

# **THE NATIONAL INTELLIGENCE SERVICE BILL, 2011**

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	<p><b>An Act of Parliament to give effect to the Constitution; to provide for the composition, functions, powers, control and administration of the National Intelligence Service; to provide for appointment of the Director General of the Service; to provide for the issuance of warrants authorising certain actions to be undertaken by the Service in the national interest; to provide for the establishment of the National Intelligence Council, the Complaints Commission and the Parliamentary Intelligence Oversight Committee and connected matters.</b></p>
	<p><b>ENACTED</b> by the Parliament of Kenya as follows:-</p> <p><b>PART I - PRELIMINARY</b></p>
<p>Short title and commencement</p>	<p><b>1.</b> This Act may be cited as the National Intelligence Service Act, 2011 and shall come into operation upon publication in the <i>Gazette</i>.</p>

Interpretation.	<p><b>2. (1) In this Act, unless the context otherwise requires -</b></p> <p>“acts of foreign interference” means activities relating to the Republic that are carried on by or on behalf of or are directed or subsidized by or are undertaken in collaboration with a foreign power, being activities that:</p> <ul style="list-style-type: none"> <li>(a) are clandestine or deceptive and ;</li> <li>(i) are carried on for intelligence purposes;</li> <li>(ii) are carried on for the purpose of affecting economic, social, political or governmental process; or</li> <li>(iii) are otherwise detrimental to the national security interests of the Republic;</li> <li>(b) involve a threat to any person.</li> </ul> <p>“agent of a foreign power” includes any person who is or has been or is reasonably suspected of being or having been recruited or employed by a foreign power either directly or indirectly for the purpose of committing an act whether within or outside Kenya prejudicial to the safety or interests of the Republic, or who has or is reasonably suspected of having within or outside Kenya committed or attempted to commit such an act in the interests of a foreign power”</p> <p>"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to national intelligence, or if no such Cabinet Secretary is appointed, the President;</p> <p>"classified information" means information of such a sensitive nature and value that the unauthorised publication or disclosure thereof would prejudice the protection or promotion of national security;</p>
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"Commission" means the Complaints Commission established under section 34;

"Committee" means the Parliamentary Intelligence Oversight Committee established under section 38;

"Council" means the National Intelligence Council established under section 33;

"counter-intelligence" means information gathered and activities conducted to impede or neutralise the intentions and activities of foreign powers, to counter subversion, sabotage, espionage and other activities aimed at or against the people, institutions, installations, processes or resources of the Republic;

"cruel, inhuman and degrading treatment or punishment" means a deliberate and aggravated treatment or punishment not amounting to torture, inflicted by a person in authority or the agent of the person in authority against a person under his custody, causing suffering, gross humiliation or debasement to the person;

"departmental intelligence" means information which relates to any power, duty or function concerning the security of Kenya which by or under any law has been entrusted to any Government Ministry, Department or Agency and which information may be required by that Department or Agency in the exercise of any such power or the performance of any such duty or function;

"desertion" means absenting oneself from duty without leave or just cause for a period exceeding twenty-one days;

"Director" means a director of any of the divisions of the Service established under section 9;

"Director-General" means the Director-General of the Service, appointed under section 7;

"domestic intelligence" means intelligence on any domestic threat or potential threat to national security as well as opportunities relevant to the protection and promotion of national security and national interests;

"espionage" includes covert means by which a foreign power or an agent of a foreign power directly or indirectly acquires or attempts to acquire classified information not entitled to acquire;

"exceptional circumstance" means an unusual situation or state of affairs requiring immediate action, the failure of which would occasion exceptionally grave danger, harm or prejudice to national security;

"external intelligence" means intelligence on any external threat or potential threat to national security, capabilities, intentions and activities of foreign powers and intelligence regarding opportunities relevant to the protection and promotion of national security and national interests;

"extreme emergency" means an unexpected situation or state of affairs requiring urgent action, the failure of which would occasion serious danger, harm or prejudice to national security;

"foreign power" means

- (a) a foreign government;
- (b) a foreign organization;
- (c) foreign person; or
- (d) an entity that is directed or controlled by a foreign government, foreign organization or foreign person;

"government" includes county government;

"intelligence" means information which has been collated and analyzed and which is relevant to a government's formulation or implementation of policy in relation to any internal or external threat or potential threat to national security as well as opportunities relevant to the protection and promotion of national security and national interests;

"monitor" means to intercept, listen to, copy or record using any device;

"national interests" include issues that are key to Kenya's survival in relation to political, economic, military and security elements of national power;

"national security" has the same meaning assigned to it by Article 238 of the Constitution;

"National Security Council" means the National Security Council established by Article 240 of the Constitution;

"officer" in relation to the Service means a person employed as an employee of the Service and includes a Director;

"organised crime" means an offence committed by a structured group of three or more persons existing for a period of time and acting in concert and includes human trafficking, money laundering and drug trafficking;

"person" includes natural and artificial person;

"public officer" means an officer, employee or member of a public body, including one that is unpaid, part-time or temporary;

"republic" has the same meaning assigned to it by Article 260 of the Constitution;

"Public Service Commission" means the Public Service Commission established by Article 233 of the Constitution.

"sabotage" means an act, falling short of a military operation or omission intended to cause physical damage or create conditions aimed at furthering or promoting subversive activities;

"security clearance" means an authorisation entitling a person to have access to classified information;

"Salaries and Remuneration Commission" means the Salaries and Remuneration Commission established by Article 230 of the Constitution.

"security intelligence" means information other than counter intelligence which relates to or may be relevant to the assessment of any internal or external threat or potential threat to national security and includes measures and strategies aimed at impeding or neutralizing such threat or potential threat;

"security vetting investigation" means a systematic procedure used to examine and appraise a person to determine his or her suitability, eligibility or security competence including the continued monitoring thereof;

"Service" means the National Intelligence Service established by Article 242 of the Constitution;

“state office” has the same meaning assigned to it by Article 260 of the Constitution;

"sensitive information" includes any information -

(a) which is likely to disclose the identity of, or provide details of, sources of information, other assistance or operational methods available to the Service;

(b) which relates to particular operations which have been, are being or are proposed to be undertaken by the Service in pursuance of any of its functions;

(c) which has been provided, by any Government, Department or Agency where that Government Ministry, Department or Agency does not consent to the disclosure of the information; or

(d) which has been provided, by an agency of a foreign government where that agency or government does not consent to the disclosure of the information;

“subversion” means an attempt by a person or group of persons to change, undermine or overthrow by unlawful means the constitution or constitutionally established system of government in the Republic;

“terrorism” means any act involving the use or threat of violence by a person or group of persons, which by reason of its nature and extent is calculated or intended to intimidate or coerce a civilian population or to influence the policy of a government by intimidation or coercion;

“threat to the security of Kenya" means -

(a) any activity relating to espionage, sabotage, subversion, terrorism, organized crime, or intention of any such activity directed against, or detrimental to the integrity, sovereignty, economic well-being or other national interests of Kenya and includes any other activity performed in conjunction with any activity relating to espionage, sabotage, organized crime, terrorism or subversion;

(b) any activity directed at undermining, or directed at or intended to bring about the destruction or overthrow by unlawful means of the constitutionally established system of government in the Republic;

(c) any act or threat of violence or unlawful harm that is directed at or intended to achieve, bring about or promote any constitutional, political, industrial, social or economic objective or change in Kenya and includes any conspiracy, incitement or attempt to commit any such act or threat; and

(d) any actions or intentions of foreign powers within or outside Kenya that is detrimental to national security and is clandestine or deceptive or involve a threat to the well-being of the Republic and its citizens or any other person lawfully resident in Kenya;

but does not include any lawful advocacy, protest or dissent unless carried out in conjunction with any of the activities referred to in paragraphs (a) to (d);

	<p>“torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes of:</p> <ul style="list-style-type: none"> <li>(a) obtaining from the person or from a third person or a confession;</li> <li>(b) punishing the person for an act which the person or a third person has committed or is suspected of having committed;</li> <li>(c) intimidating or coercing the person or a third person; or</li> <li>(d) for any reason based on discrimination of any kind</li> </ul> <p>provided that torture does not include any pain or suffering from, inherent in or incidental to lawful sanctions.</p> <p>“vetttable post” means a State Office, post or position in the Government, Government Ministry, Department or Agency that is of strategic interest to the State or requiring the holder thereof to have, in the performance of his official duties, access to sensitive or classified information;</p>
	<p>(2) Despite subsection (1), until after the first general elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean Minister.</p>
Application	<p><b>3.</b> Unless the context otherwise requires, the- provisions of this Act shall apply in respect of the Director-General and officers of the Service, whether working within or outside Kenya.</p>
	<p><b>PART II – COMPOSITION, FUNCTIONS, POWERS AND ADMINISTRATION OF THE SERVICE</b></p>
Composition of the Service	<p><b>4.</b> (1) The Service shall comprise -</p> <ul style="list-style-type: none"> <li>(a) the Director-General appointed under section 7;</li> <li>(b) Directors appointed under section 9; and</li> <li>(c) such other officers of the Service appointed under section 10.</li> </ul>
Act No. 11 of 1998	<p>(2) All persons who were immediately before the commencement of this Act were members or employees the National Security Intelligence Service established under the National Security Intelligence Service Act shall upon commencement of this Act become members of the Service and shall be deemed to have been appointed in accordance with this Act.</p> <p>(3) The Service shall be employed for the performance of the functions specified in the Constitution, this Act or any other written law.</p>

Functions of Service

5. (1) Subject to subsection (2), the Service shall-

- (a) be responsible for security intelligence and counter intelligence to enhance national security;
- (b) be responsible for detecting and identifying any threat or potential threat to national security;
- (c) advise the President and the Government of any threat or potential threat to national security;
- (d) safeguard and promote national security, national interests, sovereignty and the economic wellbeing of the republic and its citizens within and outside Kenya;
- (e) gather departmental intelligence at the request of any Government Ministry, Department or Agency and without delay, to evaluate and transmit as appropriate to that Ministry, Department or Agency such intelligence and any other intelligence at the disposal of the Service and which constitutes departmental intelligence;
- (f) regulate, in co-operation with any Government Ministry, Department or Agency entrusted with any aspect of the maintenance of the security of Kenya, the flow of security intelligence and the co-ordination between the Service and that Ministry, Department or Agency of functions relating to such intelligence;
- (g) carry out security vetting investigations for the security clearance of persons who hold or may hold vettable posts or persons seeking Kenyan citizenship, work permits and other documents of security interest;
- (h) carry out protective and preventive security functions within government departments, agencies, institutions, facilities and diplomatic missions;
- (i) safeguard the integrity of data, information and information systems and processes within Government Ministries, Departments or Agencies;
- (j) support and aid law enforcement agencies in the detection and prevention of threats to national security;
- (k) make recommendations to the President in connection with -
  - (i) policies concerning security intelligence;
  - (ii) security intelligence priorities;
  - (iii) security measures in Government Ministries, Departments or agencies; and
- (l) subject to the provisions of any other written law, perform such other duties and functions as may, from time to time, be determined by the President to be in the national interest.

Powers of the Service

- (2) The functions referred to subsection (1) shall be exercisable only-
- (a) for the purpose of detecting and identifying any threat or potential threat to national security;
  - (b) for the purpose of safeguarding and promoting national security; or
  - (c) in support of the prevention or detection of terrorism and organized crime.
6. (1) Subject to subsection (3), the Service shall have all powers necessary or expedient for the performance of its functions under the Constitution and this Act.
- (2) Without prejudice to the generality of subsection (1), the Service shall have the power to-
- (a) gather by investigation or otherwise, collate, correlate, evaluate, interpret, disseminate and store information it considers relevant to its functions, whether inside or outside Kenya;
  - (b) co-operate with any person, body, organization or authorities it may deem appropriate, and it shall be the duty of such person, body or organisation to afford the Service every co-operation;
  - (c) enter into arrangements or otherwise cooperate with persons, bodies, organisations or authorities within or outside Kenya in so far as it necessary or expedient for the exercise of powers or performance of the functions of the Service under the Act;
  - (d) subject to section 31, monitor electromagnetic, acoustic and other emissions and any equipment producing such emissions and to obtain any information derived from or related to such emissions, equipment or encrypted material;
  - (e) take steps and measures to safeguard and promote the national interests of Kenya, whether political, military or economic; and
  - (f) subject to the provisions of any other written law, exercise such other powers as may, from time to time, be determined by the President to be in the national interest.
- (3) The powers referred to subsection (1) shall be exercisable only-
- (a) for the purpose of detecting and identifying any threat or potential threat to national security;
  - (b) for the purpose of safeguarding and promoting national security;
  - (c) in support of the prevention or detection of terrorism and organized crime.

7. (1) There shall be a Director-General of the Service who shall be appointed by the President with the approval of National Assembly, on such terms as the Salaries and Remuneration Commission may, in consultation with the Public Service Commission determine.

(2) A person is qualified for appointment as Director General if such person-

- (a) is a citizen of Kenya;
- (b) possesses a degree from a university recognized in Kenya;
- (c) has served in a senior management position for at least ten years and has knowledge and experience in security and intelligence and any of the following areas-
  - (i) public management; or
  - (ii) government and public administration; and
- (d) meets the requirements of chapter six of the Constitution.

(3) No person shall be qualified for appointment as Director General if the person-

- (a) is a member of Parliament or county assembly;
- (b) has served as a Member of Parliament or county assembly or has held an office in a political party or trade union in Kenya;
- (c) holds dual citizenship;
- (d) has previously been convicted of a criminal offence attracting an imprisonment term of more than six months;
- (e) has been removed from office for contravening the provisions of the Constitution or any other law; or
- (f) is an un-discharged bankrupt.

(4) In appointing the Director General, the President shall nominate a person for appointment as the Director General and submit the name to the National Assembly and-

- (a) The National Assembly shall, within fourteen days after it first meets after receiving the name of the nominee-
  - (i) consider the nominee and either approve or reject; and
  - (ii) notify the President as to its approval or rejection.
- (b) If the National Assembly approves the nominee the President shall, within seven days after receiving the notification to that effect, appoint the nominee as the Director General of the National Intelligence Service;
- (c) If the National Assembly rejects a nominee submitted by the President, the National Assembly shall request the President to submit a new nominee and the provisions of this subsection shall apply with necessary modifications with respect to the new nominee.

(5) The Director-General shall hold office for a term of five years but shall be eligible for re-appointment for one further term.

(6) The Director-General may resign his or her office by writing under his or her hand to the President and such resignation shall take effect one month after the date of receipt thereof by the President.

(7) If the Director-General resigns or otherwise vacates his or her office before the expiry of his or her term of office, President shall in accordance with subsection (1) appoint another person in his or her place.

(8) Where the Director-General is unable to perform the functions of his or her office due to any temporary incapacity, the President shall appoint one of the Directors to act in his or her place until such time that the incapacity has ceased.

(9) The Director-General may be removed from office by the President only on the grounds of -

- (a) serious violation of this Constitution including a contravention of Chapter six thereof, this Act or any other law;
- (b) gross misconduct whether in the performance of his or her functions or otherwise;
- (c) physical or mental infirmity to perform the functions of his or her office;
- (d) incompetence;
- (e) bankruptcy; or
- (f) any other just cause.

provided that the appointment of the Director-General shall not be terminated under this paragraph until the question of his or her removal has been referred to the Commission and the Commission has recommended to the President that the Director-General ought to be removed from office on any of the grounds listed in (a) to (f) above.

(10) Where the question of removing the Director-General has been referred to the Commission under sub-section (9), the President may suspend the Director-General from the exercise of the functions of his or her office and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the Commission recommends to the President that the Director-General should not be removed.

<p>Functions and powers of the Director-General</p>	<p><b>8. (1) The Director-General shall -</b></p> <p>(a) be responsible for the overall control and administration of the Service;</p> <p>(b) be the principal advisor to the President and the Government, Departments or Agencies on matters relating to national security and intelligence;</p> <p>(c) report to the President and the Government on threats and potential threats to national security;</p> <p>(d) in consultation with the President and the Government, ensure that a good relationship is established and maintained between the Service and every Government Ministry, Department or Agency and any other institution approved by the President;</p> <p>(e) take all reasonable steps to ensure that the actions of the Service are limited to what is necessary for the proper performance of its functions under this Act or any other written law and that no information is gathered or disclosed by the Service except in so far as may be necessary for the proper performance of its said functions;</p> <p>(f) ensure that the Service is not, in the performance of its functions, influenced by considerations not relevant to such functions and that no act is performed that could give rise to any reasonable suspicion that the Service is concerned in furthering, protecting or undermining the interests of any person, particular section of the population or of any political party or other organisation in Kenya; and</p> <p>(g) as far as is reasonably practicable, take steps to ensure that classified information, intelligence collection methods, operations, operational files, sources of information and the identity of officers of the Service are protected from disclosure otherwise than in the strict performance of the functions of the Service under this Act.</p> <p>(2) The Director General shall have all the powers necessary or expedient for the performance of his or her functions under the Act, and may exercise such powers and shall perform such functions as are by or under this Act or any other written law conferred or imposed upon him.</p>

<p>Divisions of the Service and directors.</p>	<p><b>9.</b> (1) There shall be -</p> <ul style="list-style-type: none"> <li>(a) an internal intelligence division of the Service which shall be responsible for gathering domestic intelligence in the execution of the functions of the Service under this Act;</li> <li>(b) an external intelligence division of the Service which shall be responsible for gathering foreign intelligence in the execution of the functions of the Service under this Act;</li> <li>(c) a counter intelligence division of the service which shall be responsible for gathering and performing counter-intelligence in the execution of the functions of the Service under this Act;</li> <li>(d) such other divisions of the Service as may be necessary for the proper and efficient performance of the functions of the Service under this Act.</li> </ul> <p>(2) Each of the divisions of the Service shall be headed by a Director appointed by the Director General in consultation with the Council.</p> <p>(3) The Director shall be the administrative head of the division in respect of which he or she is appointed and shall, subject to the control and directions of the Director-General, be responsible for the efficient management, administration and control of the division.</p>
<p>Officers of the Service</p>	<p><b>10.</b> (1) There shall be such officers of the Service as the Director-General may in consultation with the Council deem necessary for the proper and efficient discharge of the functions of the Service.</p> <p>(2) The Director General may in consultation with the Council procure the transfer, secondment, or attachment of public officers to the Service for specific periods of time and on such terms as may be agreed upon between the Director General and the Public Service Commission.</p> <p>(3) For the purposes of this Act, a public officer who is transferred or seconded to the Service under subsection (3) shall be regarded as an officer of the Service and subject only to the control and direction of the Director General.</p>

<p>Functions and Power of officers of the Service.</p>	<p><b>11.</b> (1) An officer of the Service shall perform functions and duties as are by or under this Act or any other written law conferred or imposed upon him or her and shall in the performance of such functions and duties obey all lawful directions which he or she may from time to time, receive from any person having the authority to give such directions.</p> <p>(2) An officer of the Service shall have all the powers necessary or expedient for the performance of the functions of the Service under the Act, and may exercise such powers and shall perform such duties as are by or under this Act or any other written law conferred or imposed upon him or her.</p> <p>(3) An officer of the Service shall for the purposes of this Act be considered to be always on duty when required to act as such and shall perform the duties and exercise the powers granted to him or her under this Act or any other law at any place where he or she may be deployed.</p> <p>(4) The functions and powers of the officers of the Service under this section shall be exercisable only and to the extent necessary for the performance of the functions of the Service under this Act or any other written law.</p>
<p>Oaths and affirmations</p>	<p><b>12.</b>(1) The Director-General and every officer of the Service on being appointed to the Service shall, before assuming the duties of his office, make and subscribe to the oaths or affirmations prescribed in the Schedule-</p> <p>(a) in the case of the Director-General, before the President; and</p> <p>(b) in the case of every other officer, before the Director-General.</p> <p>(2) The oath of Secrecy shall bind the Director General and every officer of the Service during and after expiry or termination of employment or engagement with the Service.</p>
<p>Certificate of identity and appointment.</p>	<p><b>13.</b> (1) The Director-General shall cause to be issued to every officer of the Service on appointment, a certificate of identity and appointment in such form as the Director-General may prescribe, which shall be the evidence of such appointment for the purposes of this Act.</p> <p>(2) A person appointed as an officer of the Service and issued with certificate of identity mentioned in subsection (1), may where necessary for the performance of his or her functions under the Act and with approval of the Director General, have authority to carry and use such official firearm as may be determined by the Director General.</p> <p>(3) The Director General shall establish procedures not inconsistent with any written law for the issuance, custody and use of firearms referred to in subsection (2).</p>

Scheme of service.	<p><b>14.</b> (1) The Public Service Commission shall, in consultation with the Director-General and on advice of the Salaries and Remuneration Commission prescribe a scheme of service setting out the terms and conditions of service for officers of the Service which shall provide for-</p> <p>(a) appointments, confirmations of appointments, promotions, resignations, retirements and termination of appointment;</p> <p>(b) scales of salaries and allowances; and</p> <p>(c) the designations and grades of officers of the Service.</p> <p>(2) The Public Service Commission shall at least once every four years review the terms and conditions of officers of the Service.</p>
Pension scheme and other benefits	<p><b>15.</b> (1) The Director General-</p> <p>(a) shall with the approval of the Council establish a pension scheme for officers of the Service; and</p> <p>(b) may with the approval of the Council establish or adopt a contributory optional superannuation, provident or medical fund or other scheme for all officers of the Service and may grant pensions, gratuities, retirement allowances, sickness or injury benefits to such officer.</p> <p>(2) Any pension scheme, medical scheme or other scheme existing immediately before the commencement of this Act shall continue existing and shall be deemed to have been established in accordance with this Act.</p>
Disciplinary Code.	<p><b>16.</b> (1) The Director-General shall issue and maintain a disciplinary code for the Service which may provide for-</p> <p>(a) disciplinary offences;</p> <p>(b) the investigation, hearing and determination of disciplinary offences and the hearing of any appeals therefrom; and</p> <p>(c) the delegation by the Director-General to Directors and other officers of such disciplinary powers as he may deem necessary.</p>

	<p>(2) The disciplinary code may provide for, among others, the following disciplinary penalties or any combination thereof-</p> <ul style="list-style-type: none"> <li>(i) dismissal from the Service;</li> <li>(ii) retirement in public interest;</li> <li>(iii) reduction in rank or grade as the case may be;</li> <li>(iv) reprimand;</li> <li>(v) admonition;</li> <li>(vi) stoppage of salary increments;</li> <li>(vii) fines; and</li> <li>(viii) recovery of the cost or part thereof in respect of any loss or damage to the property of the Service caused by the default or negligence of any person subject to disciplinary proceedings where such recovery has not been effected through any other lawful Government procedure.</li> </ul>
Code of Conduct and Ethics	<p><b>17.</b> (1) Subject to the provisions of any other written law, the Director-General shall issue and maintain a code of conduct and ethics for officers of the Service which may provide for-</p> <ul style="list-style-type: none"> <li>(a) professional conduct;</li> <li>(b) political neutrality;</li> <li>(c) conflict of interest;</li> <li>(d) conduct of private affairs;</li> <li>(e) dealings with foreigners; and</li> <li>(f) submission of declarations.</li> </ul>
No. 4 of 2003	<p>(2) For avoidance of doubt officers of the Service are bound by the Public Officers Ethics Act</p>
Grievance mechanism	<p><b>18.</b> Director General shall establish procedures for the consideration and adjudication of grievances in relation to officers of the Service.</p>

Limitation of certain rights and fundamental freedoms.

**19.(1)** Subject to Article 24 of the Constitution, the rights and fundamental freedoms of—

- (a) an officer of the Service;
- (b) a person seeking to access information held by the Service;
- (c) a person being vetted by the Service; or
- (d) a person who is the subject of investigations or otherwise affected by the operations of the Service,

may be limited for the purposes, in the manner and to the extent set out in this Section.

(2) A limitation of right or fundamental freedom under subsection (1) shall be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom and shall be limited only for purposes of ensuring—

- (a) the protection of classified information;
- (b) the maintenance and preservation of national security;
- (c) the security and safety of officers of the Service;
- (d) the independence and integrity of the Service; and
- (e) that the enjoyment of the rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others.

(3) A limitation of right or fundamental freedom under this Section shall relate to—

- (a) the right to privacy to the extent of allowing—
  - (i) a person, home or property to be searched;
  - (ii) possessions to be seized;
  - (iii) information relating to a person's family or private affairs to be required or revealed; or
  - (iv) the privacy of a person's communications to be investigated or otherwise interfered with.
- (b) the freedom of expression to the extent of limiting the freedom to impart information for officers of the Service;
- (c) the right to access to information held by the Service to the extent of protecting the Service from—
  - (i) demands to furnish persons with classified information;
  - (ii) disclosing and publicising information relating to covert operations of the Service; and
  - (iii) disclosing and publicising information the disclosure or publication of which would be prejudicial to national security;

	<p>(d) the freedom of association to the extent of limiting the right of officers of the Service from joining or participating in the activities of any kind of association;</p> <p>(e) the right to assemble, demonstrate, picket and petition public authorities to the extent of ensuring discipline in the Service;</p> <p>(f) the right to fair labour relations to the extent of prohibiting officers of the Service from joining and participating in the activities of a trade union and going on strike;</p>
	<p><b>PART III – OFFENCES</b></p>
Prohibition of certain conduct of officers of the Service.	<p><b>20.</b> Any officer of the Service, who-</p> <p>(a) subjects any person to torture or to any other cruel, inhuman or degrading treatment; or</p> <p>(b) enters or searches any private premises, seizes any material, monitors communication otherwise than as provided for under section 31.</p> <p>commits an offence and shall on conviction be liable for imprisonment for a term not exceeding two years or to a fine not exceeding three hundred thousand shillings or to both.</p>
Offence of desertion	<p><b>21.</b> Any officer who absents himself or herself from duty without leave or just cause for a period exceeding twenty-one days commits an offence and is liable on conviction to dismissal or imprisonment for a term not exceeding two years or to a fine not exceeding three hundred thousand shillings or to both.</p>
Surrender of Service property on dismissal	<p><b>22.</b> (1) Any officer who is dismissed from the Service, or resigns his or her office, or otherwise leaves the Service, shall forthwith deliver over to the person authorized by regulations or appointed for that purpose every article in his or her possession and which he or she has not been expressly authorized to keep or use for private benefit.</p> <p>(2) Any officer who fails to comply with subsection (1) or who returns such property in a damaged condition, the damage not being attributed to the proper discharge of his or her duties in the Service commits an offence and is liable on conviction, whether or not any penalty is otherwise imposed, for the cost of replacing or repairing such property, and such cost shall be recoverable by the Service by deductions from any monies due to such person and shall be a civil debt due from such a person to the Service.</p>

<p>Prohibition of false representations as to association with Service</p>	<p><b>23.</b> Any person who, without prior written approval of the Director General, in connection with any activity carried on by him takes assumes uses or in any manner publishes any name, description, title or symbol indicating or conveying or purporting to indicate or convey or which is calculated or is likely to lead other persons to believe or infer that such activity is carried on under or by virtue of the provisions of this Act or under the patronage of the Service, commits an offence and shall on conviction be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding one million shillings or to both.</p>
<p>Offences in connection with officers of the Service</p>	<p><b>24.</b> Any person, who-</p> <ul style="list-style-type: none"> <li>(a) not being the Director General or officer of the Service, by words, conduct or demeanour falsely represents himself to be the Director General or officer of the Service; or</li> <li>(b) exercises or attempts to exercise undue influence over the Director General or any officer of the Service, which is calculated to prevent the Director General or any officer of the Service from carrying out his duties or encouraging him or her to perform any act which is in conflict with his duties; or</li> <li>(c) is an accomplice to the commission of any act whereby any lawful order given the Director General or any officer of the Service or any regulation or directive or any rule may be evaded</li> </ul> <p>commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one million shillings or to both.</p>

Prohibition of disclosure of identity

**25.** (1) Any person who has at his disposal information which he has obtained or to which he had access by virtue of -

(a) the performance of his duties or functions under this Act; or

(b) his position as a person who holds or has held any office in the Service or public service;

and from which the identity of any person who -

(i) is or was a confidential source of information to the Service; or

(ii) is or was an officer of the Service engaged in covert operational activities of the Service

is identified or can be inferred, and who discloses such information to any person other than a person to whom he or she is authorised to disclose it or to whom it may lawfully be disclosed, commits an offence.

(2) Any person who publishes or causes to be published in a newspaper or other publication, or by radio broadcast or television or other media or otherwise makes public any information from which it could be reasonably be inferred, that a person having a particular name or otherwise identified, or a person residing at a particular address;

(i) is or was a confidential source information to the Service; or

(ii) is or was an officer of the Service engaged in covert operational activities of the Service.

commits an offence.

(3) Any person who commits an offence under this section shall, on conviction, be liable to imprisonment for a mandatory term not exceeding fourteen years.

<p>Prohibition of access to premises of the Service</p>	<p><b>26.</b>(1) The Cabinet Secretary may, by notice in the Gazette, or in such other manner as he may deem sufficient in the circumstances, prohibit or restrict access to any land or premises under the control of the Service.</p> <p>(2) The Cabinet Secretary may take or cause to be taken such measures as he may deem necessary for the security of, or the application of a prohibition of or a restriction on access to, any land or premises referred to in subsection (1), and may in connection with any measures so taken cause such notices to be published or such warning notices to be erected as he may, in each particular case, deem necessary.</p> <p>(3) Any person who-</p> <ul style="list-style-type: none"> <li>(i) enters upon or is on any land or enters upon or is on any premises in contravention of a prohibition or restriction under subsection (1);</li> <li>(ii) takes a photograph of a prohibited land or premises of the Service or who takes a photograph in a prohibited land or premise of the Service without having first obtained the authority of the Director General</li> </ul> <p>commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or a fine not exceeding three hundred thousand shillings, or to both.</p>
<p>Prohibition of unauthorized access and retention of information</p>	<p><b>27.</b> Any person, who without lawful authority or excuse, obtains or attempts to obtain, or has in his possession or retains any classified information, document or record commits an offence and shall, on conviction, be liable to imprisonment for a mandatory term not exceeding seven years.</p>
<p>Obstruction of Director General and officers of Service</p>	<p><b>28.</b> Any person who assaults, willfully obstructs, hinders, resists, knowingly lies, misleads, unduly influences or exerts pressure on the Director General or any officer of the Service or any person acting under the direction of the Director General or such other officer in the due execution of his duties under this Act commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or a fine not exceeding three hundred thousand shillings, or to both.</p>

Prohibition of unauthorized disclosure of information	<p><b>29.</b> (1) Any person who-</p> <ul style="list-style-type: none"> <li>(a) discloses or uses any information gained by him by virtue of his or her employment otherwise than in the strict course of his or her official duties or without the authority of the Director- General;</li> <li>(b) by a warrant, is authorized to obtain or seize any information, material, record, document or thing or any other source material or is requested to give any information, material, record, document or thing or any other source material or to make the services of other persons available to the Service and discloses the warrant, or discloses or uses any information gained by or conveyed to him or her when acting pursuant to the warrant, otherwise than as authorized by the warrant or by the Director-General;</li> <li>(c) acquires knowledge of any information knowing that it was gained as a result of any warrant or seizure in accordance with such warrant and discloses that information otherwise than in the strict course of his or her duties or without the authority of the Director- General;</li> <li>(d) receives or acquires classified information by virtue of his or her association or engagement with the Service or while being entitled to so receive or acquire and discloses or uses such information otherwise than in the strict course of his or her duty or without the authority of the Director General;</li> <li>(e) receives classified information from the Service while being entitled to so receive and identifies or otherwise discloses the Service as the originator or author of such information without the authority of the Director General;</li> <li>(f) receives classified information, knowing or having reasonable grounds for believing that, the information was obtained or communicated to him or her in contravention of this Act and discloses such information to any person other than the Director General or an officer of the Service; or</li> <li>(g) communicates any classified information or causes the leakage of such classified information to any person other than a person whom he is authorized to communicate it or to whom it is in the interest of the Republic his duty to communicate it;</li> </ul> <p>commits an offence and shall, on conviction, be liable to imprisonment for a mandatory term not exceeding fourteen years.</p> <p>(2) The provisions of this Section shall apply even after expiry or termination of employment, association or engagement with the Service.</p> <p>(3) The limitation on disclosure in this section shall not be construed to prevent the disclosure of criminal activity.</p>
Attempts etc	<p><b>30.</b> Any person who attempts to commit any offence under this Act or solicits or incites or procures another person to commit any such offence, or aids or abets or does anything preparatory to the commission of an offence under this Act commits an offence and shall on conviction be liable to imprisonment for a term not exceeding three years or a fine not exceeding five hundred thousand shillings, or to both.</p>

## PART IV - WARRANTS

Warrants for entry, search, seizure etc

**31.** (1) Where the Director-General believes on reasonable grounds that a warrant under this section is required to enable the Service to investigate any threat to national security or to perform any of its functions under this Act, he may make an *ex-parte* application to a judge of the High Court for a warrant in accordance with subsection (2).

(2) An application to a judge under subsection (1) shall be made in writing and shall be accompanied by an affidavit of the applicant deposing to the following matters, namely-

(a) the purpose for which the warrant is sought;

(b) whether other investigative procedures have been tried and have failed or are unlikely to succeed, or whether the urgency of the matter is such that it would be impracticable to carry out the investigation using any other investigative procedures or that without a warrant under this section it is likely that information of importance with respect to the threat to the security of the Republic or the performance by the Service of its functions under this Act would not be obtained;

(c) the type of information, material, record, document or thing proposed to be obtained and the power referred to in subsection (5) proposed to be exercised for that purpose;

(d) the identity of the person, if known, to whom the warrant is directed or who has possession of the information, material, record, document or thing proposed to be obtained;

(e) the person or class of persons to whom the warrant is proposed to be directed;

(f) a general description of the place where the warrant is proposed to be executed, if a general description of that place can be given;

(g) if the assistance of any person in implementing the warrant will be sought, sufficient information for a judge so to direct;

(3) A judge may issue a warrant under this section authorizing the taking of such action as is specified in the warrant in respect of any person, property or thing specified therein if the judge reasonably believes that it is necessary for the action to be taken in order to obtain any information, material, record, document or thing which is likely to be of substantial value in assisting the Service in the investigation in question and which cannot reasonably be obtained by any other means.

(4) Where the Director-General intends to seek the assistance of any person in executing the warrant, the judge shall upon the Director-General's request, direct appropriate persons to furnish information, facilities or technical assistance necessary to execute the warrant.

(5) Without prejudice to subsection (3) a warrant issued under that subsection shall authorize the Service to obtain any information, material, record, document or thing and for that purpose –

- (a) to enter any place, or obtain access to anything;
- (b) to search for or remove or return, examine, take extracts from, make copies of or record in any other manner the information, material, record, document or thing; or
- (c) install, maintain or remove anything.

(6) A warrant issued under this section shall be valid for a period not exceeding three months at a time.

(7) The judge who issued a warrant or an officer acting in his stead may, upon a written application made by the Director-General before the expiry of the period or extended period for which the warrant has been issued, extend that period for a further period not exceeding three months at a time if the judge is convinced that the extension is necessary for the reasons mentioned in subsection (3).

(8) If, upon an application made by the Director-General before the expiry of the period or extended period for which a direction has been issued, the judge is convinced that the grounds on which the warrant was issued have ceased to exist, the judge shall cancel the warrant.

(9) (a) Where a judge is satisfied that the urgency of the circumstances so requires-

- (i) he may dispense with the requirements for a written application and proceed to hear an oral application for a warrant, or for the extension of a warrant; and
- (ii) is satisfied that a warrant is necessary as mentioned in subsection (3) or that extension is justified as provided for in subsection (6), he shall issue the warrant, or as the case may be, extend the warrant, in accordance with this section.

(b) Where a warrant is issued or extended under this subsection, the Director-General shall within seventy two hours from the time of issuance, or as the case may be, the extension thereof, submit to the judge a written application.

(c) If the Director General fails to submit a written application as provided in this subsection, or the judge is not satisfied that the warrant continues to be necessary, he shall make an order terminating the warrant.

(10) In the event of extreme emergency or existence of exceptional circumstances, the Director General may exercise powers under subsection (5), whether or not an application referred to in subsection (1) has been made or not, provided that the Director General shall, as soon as practical but not later than thirty six hours after exercising any of the powers under subsection (5) make an application to a judge in accordance with the provisions of this section.

(11) The application referred to in this section shall be made by the Director General or an officer authorized for that purpose by the Director General.

(12) A person aggrieved by the issuance of a warrant or by the extension of the period of a warrant under this section may appeal to the Court of Appeal within fourteen days.

## PART V – OVERSIGHTS

National Security Council	<p><b>32.</b> In accordance with Article 240 of the Constitution, the National Security Council shall-</p> <ul style="list-style-type: none"><li>(a) exercise supervisory control over the Service; and</li><li>(b) integrate domestic and foreign policies relating to national security in order to enable the Service to co-operate with other national security organs and function effectively.</li></ul>
National Intelligence Council	<p><b>33.</b>(1) There is established a Council to be known as the National Intelligence Council which shall consist of -</p> <ul style="list-style-type: none"><li>(a) the Cabinet Secretary, who shall preside at meetings of the Council;</li><li>(b) the Cabinet Secretary for the time being responsible for matters relating to foreign affairs;</li><li>(c) the Cabinet Secretary for the time being responsible for matters relating to finance;</li><li>(d) the Cabinet Secretary for the time being responsible for matters relating to public service; and</li><li>(e) the Attorney-General;</li></ul> <p>(2) The Director-General shall be Secretary to the Council.</p> <p>(3) The functions of the Council shall be -</p> <ul style="list-style-type: none"><li>(a) to advise the Service generally on all matters pertaining to -<ul style="list-style-type: none"><li>(i) national security and intelligence policies;</li><li>(ii) the administration of the Service;</li><li>(iii) the expenditure of the Service; and</li></ul></li><li>(b) to perform such other functions as are conferred on it by this Act or by any other written law.</li></ul> <p>(4) For the better carrying out of its functions under this Act, the Council may establish such functional committees of the Council as it may deem necessary.</p> <p>(5) The Cabinet Secretary shall, in regulations, prescribe the manner of discharging the functions of the Council under this section, including the procedure for meetings of the Council and any committees thereof, but subject thereto, the Council may regulate its own procedure.</p>

<p>Complaints Commission.</p>	<p><b>34.</b> (1) There is established a Commission to be known as the Complaints Commission which shall consist of the following members, all of whom shall be appointed by the President on the recommendation of the Judicial Service Commission.</p> <p>(a) a chairperson who shall be a person who holds office as a judge of the High Court;</p> <p>(b) four other members of whom -</p> <ul style="list-style-type: none"> <li>(i) one shall be an advocate of not less than ten year's standing;</li> <li>(ii) one shall be retired senior intelligence officer;</li> <li>(iii) one shall be a religious leader of national repute; and</li> <li>(iv) one shall be person of integrity who has held a public office.</li> </ul> <p>(2) The chairperson or a member of the Commission shall hold office for a period of three years but shall be eligible for reappointment:</p> <p>provided that no chairperson or member shall hold office for more than two terms.</p> <p>(3) The chairperson or a member of the Commission may resign his office by writing under his hand addressed to the President which resignation shall take effect from the date of receipt of the letter of resignation by the President.</p> <p>(4) If the chairperson or a member of the Commission vacates office before the expiry of his or her term of office, the President shall appoint another person in his or her place.</p> <p>(5) Where the chairperson or a member is unable to perform the functions of his office due to any temporary incapacity which is likely to be prolonged, the President may appoint a substitute for the chairperson or member until such time as the President determines that the incapacity has ceased.</p>
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Powers and functions of the Commission

**35. (1)** The functions of the Commission shall be-

(a) to receive and inquire into complaints against the Service made by any person aggrieved by anything done by the Director-General or any officer of the Service in the exercise of the powers or the performance of the functions of the Service under this Act;

(b) to inquire into the question of removal of the Director General; and

(c) to inquire into any other matter referred to it by the President under this Act;

and make its recommendation thereon to the President.

(2) Subject to subsection (3), for the purpose of investigating any complaint under this Act, the Commission shall have the powers of the High Court to summon any witnesses, to administer oaths or affirmations and to order the production of any records or documents relevant to the investigation:

provided that no person shall be compellable under any such summons to produce any document which he could not be compelled to produce at the trial of a suit.

(3) In the discharge of its functions under this Act, the Commission shall have regard to the requirements of national security and for that purpose shall-

(a) consult the Director-General and the Council, except under the circumstances envisaged under subsection 1(b), in determining information or circumstances under which certain information may not be disclosed in the course of or in relation to any inquiry in the interests of national security;

(b) take all the necessary precautions to prevent the disclosure of-

(i) any information which in its opinion may not be disclosed in the course of or in relation to any inquiry; and

(ii) the source of any such information.

(4) The Commission may hear separately and in private, such evidence as may be tendered by the complainant and the Director-General in connection with the complaint.

	<p>(5) If at any stage during the course of an inquiry, the Commission is of the opinion that there is evidence of any breach of duty or misconduct by any officer of the Service, it shall forthwith inform the President and the Council or the Director-General and subject to the provisions of this Act, appropriate disciplinary action shall be taken against such officer.</p> <p>(6) The Commission shall inform the complainant in writing of its conclusions and shall make a report of its findings to the President and the Council with such recommendations as it considers appropriate.</p> <p>(7) The Cabinet Secretary may, in regulations, prescribe the manner of discharging the functions of the Commission under this section including the procedure for proceedings of the Commission, but subject thereto, Council shall regulate its own procedure.</p>
<p>Proceedings findings, etc</p>	<p><b>36.</b> (1) No proceedings shall lie against the chairperson or any member of the Commission in respect of anything done <i>bonafide</i> in the performance of the functions of commission or the exercise of the powers of the Commission under this Act.</p> <p>(2) The Chairperson or member of the Commission shall not be called upon to give evidence in any court or in any proceedings of a judicial nature, in respect of anything in his or her knowledge by virtue of the powers or the functions of the Commission under this Act.</p> <p>(3) Anything said or any information supplied or any document or material produced by any person in the course of any inquiry by, or proceedings before the Commission shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a court.</p> <p>(4) Any person who is aggrieved by any the decision of the Commission may apply for judicial review.</p>
<p>Funds of the Commission</p>	<p><b>37.</b> The funds of the Commission shall consist of-</p> <p>(a) monies appropriated by Parliament for the purposes of the Commission; and</p> <p>(b) such monies or assets as may accrue to the Commission in the course of the exercise of its powers or the performance of its functions under this Act.</p>

**38.** (1) There shall be a Committee to be known as the Parliamentary Intelligence Oversight Committee consisting of Members of the National Assembly elected in accordance with the Standing Orders of the National Assembly.

(2) The function of the Committee shall be to exercise oversight over the administration, expenditure and policy of the Service and report thereon to Parliament.

(3) Members of the Committee shall be subject to security vetting by the Service and shall before assuming their duties, make and subscribe to the oath or affirmation prescribed in the Second Schedule.

(4) The Committee shall conduct its functions within a ring of secrecy and in a manner consistent with the protection and promotion of national security.

(5) Except in the strict performance of his functions under this Act, no member of the Committee may disclose any information or document gained by him in the performance of his functions under this Act.

(6) The Committee shall not include in its report to Parliament anything the inclusion of which will be prejudicial to the protection and promotion of national security.

(7) The proceedings of the Committee shall not be open to the public.

(8) Notwithstanding anything to the contrary contained in this Act or any other written law, the Service shall not be obliged to disclose to the Committee-

(a) information from which the name or identity of any person who is a confidential source of information to the Service may be disclosed or inferred;

(b) information from which the name or identity of an officer of the Service engaged in covert operations may be disclosed or inferred;

(c) information from which the intelligence collection methods, sources of information and operations of the Service may be disclosed or inferred.

(9) Any person who fails to comply with this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding one million shillings or to both.

## PART VI – MISCELLANEOUS PROVISIONS

<p>Destruction of classified information, records, etc.</p>	<p><b>39.</b> (1) The Director General shall prescribe procedures for the destruction of classified information and other records.</p> <p>(2) Subject to the provisions of subsection (1), any person who obtains or seizes any classified information, material, record, document or other thing for the purposes of this Act shall, as soon as reasonably practicable after he has obtained or seized it, destroy any copy that he may make of it or any part thereof, and any record thereof, whether in writing or otherwise.</p> <p>(3) Any person who fails to comply with subsection (2) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding two years or to a fine not exceeding three hundred thousand shillings or to both.</p>
<p>Immunity and Non-compellability of Director General and officers of Service</p>	<p><b>40.</b> (1) No proceedings shall lie against the Director General or any officer of the Service in respect of anything done <i>bonafide</i> in the performance of the functions of the Service or the exercise of the powers of the of the Service under the Constitution or this Act.</p> <p>(2) Except as provided by the Constitution, the Director General, any officer of the Service or any other person who acquires knowledge or information as a result of association or connection, engagement, duty or service with the National Intelligence Service shall not be compellable in proceedings in a court, tribunal, commission of inquiry or any other body to produce any document or to disclose information or a matter or a thing related to the exercise of powers or performance of the functions of the Service under this Act.</p>
<p>Role of Ministries, Departments in relation to national security</p>	<p><b>41.</b> (1) It shall be the duty of every Government Ministry, Department or Agency to afford the Service the cooperation and assistance necessary to enable it to perform its functions under the Constitution and this Act.</p> <p>(2) It shall be the duty of every Government Ministry, Department or Agency that is in possession of information relating to national security or other information which may be of value to the Service for the purposes of performing its functions under the Constitution and this Act to transmit such information without delay to the Service, whether or not the Service has requested for it.</p> <p>(3) It shall be the duty of every Government Ministry, Department or Agency that receives intelligence from the Service to comply with or otherwise utilise such intelligence.</p> <p>(4) Except with the prior consent of the Service, no Government Ministry, Department or Agency shall directly or indirectly engage with, enter into arrangement or otherwise associate with a foreign intelligence service.</p> <p>(5) A failure by any Government Ministry, Department or Agency to comply with this section shall be referred to the National Security Council established under Article 240 of the Constitution for determination and appropriate action.</p>

General Penalty	<b>42.</b> Any person who is guilty of an offence under this Act for which no other penalty is expressly provided shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding two hundred thousand shillings or to both.
Extraterritorial application of the Act	<b>43.</b> Any act, omission or other conduct constituting an offence under this Act, shall constitute such offence wherever such conduct took place whether within or outside the Republic.
Annual report.	<b>44.</b> The Director-General shall, within three months after the end of each calendar year, furnish to the President, the National Security Council and the Council a report of the activities of the Service during that year.
Regulations.	<b>45.</b> The President may make regulations, not inconsistent with this Act, prescribing anything required by this Act to be prescribed or generally for the better carrying out of the provisions of this Act.
Transition and saving	<p><b>46.</b> (1) Any person who, immediately before the commencement of this Act, was a Director General, director, an officer or employee of the National Security Intelligence Service established under the National Security Intelligence Service Act No. 11 of 1998, shall be deemed to have been appointed in accordance with the provisions of this Act.</p> <p>(2) Anything done, including any regulation made or directive or instruction issued or other administrative measure taken or any contract entered into or any obligation incurred under the National Security Intelligence Service Act or any other law repealed by this Act and in force immediately before the commencement of this Act, shall remain in force and shall be deemed to have been made, issued, taken, entered, into or incurred, as the case may be, under this Act until amended, withdrawn or repealed under this Act.</p>
Repeal of No.11 of 1998	<b>47.</b> The National Security Intelligence Service Act is hereby repealed.

**FIRST SCHEDULE**

(s. 11)

**OATH/AFFIRMATION OF ALLEGIANCE**

I. .... (full names) DO HEREBY SWEAR BY THE ALMIGHTY GOD/SOLEMNLY AND SINCERELY AFFIRM THAT I shall be faithful and bear true allegiance to the President and the Republic of Kenya during my service. in the National Intelligence Service; THAT I will at all times do my best to preserve the national security of Kenya; THAT I shall discharge all the duties devolving upon me by virtue of my appointment according to law without fear, favour, affection or ill-will: THAT I shall subject myself to the National Intelligence Service Act and to all other Acts and the Orders and Regulations now or in the future in force relating to my service in the National Intelligence Service; SO HELP ME GOD.

SWORN/AFFIRMED by the said..... at

.....this.....day of .....20.....

Signature.....

BEFORE.....

**OATH/AFFIRMATION OF SECRECY**

I.....(full names) DO HEREBY SWEAR BY THE ALMIGHTY GOD/SOLEMNLY AND SINCERELY AFFIRM THAT I will not, without due authority, disclose or make known to any person any information acquired by me by reason of the duties performed by me on behalf or under the direction of the National Intelligence Service or by reason of any office or employment held by me pursuant to the National Intelligence Service Act. SO HELP ME GOD.

SWORN/AFFIRMED by the said..... at

.....this.....day of .....20.....

Signature.....

BEFORE.....

**SECOND SCHEDULE (s. 38)**

**OATH/AFFIRMATION OF SECRECY FOR A MEMBER OF THE PARLIAMENTARY INTELLIGENCE OVERSIGHT COMMITTEE**

I.....(full names) having been elected a member of the Parliamentary Intelligence Oversight Committee, DO HEREBY SWEAR BY THE ALMIGHTY GOD/SOLEMNLY AND SINCERELY AFFIRM THAT I will not, except in the performance of the functions of the Committee, disclose or make known to any person any information acquired by me by reason of my appointment. THAT I SHALL NOT retain any article, document or record which is no longer needed in the performance of the said functions. SO HELP ME GOD.

SWORN/AFFIRMED by the said..... at

.....this.....day of .....20.....

Signature.....

BEFORE.....

## MEMORANDUM OF OBJECTS AND REASONS

The principal purpose of this Bill is to amend the law relating to National Intelligence Service in order to give effect to the Constitution; to provide for the composition, functions, powers, control and administration of the National Intelligence Service; to provide for appointment of the Director General of the Service; to provide for the issuance of warrants authorizing certain actions to be undertaken by the Service in the national interest; to provide for the establishment of the National Intelligence Council, the Complaints Commission and the Parliamentary Intelligence Oversight Committee and other related matters.

**Part I** (Clauses 1-3) provides for preliminary matters, interpretation of terms and phrases, and application of the Bill.

**Part II** (Clauses 4-19) provides for the composition, functions, powers and administration of the Service.

Clause 4 provides that the Service shall comprise of the Director General, Directors and other officers of the Service. It also provides that all persons who were immediately before the commencement of this Act officers, employees or members of the National Security Intelligence Service established under the National Security Intelligence Service Act shall upon commencement of the Act become members of the Service.

Clause 5 provides for the functions of the Service. These include, responsibility for security intelligence and counter intelligence to enhance national security, gathering departmental intelligence at the request of any Government Department or Agency, regulation of the flow of security intelligence, security vetting, and making recommendations to the President in connection with policies concerning security intelligence, security intelligence priorities and security measures in Government Ministries, departments or agencies.

Clause 6 defines the powers necessary of the Service and provides that such powers shall only be exercisable in the interests of national security.

Clauses 7-8 provide for the qualifications for appointment of the Director General, appointment procedures, grounds for removal from office, as well as functions and powers of the Director General.

Clauses 9 -11 provide for the establishment of the Divisions of the Service, each to be headed by a Director appointed by the Director General, and provides for functions and powers of other officers of the Service.

Clauses 12-15 provide for making of oaths and affirmations by all officers on appointment, issuance of certificate of identity and appointment to all officers, scheme of service for all officers which shall be prescribed by the Public Service Commission in consultation with the Director General, and establishment of a contributory pension scheme for officers of the Service.

Clauses 16-18 deal with issues of discipline, code of conduct and ethics and grievance mechanism for officers of the Service.

Clause 19 provides for instances when of certain rights and fundamental freedoms of officers of the Service and other persons may be limited. These include; protection of classified information, maintenance and preservation of national security, security and safety of officers, independence and integrity of the service, and for purposes of ensuring that enjoyment of rights and freedoms does not prejudice the rights and freedoms of others.

**PART III** (Clauses 20 – 30) provides for offences and penalties under the Act.

Clause 20 prohibits officers of the Service from subjecting any person to torture or any other cruel, inhuman or degrading treatment, and prescribes punishment for such conduct.

Clause 21 creates the offence of desertion and prescribes punishment for the same while Clause 22 requires any officer who exits the Service to surrender service property issued to him or her failure to which such officer will be deemed to have committed an offence.

Clauses 23- 30 provide for offences and penalties in connection with officers of the Service and other persons. These include; prohibition of false representations as to association with the Service; prohibition of disclosure of identity; prohibition of access to premises of the service; prohibition of unauthorized access and retention of information; prohibition of unauthorized disclosure of information; willful obstruction of officers of the Service by any person and attempts to commit an offence.

**PART IV** (Clause 31) provides for the issuance of warrants by a High Court judge authorizing certain actions to be undertaken by the Service in the national interest. Such actions include entry, search and seizure. It also prescribes the procedure for the application and issuance of warrants, the limitation of warrants and redress avenue for those aggrieved by the issuance of warrants.

**PART V** (Clauses 32-38) establishes various bodies responsible for advising and exercising oversight over expenditure, administration, policy and activities of the Service.

Clause 32 restates the supervisory role of the National Security Council over the Service as provided in Article 240 of the Constitution.

Clause 33 establishes the National Intelligence Council, its composition and functions. The National Intelligence Council shall advise the Service generally on all matters pertaining to national security and intelligence policies, administration of the Service and the expenditure of the Service.

Clause 34 establishes the Complaints Commission comprising of a Chairperson who shall be a judge of the high Court and four other members all of whom shall be appointed by the President on the recommendation of the Judicial Service Commission.

Clause 35 sets out the powers and functions of the Complaints Commission which include investigating complaints from members of the public against the Director General and officers of the Service and inquiring into the question of removal of the Director General from office.

Clause 36 provides for immunity from liability of the chairperson and any member of the Complaints Commission for certain actions while Clause 37 provides for the source of the Complaints Commission's funds.

Clause 38 provides for the establishment of the Parliamentary Intelligence Oversight Committee whose function is to exercise oversight over the administration, expenditure and policy of the Service and report thereon to Parliament. It also provides for safeguards to ensure protection of classified information, sources of information and intelligence collection methods from undue disclosure.

**Part VI** (Clauses 39-47) makes miscellaneous provisions including the following:-

- (a) Destruction of classified information and records;
- (b) Immunity and non-compellability of the Director General and officers of the Service;
- (c) Role of Government Ministries, Departments and Agencies in relation to national security;
- (d) General penalty;
- (e) Extraterritorial application of the Act;
- (f) Annual report to be furnished by the Director General to the Council and the National Security Council;
- (g) Powers of the Cabinet Secretary to make regulations not inconsistent with this Act;
- (h) Transitional and saving provisions;
- (i) Repeal of the National Security Intelligence Service Act.

The enactment of this Bill will occasion additional expenditure of public funds to be provided through the annual estimates.

Dated the.....

**PROF. GEORGE SAITOTI,**  
*Minister of State for Provincial  
Administration and Internal Security*