

THE NATIONAL INTELLIGENCE SERVICE BILL, 2012

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PARLIAMENTARY INTELLIGENCE OVERSIGHT
COMMITTEE**

A Bill for

**AN ACT of Parliament 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; the Complaints Commission and the
Parliamentary Intelligence and Oversight
Committee and connected purposes**

ENACTED by the Parliament of Kenya as follows—

	PART I – PRELIMINARY
Short title and commencement	1. This Act may be cited as the National Intelligence Service Act, 2012 and shall come into operation on publication in the <i>Gazette</i> .
Interpretation.	2. (1) In this Act, unless the context otherwise requires – “acts of foreign interference” means activities relating to the Republic that are carried on by or on behalf of or are directed or financed by or are undertaken in collaboration with a foreign power, being activities that- (a) are clandestine or deceptive and- (i) are carried on for intelligence purposes; (ii) are carried on for the purpose of affecting economic, social, political or governmental processes; or (iii) are otherwise detrimental to the national security interests of the Republic;

	<p>(b) involve a threat to any person.</p> <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>"classified information" means information of such a sensitive nature and value that the unauthorized publication or disclosure thereof would prejudice the protection or promotion of national security and national interests;</p> <p>"Commission" means the Complaints Commission established under section 37;</p> <p>“Committee” means the Parliamentary Intelligence and Oversight Committee established under section 41;</p> <p>“counter-intelligence” means information gathered and activities conducted to impede or neutralize the intentions and activities of foreign powers, counter subversion, sabotage, espionage or any hostile activity aimed at or against the people, institutions, installations, processes or resources of the Republic;</p> <p>“departmental intelligence" means information which relates to any power, duty or function concerning the security of Kenya which has been entrusted to any State Department or Agency under any law and may be required by that State Department or Agency in the exercise of any such power or the performance of any such duty or function;</p>
	<p>“Director” means a director of any of the divisions of the Service established under section 14;</p> <p>"Director-General" means the Director-General of the Service, appointed under section 7;</p> <p>“domestic intelligence” means intelligence on an internal threat or potential threat to national security or opportunities relevant for the protection and promotion of national security</p>

	<p>and national interests;</p> <p>“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;</p> <p>“foreign power” means-</p> <ul style="list-style-type: none">(a) a foreign government;(b) a foreign organization;(c) foreign person; or <p>an entity that is directed or controlled by a foreign government, foreign organization or foreign person;</p> <p>"intelligence" means information which has been collated, evaluated 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;</p>
	<p>“national security” has the same meaning assigned to it under Article 238 of the Constitution;</p> <p>“National Security Council” means the National Security Council established by Article 240 of the Constitution;</p> <p>“officer” means a person employed by the Service;</p> <p>“organized 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;</p> <p>“person” has the meaning assigned to it under section 260 of the Constitution;</p> <p>“public officer” has the meaning assigned to it under section 260 of the Constitution;</p>

	<p>“Public Service Commission” means the Public Service Commission established by Article 233 of the Constitution.</p> <p>“Republic” has the same meaning assigned to it by Article 260 of the Constitution;</p> <p>“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 a subversive intention;</p> <p>“security clearance” means an authorization entitling a person to have access to classified information;</p>
	<p>“Salaries and Remuneration Commission” means the Salaries and Remuneration Commission established by Article 230 of the Constitution;</p> <p>“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;</p> <p>“Service” means the National Intelligence Service established by Article 242 of the Constitution;</p> <p>“State Office” has the same meaning assigned to it by Article 260 of the Constitution;</p> <p>“threat ” means -</p> <ul style="list-style-type: none">(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

	<p>overthrow by unlawful means of the constitutionally established system of government in the Republic;</p> <p>(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</p> <p>(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;</p> <p>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> <p>“vettable post” means a State Office or post or position in the Government, State Department or Agency 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>3. Unless the context otherwise requires, the provisions of this Act shall apply to the Director-General and officers of the Service, working within or outside Kenya.</p>
	<p align="center">PART II – COMPOSITION, FUNCTIONS, POWERS AND ADMINISTRATION OF THE SERVICE</p>
Composition of the Service.	<p>4. (1) The Service shall consist of -</p> <p>(a) the Director-General appointed under section 7;</p> <p>(b) the Directors appointed under section 14;</p>

	<p>(c) such other officers of the Service appointed under section 15.</p> <p>(2) In short listing, nominating or appointing persons as Director-General, Directors and officers of the Service, the President, National Assembly, the Director-General and the Council shall ensure that no more than two-thirds of the members are of the same gender, and shall observe the principle of regional balance and ethnic diversity of the people of Kenya.</p>
Functions of the Service	<p>5. (1) In addition to the functions assigned to the Service under Article 242 (2), the Service shall –</p> <ul style="list-style-type: none">(a) collect, analyse and disseminate security intelligence and counter intelligence;(b) detect and identify threats or potential threats to national security;(c) detect and identify threats or potential threats to national security;(d) safeguard and promote national security and national interests, within and outside Kenya;(e) gather, evaluate and transmit departmental intelligence at the request of any State department or Agency;-(f) regulate the flow of security intelligence between State departments or agencies;(g) vet persons seeking or holding vettable positions;(h) vet persons who apply to be registered as a Kenyan citizen;(i) vet persons seeking documents relating to security;(j) carry out protective and preventive security functions within State departments, agencies, facilities and diplomatic missions;(k) safeguard information systems and processes within State departments or agencies;(l) support and aid law enforcement agencies in detecting

	<p>and preventing terrorism, organized crime and other threats to national security;</p> <p>(m) make recommendations to the National Security Council on policies concerning security intelligence;</p>
	<p>(n) to make recommendations to the President or National Security Council on policies concerning security measures to be taken by State departments or agencies; and</p> <p>(o) 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.</p> <p>(2) The provisions of subsection (1) shall not be construed as –</p> <p>(a) depriving any person or authority any power, duty or function conferred upon that person or authority under the Constitution or any other written law; or</p> <p>(b) limiting the performance of an intelligence related function by a State department or agency.</p>
Powers of the Service	<p>6. (1) The Service shall have all powers necessary or expedient for the performance of its functions under the Constitution and this Act.</p> <p>(2) Without prejudice to the generality of subsection (1), the Service shall have the power to-</p> <p>(a) gather, collate, correlate, evaluate, interpret, disseminate and store information which is relevant in the performance of functions under this Act, whether inside or outside Kenya;</p> <p>(b) co-operate with or enter into arrangements with any person, body, organization or authority for the performance of its functions under this Act;</p> <p>(c) monitor and record electromagnetic emissions, acoustic emissions and other</p>

	<p>emissions;</p> <p>(d) take steps and measures to safeguard and promote national interests.</p> <p>(3) For purposes of executing warrants under the Act, an officer of the Service shall have the powers, privileges and immunities of a police officer.</p> <p>(4) The powers referred to subsection (1) may be exercised -</p> <p>(a) for the purpose of detecting and identifying any threat or potential threat to national security;</p> <p>(b) for the purpose of safeguarding and promoting national security and national interests; or</p>
	<p>(c) for the purpose of ensuring the enjoyment of the rights and fundamental freedoms by an individual in so far as they do not prejudice the rights and fundamental freedoms of others.</p>
<p>Director-General</p>	<p>7. (1) There shall be a Director-General of the Service who shall be appointed by the President.</p> <p>(2) The President shall nominate a person for appointment as the Director General and submit the name of the nominee to the National Assembly.</p> <p>(3) The National Assembly shall, within fourteen days after it first meets after receiving the name of the nominee-</p> <p>(a) consider the suitability of the nominee; and</p> <p>(b) either approve or reject the nominee for the appointment; and</p> <p>(c) the speaker shall notify the President of the decision of the National Assembly.</p>

	<p>(4) 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.</p> <p>(5) 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.</p>
Qualifications of the Director-General.	<p>8. (1) A person is qualified for appointment as Director General if the person-</p> <ul style="list-style-type: none">(a) is a citizen of Kenya;(b) holds a degree from a university recognized in Kenya;(c) has served as a senior intelligence officer in the Service for atleast ten years; or(d) has served in any other National Security Organ and has atleast fifteen years experience in intelligence; and(e) meets the requirements of chapter six of the Constitution. <p>(2) A person is not qualified for appointment as Director-General if the person-</p> <ul style="list-style-type: none">(a) has been a member of Parliament or county assembly;(b) has held office in a political party or trade ;(c) holds dual citizenship;(d) has been convicted of a criminal offence and has been sentenced to imprisonment for a term of more than six months;(e) has previously been removed from office for contravening the provisions of the Constitution or any other law; or

	<p>(f) is an undischarged bankrupt.</p>
Functions and powers of the Director-General.	<p>9. (1) The Director-General shall –</p> <ul style="list-style-type: none">(a) be responsible for the overall control and administration of the Service;(b) be the principal advisor to the President and the Council on matters relating to national security and intelligence;(c) report to the President on threats and potential threats to national security and national interests;(d) to control flow of information which is gathered by the Service;(e) to put in place mechanisms –<ul style="list-style-type: none">(i) to ensure that the officers of the Service are not unduly influenced in the performance of the functions;(ii) to ensure that the Service is impartial in the execution of its functions;(iii) to prevent disclosure of the operations of the Service;(iv) to prevent disclosure of classified information;(v) to protect the identity of sources of information to the Service;(vi) to protect the identity of officers of the Service;(vii) to prevent unauthorized access to the premises of the Service;and

	<p>(viii) to prevent interference with any installations of the Service.</p> <p>(2) The Director General shall have all the powers necessary or expedient for the performance of his or her functions under this Act.</p>
Tenure of office.	<p>10. The Director-General shall hold office for a term of five years and shall be eligible for re-appointment for one further term.</p>
Vacancy.	<p>11.(1) The office of the Director General shall become vacant if the holder-</p> <ul style="list-style-type: none"> (a) dies; (b) resigns by notice, in writing, to the President; (c) is unable to perform the functions of the office by virtue of mental or physical incapacity; and (d) is removed by the President in accordance with section13. <p>(2) Where the Director-General resigns from office, he shall cease to hold office one month after receipt by the President, of the written notice of resignation.</p>
Temporary incapacity.	<p>12. Where the Director-General is unable to perform the functions of the office as a result of temporary incapacity, the President shall appoint one of the Directors to act in place of the Director-General until such a time when the Director General is able to take up the office.</p>
Removal by the President.	<p>13. (1) The President may remove the Director-General from office on the following grounds -</p> <ul style="list-style-type: none"> (a) violation of the Constitution, this Act or any other written law; (b) the Director General is convicted of an offence and sentenced to imprisonment for a term of at least six

	<p>months;</p> <p>(c) physical or mental infirmity;</p> <p>(d) incompetence; or</p> <p>(e) the Director General is adjudged bankrupt.</p>
	<p>(2) Before the removal of the Director-General under subsection (1), the President shall request the Commission to-</p> <p>(a) investigate the circumstances giving rise to the proposed removal; and</p> <p>(b) make recommendations.</p>
<p>Divisions of the Service .</p>	<p>14. (1) The Service shall have the following divisions—</p> <p>(a) internal intelligence division which shall be responsible for gathering domestic intelligence;</p> <p>(b) an external intelligence division which shall be responsible for gathering foreign intelligence ;</p> <p>(c) a counter intelligence division which shall be responsible for gathering counter-intelligence;</p> <p>(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.</p> <p>(2) A division of the Service shall be headed by a Director.</p> <p>(3) Each Director shall be appointed by the Director General in consultation with the Council.</p> <p>(4) A Director shall be the administrative head of a division but shall be subject to the direction and control of the Director General.</p>
<p>Officers of the Service.</p>	<p>15.(1) There shall be such number of officers of the Service as the Director-General, may in consultation with the Council, consider 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, request for a public officer to be seconded to the Service for a specific period of time and on such terms and conditions as may be agreed upon between the Director General and the seconding body.</p> <p>(3) For the purposes of this Act, a public officer who is seconded to the Service under subsection (2) shall be regarded as an officer of the Service and subject only to the control and direction of the Director General.</p>
Oaths and affirmations.	<p>16.(1)The Director-General and every officer of the Service shall, before assuming office, make and subscribe to the respective oath or affirmation as 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>
Certificate of identity and appointment.	<p>17.(1)The Director-General shall cause to be issued to every officer on appointment, a certificate of appointment.</p> <p>(2) The certificate of appointment shall be in such form as the Director-General may prescribe by notice in the Gazette.</p> <p>(3) An officer of the Service shall produce the certificate of appointment issued under subsection (1) on being requested to do so by any person in relation to whom that officer is exercising or is about to exercise a power conferred by this Act.</p> <p>(4) An officer of the Service may, where necessary for the performance of his or her functions under the Act and with approval of the Director General, carry and use an official firearm.</p>
Scheme of service.	<p>18.(1) The Public Service Commission shall, in consultation with the Director-General and on advice of the</p>

	<p>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> <ul style="list-style-type: none"> (a) appointments, confirmation of appointments, promotions, resignations, retirements and termination of appointment; (b) scales of salaries and allowances; and (c) the designations and grades of officers of the Service. <p>(2) The terms and conditions of officers of the Service shall be reviewed at least once every four years.</p>
<p>Pension scheme and other benefits.</p>	<p>19.(1) The Director General-</p> <ul style="list-style-type: none"> (a) shall with the approval of the Council establish a pension scheme for the officers of the Service; (b) shall with the approval of the Council establish a medical scheme or fund for officers of the Service to provide for in-service and retirement medical benefits; and (c) may with the approval of the Council and subject to any written law, establish such other schemes or funds as the Director General may consider to be necessary. <p>(2) Any pension scheme, medical scheme or fund 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>
<p>Disciplinary code.</p>	<p>20.(1)The Director-General shall issue and maintain a disciplinary code for the Service which may -</p> <p>prescribe disciplinary offences;</p> <ul style="list-style-type: none"> (b) provide for the investigation, hearing and determination of disciplinary cases and the hearing of any appeals therefrom; and
	<ul style="list-style-type: none"> (c) provide for the delegation by the Director-General to any Director or officer of such disciplinary powers

	<p>as he may consider necessary.</p> <p>(2) The disciplinary code may, in addition to any other penalties, provide for the following disciplinary penalties -</p> <ul style="list-style-type: none"> (a) dismissal from the Service; (b) retirement in public interest; (c) reduction in rank or grade as the case may be; (d) reprimand; (e) admonition; (f) stoppage of salary increments; (g) fines; and (h) 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.
Code of Conduct and Ethics.	<p>21.(1) Subject to the provisions of any other written law, the Director-General shall issue and maintain a code of conduct and ethics for the officers of the Service which may provide for-</p> <ul style="list-style-type: none"> (a) professional conduct; (b) political neutrality; (c) conflict of interest; (d) conduct of private affairs; (e) dealings with foreigners; and (f) submission of declarations.
No.4 of 2003.	<p>(2) For the avoidance of any doubt, officers of the Service are bound by the Public Officers Ethics Act.</p>
Mechanism for determination of grievances.	<p>22. The Director General shall establish procedures for the consideration and adjudication of grievances in relation to officers of the Service.</p>

<p>Limitation of certain rights and fundamental freedoms.</p>	<p>23.(1) Subject to Article 24 of the Constitution, the rights and fundamental freedoms of—</p> <ul style="list-style-type: none">(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, <p>may be limited for the purposes, in the manner and to the extent set out in this Section.</p> <p>(2) A right or fundamental freedom under subsection (1) shall be limited in accordance with Article 35(1) of the Constitution only for purposes of ensuring—</p> <ul style="list-style-type: none">(a) the protection of classified information;(b) the maintenance and preservation of national security;(c) the security and safety of officers of the Service; and(d) that the enjoyment of the rights and fundamental freedoms by a person does not prejudice the rights and fundamental freedoms of others. <p>(3) The following rights and fundamental freedoms may be limited -</p> <p>the right to privacy to the extent that —</p> <ul style="list-style-type: none">(i) a person may be searched;(ii) property may searched;(iii) property may be seized;(iv) information relating to a person’s private
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	<p>affairs may be required; or</p> <p>(v) a person's communication may be intercepted or monitored ;;</p> <p>(b) the freedom of expression to the extent of limiting the freedom to impart information relating to the officers of the Service;</p> <p>(c) the right to access information held by the Service to the extent that—</p> <p>(i) an officer the Service may not furnish any person with classified information;</p> <p>(ii) an officer of the Service may not disclose or publish information relating to the operations of the Service; and</p> <p>(iii) a person may not disclose or publish information the disclosure or publication of which would be prejudicial to national security;</p> <p>(d) freedom of association to the extent of limiting the right of officers of the Service to join an association or participating in the activities of any kind of association;</p> <p>(e) the right to make political choices to the extent prohibiting officers of the Service from joining, campaigning for or participating in the activities of a political party;</p> <p>(f) the right to assemble, demonstrate, picket and petition public authorities to the extent of ensuring discipline in the Service; and</p> <p>(g) 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>PART III - OFFENCES</p>
<p>Prohibition of certain conduct of officers of the</p>	<p>24. Any officer of the Service, who-</p>

<p>Service.</p>	<p>(a) acts as a agent, campaigns for or otherwise engages in the activities of a political party; or</p> <p>(b) enters, searches any private premises or seizes any material otherwise than as provided for under section 31,</p> <p>commits an offence and is liable, on conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding three hundred thousand shillings or to both.</p>
<p>Dessertion</p>	<p>25.(1) Any officer who remains absent from duty without leave or just cause for a period exceeding twenty-one days commits an offence.</p> <p>(2) A person who commits an offence under subsection (1) is liable, on conviction, to -</p> <p>(a) dismissal;</p> <p>(b) imprisonment for a term not exceeding two years ;or</p> <p>(c) to a fine not exceeding three hundred thousand shillings or;</p> <p>(d) to both imprisonment and fine.</p>
<p>Surrender of Service property on exit.</p>	<p>26.(1) An officer of the Service who is dismissed, resigns or otherwise leaves the Service, shall surrender any property of Service to an officer designated under sub-section (2)..</p> <p>(2) The Director-General may by regulations—</p> <p>(a) designate property which should be surrendered under sub-section (1); and</p>
	<p>(b) designate an officer of the Service to receive property which is surrendered under subsection (1).</p> <p>(3) An officer of the Service who —</p> <p>(a) fails to comply with subsection (1);or</p> <p>(b) who returns property in a damaged condition, the damage not being attributed to the proper discharge</p>

	<p>of duties in the Service, commits an offence.</p> <p>(4) A person who commits an offence under this section, shall, on conviction and notwithstanding any other penalty that may be imposed on him or her be liable for the cost of replacing or repairing such property.</p> <p>(5) The cost of replacing or recovering property under this section may be recovered-</p> <p>(a) by deductions from any monies due to such person; or</p> <p>(b) as a civil debt .</p>
Prohibition of false representations as to association with Service.	<p>27. Any person who, without prior written approval of the Director General, in connection with any activity carried on by him, uses any name, description, title or symbol which is likely to lead other persons to believe is carried on under 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>
Offences in connection with officers of the Service.	<p>28. Any person, who-</p> <p>(a) falsely represents himself to be the Director General or an officer of the Service;</p> <p>(b) exercises or attempts to exercise undue influence over the Director General or any officer of the Service; or</p> <p>(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,</p> <p>commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years or to a fine not exceeding one million shillings or to both.</p>

<p>Prohibition of disclosure of identity.</p>	<p>29. (1) An officer of the Service who discloses, without the approval of the Director-General, the identity of a person who—</p> <p>(a) is a confidential source of information to the Service; or</p> <p>(b) is an officer of the Service engaged in a covert operation,</p> <p>commits an offence.</p> <p>(2) An officer who publishes, causes to be published, broadcasts, otherwise makes public, the identity of a person who—</p> <p>(a) is a confidential source of information to the Service; or</p> <p>(b) is an officer of the Service engaged in a covert operation,</p> <p>commits an offence.</p> <p>(3) Any person who commits an offence under this section is liable, on conviction to imprisonment, for a term not exceeding fourteen years.</p>
<p>Prohibition of access to premises of the Service.</p>	<p>30.(1) The Cabinet Secretary may, by notice in the Gazette, prohibit or restrict access to land or premises under the control of the Service.</p> <p>(2) Any person who-</p> <p>(a) enters the land or any premises ;</p> <p>(b) takes a photograph of the land or premises;</p> <p>without having first obtained the authority of the Director General commits an offence.</p> <p>(3) A person who commits an offence under this section is liable on conviction to -</p> <p>(a) imprisonment for a term not exceeding two years ;or</p> <p>(b) a fine not exceeding three hundred thousand shillings, or</p>

	(c) to both imprisonment and a fine.
Prohibition of unauthorized access and retention of information.	<p>31. Any person who—</p> <p style="padding-left: 40px;">(a) without the approval of the Director-General;</p> <p style="padding-left: 40px;">(b) not being an officer of the Service;</p> <p>obtains or is found in possession of classified information, documents or records commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.</p>
Obstruction of Director-General and officers of Service.	<p>32. Any person who obstructs the Director General or any officer of the Service or any person acting under the direction of the Director General or such officer in the due execution of his duties under this Act, commits an offence and is liable on conviction to—</p> <p style="padding-left: 40px;">(a) imprisonment for a term not exceeding two years ;or</p> <p style="padding-left: 40px;">(b) a fine not exceeding three hundred thousand shillings; or</p> <p style="padding-left: 40px;">(c) to both a fine and imprisonment.</p>
Prohibition of unauthorised disclosure of information.	<p>33. (1) Any person who-</p> <p style="padding-left: 40px;">(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;</p> <p style="padding-left: 40px;">(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</p>

	<p>by the warrant or by the Director-General;</p> <p>(c) discloses information gained in execution of a warrant without the authority of the Director General;</p> <p>(d) discloses information gained while in the course of duty in the Service without the authority of the Director- General;</p> <p>(e) receives classified information from the Service while being entitled to receive and discloses the Service as the originator or author of such information without the authority of the Director-General;</p> <p>(f) receives classified information, knowing or having reasonable grounds to believe 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</p>
	<p>(g) discloses classified information to any person other than the person whom he or she is authorized to communicate it ,</p> <p>commits an offence and shall on conviction be liable to imprisonment for a 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 a person from disclosing criminal activity.</p>
Attempts etc	<p>34. Any person who –</p> <p>(a) attempts to commit any offence under this Act; or</p> <p>(b) solicits or procures another person to commit an offence under this Act; or</p>

	<p>(c) aids or abets or does anything preparatory to the commission of an offence under this Act ;</p> <p>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>
	<p style="text-align: center;">PART IV – WARRANTS</p>
<p>Warrants for entry, search, seizure, etc.</p>	<p>35.(1) The Director General may apply for a warrant to enter, search or seize any property for the purpose of investigating a threat to national security.</p> <p>(2) An application under sub-section (1) shall be made <i>ex-parte</i> and before a Judge of the High Court.</p> <p>(3) An application under subsection (2) shall be—</p> <p style="padding-left: 40px;">(a) made in writing ;and</p> <p style="padding-left: 40px;">(b) be accompanied by an affidavit deposing the following matter -</p>
	<p style="padding-left: 40px;">(i) the purpose for which the warrant is sought;</p> <p style="padding-left: 40px;">(ii) whether other investigative procedures have been tried and have failed or are unlikely to succeed; or</p> <p style="padding-left: 40px;">(iii) whether the urgency of the matter is such that it would be impracticable to carry out the investigation using any other investigative procedures; or</p> <p style="padding-left: 40px;">(iv) that without a warrant it is likely that information with respect to the threat to national security would not be obtained;</p> <p style="padding-left: 40px;">(v) the type of information, material, record, document or thing proposed to be obtained;</p>

	<p>(vi) the person, if known, to whom the warrant is to directed;</p> <p>(vii) a general description of the place where the warrant is proposed to be executed; and</p> <p>(viii) if the assistance of any person in implementing the warrant will be sought, sufficient information for a judge so to direct:</p> <p>(4) 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.</p>
	<p>(5) 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.</p> <p>(6) Without prejudice to subsection (3) a warrant issued under that subsection may authorize an officer of the Service to obtain any information, material, record, document or thing and for that purpose –</p> <p>(a) to enter any place, or obtain access to anything;</p> <p>(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;</p> <p>(c) to monitor communication; or</p> <p>(d) install, maintain or remove anything.</p> <p>(7) A warrant issued under this section shall be valid for a</p>

	<p>period not exceeding one month and the period for which it has been issued shall be specified in the warrant.</p> <p>(8) 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 one month at a time if the judge is convinced that the extension is necessary for the reasons mentioned in subsection (3).</p> <p>(9) 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.</p> <p>(10) Where the judge is satisfied that the urgency of the circumstances so requires-</p>
	<p>(a) he or she may dispense with the requirements of subsection (3) and hear an oral application for a warrant, or for the extension of a warrant; and</p> <p>(b) is satisfied that a warrant is necessary as mentioned in subsection (3) or that extension is justified as provided for in subsection (8);</p> <p>he or she shall issue the warrant, or as the case may be, extend the warrant, in accordance with this section.</p> <p>(11) Where a warrant is issued or extended under subsection (10), 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.</p> <p>(12) If the Director General fails to submit a written application as provided sub-section (11) or the judge is not satisfied that the warrant should be extended, he or she shall make an order withdrawing the warrant.</p> <p>(13) In the event of extreme emergency, the Director General may exercise powers under subsection (6), whether or not an application referred to in subsection (1) has been made, provided that the Director General shall, as soon as is practically possible, but not later than thirty six hours after exercising any</p>

	<p>of the powers under subsection (6) make an application to a judge in accordance with the provisions of this section.</p> <p>(14) 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.</p> <p>(15) 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.</p>
	<p style="text-align: center;">PART V – OVERSIGHT BODIES</p>
National Intelligence Council.	<p>36.(1) (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">(a) the Cabinet Secretary, who shall preside at meetings of the Council;(b) the Cabinet Secretary for the time being responsible for matters relating to foreign affairs;(c) the Cabinet Secretary for the time being responsible for matters relating to finance;(d) the Cabinet Secretary for the time being responsible for matters relating to public service; and(e) the Attorney-General;(f) the Secretary to the Cabinet. <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">(a) to advise the Service generally on all matters pertaining to—<ul style="list-style-type: none">(i) the administration of the Service;(ii) the expenditure of the Service; and(b) to perform such other functions as are conferred on

	<p>it by this Act or by any other written law.</p> <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>
Complaints Commission.	<p>37.(1)There is established a Commission to be known as the Complaints Commission which shall consist of the following members, appointed by the President on the recommendation of the Judicial Service Commission-</p> <ul style="list-style-type: none">(a) a chairperson who shall be a person who holds or has held office as a judge of the High Court;(b) four other members of whom –<ul style="list-style-type: none">(i) one shall be an advocate of not less than seven years standing; and(ii) one shall be a religious leader of national repute; and <p>(2) A member of the Commission shall hold office for a period of three years but shall be eligible for reappointment for one further term.</p> <p>(3) A member of the Commission may resign his office by notice in writing 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) Where 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 a member of the Commission is unable to perform the functions of his or her office due to any temporary incapacity, the President may appoint a substitute for the chairperson or member until such time as the President</p>

	determines that the incapacity has ceased.
Powers and functions of the Commission.	<p>38. (1)The functions of the Commission shall be-</p> <ul style="list-style-type: none">(a) to receive and inquire into complaints against the Service made by any person aggrieved for 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;(c) to inquire into any other matter referred to it by the President under this Act; and(d) make its recommendation thereon to the President. <p>(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 -</p> <ul style="list-style-type: none">(a) to summon any witnesses;(b) to administer oaths or affirmations; and(c) to order the production of any records or documents relevant to the investigation. <p>(3) 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.</p> <p>(4) 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-</p> <ul style="list-style-type: none">(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; and

	<p>(b) take all the necessary precautions to prevent the disclosure of-</p> <p>(i) any information which in its opinion may not be disclosed in the course of or in relation to any inquiry; and</p> <p>the source of such information.</p> <p>(5) The Commission may hear separately and in private, such evidence as may be tendered by a complainant and the Director-General in connection with the complaint.</p> <p>(6) If at any stage during the course of an inquiry, the Commission receives evidence of a breach of duty or misconduct against any officer of the Service, it shall notify the President and the Council or the Director-General, as the case may be, and subject to the provisions of this Act, recommend appropriate disciplinary action against such officer.</p> <p>(7)The Commission shall inform the complainant in writing of its findings and shall make a report of its findings and recommendations to the President and the Council.</p> <p>(8) 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>
Proceedings findings, etc	<p>39. (1) No proceedings shall lie against any member of the Commission in respect of anything done in good faith in the performance of the functions of commission or the exercise of the powers of the Commission under this Act.</p> <p>(2) A 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>Funds of the Commission.</p>	<p>40.(1) (1) The funds of the Commission shall consist of-</p> <ul style="list-style-type: none">(a) monies allocated by Parliament for purposes for the purposes of the Commission;(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; and(c) all monies from any other source provided or donated to the Commission.
<p>Parliamentary Intelligence and Oversight Committee.</p>	<p>41.(1) (1) There is established a committee to be known as the Parliamentary Intelligence and Oversight Committee which shall consist of members of the National Assembly elected in accordance with the Standing Orders of the National Assembly.</p> <p>(2) Subject to any written law, the members of the Committee shall, before assuming their duties, make and subscribe to the oath or affirmation prescribed in the Second Schedule.</p> <p>(3) The Committee shall conduct its functions in a manner consistent with the protection and promotion of national security.</p> <p>(4) Except in the strict performance of his functions under this Act, a member of the Committee shall not disclose any information or document obtained by him in the performance of his functions under this Act.</p> <p>(5) The Committee shall not include in its report to the National Assembly anything which will be prejudicial to the protection and promotion of national security.</p> <p>(6) The proceedings of the Committee shall not be open to the public.</p> <p>(7) 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-</p>

	<p>(a) information from which the identity of any person who is a confidential source of information to the Service may be disclosed or inferred;</p>
	<p>(b) information from which the name or identity of an officer of the Service engaged in covert operations may be disclosed or inferred; and</p> <p>(c) information from which the intelligence collection methods, sources of information and operations of the Service may be disclosed or inferred.</p> <p>(8) 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.</p>
	<p>PART VI – MISCELLANEOUS PROVISIONS</p>
Destruction of classified information, records, etc.	<p>42.(1) (1) Subject to any written law, the Director General may prescribe procedures for the destruction of classified information and other records held by the Service.</p> <p>(2) Subject to 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 or she has obtained or seized it, destroy any copy that he or she 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>
Immunity and Non-compellability of Director-General and officers of Service.	<p>43. (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 Service under this Act.</p> <p>(2) Except as otherwise provided by order of the High Court, the Director General or any officer of the Service shall not be compellable in any proceedings in a court, tribunal, commission of inquiry to produce any document or to divulge or communicate any matter or thing relating to the exercise of</p>

	<p>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>44. (1) It shall be the duty of every person, 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 person, 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 utilize such intelligence.</p> <p>(4) If as a result of failure by a Government Ministry, Department or Agency to comply with the advice of the Service, harm or prejudice is occasioned to national security, the head of that Government Ministry, Department or Agency shall be held personally liable for the same.</p> <p>(5) Except with the prior consent of the Service, no Government Ministry, Department or Agency shall directly or indirectly engage with, enter into arrangements or otherwise associate with a foreign intelligence or security service.</p>
	<p>(6) A failure by any Government Ministry, Department or Agency to comply with this section shall be referred to the National Security Council for determination and appropriate action.</p>
<p>Funds and expenses of the Service.</p>	<p>45.(1) (1) The funds of the Service shall consist of-</p> <p>(a) monies allocated by Parliament for purposes of the Service;</p> <p>(b) such monies or assets as may accrue to the Service in the course of the exercise of its powers or the performance of its functions under this Act; and</p> <p>(c) all monies from any other source provided or</p>

	<p>donated to the Service.</p> <p>(2) The expenditure of the Service shall be charged on the Consolidated Fund without further appropriation than this Act.</p> <p>(3) The funds and expenses of the Service shall be treated as confidential and subject only to classified audit by vetted public officers.</p>
General Penalty.	<p>46. Any person who is convicted of an offence under this Act for which no 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.</p>
Extraterritorial application of the Act.	<p>47. 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.</p>
Annual report.	<p>48. The Director-General shall, within three months after the end of each calendar year, furnish to the National Security Council, the Council and the Parliamentary Intelligence and Oversight Committee a report of the activities of the Service during that year.</p>
Regulations.	<p>49. The Cabinet Secretary may make regulations, prescribing anything required by this Act to be prescribed or generally for the better carrying out of the provisions of this Act.</p>
Transition and saving.	<p>50.(1) (1) Every person who immediately before the commencement of this Act, was a member of staff or employee of the National Security Intelligence Service established under the National Security Intelligence Service Act No. 11 of 1998, shall, at the commencement of this Act, be deemed to be an employee of the Service.</p> <p>(2) A person who immediately before the commencement of this Act, was a Director General of the National Security Intelligence Service shall, at the Commencement of this Act, be deemed to be the Director General of the Service for the unexpired period of the term.</p> <p>(3) 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</p>

	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.
Repeal of No.11 of 1998.	51. 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 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 Constitution, 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 of20.....
.....

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 of20.....
.....

Signature.....

BEFORE.....

SECOND SCHEDULE (s. 38)

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

I.....(full names)
having been elected/appointed a member of the Parliamentary Intelligence and
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 of20.....
.....

Signature.....
.....

BEFORE.....

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose of this Bill is to align the National Security Intelligence Service 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 and 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.

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 exercisable by the Service and provides that such powers shall only be exercisable in the interest 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 Salaries and Remuneration Commission, 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 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 engaging in activities of political parties, subjecting any person to torture or any other cruel, inhuman or degrading treatment, entering or searching premises without a search warrant 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, seizure and monitoring of communication. 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 serving or retired 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 and 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 39-48) 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) Funds and expenses of the Service;
- (e) General penalty;
- (f) Extraterritorial application of the Act;
- (g) Annual report to be furnished by the Director General to the Council and the National Security Council;
- (h) Powers of the Cabinet Secretary to make regulations not inconsistent with this Act;
- (i) Transitional and saving provisions;
- (j) 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....., 2012.

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