizontal line through it, and the initials 'SKM' written below it.

Gen. Salva Kiir Mayardit
President
Government of Southern Sudan
GoSS/ Juba.