



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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of the Parliament 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 197 1997

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 10 of 1997: Namibia Central Intelligence Service Act, 1997.

**NAMIBIA CENTRAL INTELLIGENCE
SERVICE ACT, 1997****ACT**

To define the powers, duties and functions of the Namibia Central Intelligence Service; to provide for the continued existence of an account for that Service and for the utilisation and control of moneys in such account; to regulate the administration and control of that Service; to provide for the issue of directions authorising certain actions to be taken by that Service if the security of Namibia is threatened; and to provide for incidental matters.

(Signed by the President on 22 September 1997)

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MEMBERS OF PARLIAMENTARY COMMITTEE ON SECURITY****SCHEDULE 4****LAWS REPEALED OR AMENDED****BE IT ENACTED** by the Parliament of the Republic of Namibia, as follows:-**Definitions**

1. In this Act, unless the context otherwise indicates -

"Account" means the Account which continues to exist in terms of section 10;

"agency" means an agency as defined in section 1(1) of the Public Service Act, but, for the purposes of this Act, does not include the Service;

"classified information" means information of such a sensitive nature and value that the unauthorised publication or disclosure thereof would lead to a security risk being posed to the State;

"Commission" means the Public Service Commission established in terms of Article 112(1) of the Namibian Constitution;

"direction" means -

- (a) for the purposes of section 19, a direction issued by a judge under subsection (1) of that section; or
- (b) for the purposes of sections 24, 25 and 26, a direction issued by a judge under subsection (2) of section 24;

"directive" means a directive made under section 33(2);

"Director" means the Director referred to in section 3(b);

"Director-General" means the Director-General referred to in section 3(a);

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"evaluate" means the process of determining and assessing whether information is possibly correct, probably correct or factually correct;

"judge" means a judge of the High Court of Namibia;

"Means Committee" means the Means Committee referred to in section 29(1)(b);

"ministerial intelligence" means information which relates to any power, duty or function concerning the security of Namibia which by or under any law has been entrusted to any office, ministry or agency, and which information may be required by that office, ministry or agency in the performance of any such power, duty or function;

"ministry" means a ministry as defined in section 1(1) of the Public Service Act;

"misconduct" means -

- (a) the commission of any offence; or
- (b) a contravention of or failure to comply with any provision of this Act which does not constitute an offence;

"monitor" includes the recording of conversations by means of a monitoring device;

"monitoring device" means any instrument, device or equipment which is used or can be used, whether by itself or in combination with any other instrument, device or equipment, to listen to or record any image or conversation;

"National Intelligence Act" means the National Intelligence Act, 1987 (Act 19 of 1987);

"office" means an office as defined in section 1(1) of the Public Service Act;

"Personnel Committee" means the Personnel Committee referred to in section 29(1)(a);

"postal article" means any letter, post-card, reply post-card, lettercard, newspaper, book, packet, pattern or sample packet or any parcel or other article in transit by post, and includes a telegram when conveyed by post;

"prescribed" means prescribed by regulation, directive or staff rule;

"Public Service Act" means the Public Service Act, 1995 (Act 13 of 1995);

"regulation" means a regulation made under this Act;

"security clearance" means an authorisation entitling a person to have access to information of a determined sensitivity or classification;

"security intelligence" means information which relates to or may be relevant to any internal or external threat or potential threat to the security of Namibia in any field;

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

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"sensitive information" includes any information -

- (a) which is likely to disclose the identification 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; or
- (c) 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;

"Service" means the Namibia Central Intelligence Service mentioned in the first column of Schedule 3 to the Public Service Act and constituted in terms of section 3 of this Act;

"staff member" means a staff member referred to in section 3(c);

"staff rule" means a staff rule made under section 33(2)(d);

"telecommunications system" includes any apparatus, instrument, pole, mast, wire, pipe, pneumatic or other tube, thing or means which is or may be used for or in connection with the sending, conveying, transmitting or receiving of signs, signals, sounds, communications or other information;

"this Act" includes the regulations, directives and staff rules made thereunder;

"threat to the security of Namibia" means -

- (a) any activity relating to espionage, sabotage, terrorism or subversion or intention of any such activity directed against, or detrimental to the interests of, Namibia, and includes any other activity performed in conjunction with any activity relating to espionage, sabotage, terrorism or subversion, but does not include any lawful advocacy, protest or dissent not performed in conjunction with any such activity;
- (b) any activity directed at undermining, or directed at or intended to bring about the destruction or overthrow of, the constitutionally established system of the Government;
- (c) any act or threat of violence or unlawful harm that is directed at or intended to achieving, bringing about or promoting any constitutional, political, industrial, social or economic objective or change in Namibia, and includes any conspiracy, incitement or attempt to commit any such act or threat; and
- (d) any foreign influenced activity within or related to Namibia that -
 - (i) is detrimental to the interests of Namibia; and
 - (ii) is clandestine or deceptive or involves any threat whatever to the State or its citizens or any other person lawfully resident in Namibia;

"vettable post" means a post in any office, ministry or agency requiring the holder thereof to have in the performance of his or her official duties access to sensitive or classified information.

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2. Unless the context otherwise indicates, the provisions of this Act shall apply in respect of the Director-General, the Director and all staff members, irrespective of whether they work in or outside Namibia.

Composition of Service

3. The Namibia Central Intelligence Service established in terms of the Namibian Constitution shall consist of -

- (a) a Director-General appointed in terms of Article 32(3)(i)(ee) of the Namibian Constitution by the President on such terms and conditions as he or she may determine;
- (b) a Director appointed in terms of section 5(1) of the Public Service Act after consultation with the President; and
- (c) such other persons appointed in terms of section 8(1) of this Act as staff members.

General powers of President

4. The President may, subject to the provisions of the Namibian Constitution, and in particular Article 27(2) thereof, and of this Act, do or cause to be done all things which in his or her opinion are necessary for the efficient superintendence and control of, and the action by and functioning of, the Service.

Powers, duties and functions of Service

5. (1) The powers, duties and functions of the Service are, subject to the provisions of subsection (2), to -

- (a) investigate, gather, evaluate, correlate, interpret and retain information, whether inside or outside Namibia, for the purposes of -
 - (i) detecting and identifying any threat or potential threat to the security of Namibia;
 - (ii) advising the President and the Government of any threat or potential threat to the security of Namibia;
 - (iii) assisting the Namibian Police Force by gathering intelligence to be used in the detection and prevention of such serious offences as may be determined by the Director-General after consultation with the Inspector-General of Police; and
 - (iv) taking steps to protect the security interests of Namibia whether political, military or economic;
- (b) gather ministerial intelligence at the request of any interested office,

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- ministry or agency, and without delay to evaluate and transmit as appropriate to that office, ministry or agency such intelligence and any other intelligence at the disposal of the Service and which constitutes ministerial intelligence;
- (c) regulate, in co-operation with any office, ministry or agency entrusted with any aspect of the maintenance of the security of Namibia, the flow of security intelligence and the co-ordination between the Service and that or any other office, ministry or agency of functions relating to such intelligence;
 - (d) assist with the carrying out of security vetting investigations for the security clearance of persons who hold or may hold vettable posts in offices, ministries and agencies or who have or may have access to any sensitive or classified information;
 - (e) make recommendations to the President in connection with -
 - (i) policies concerning security intelligence;
 - (ii) security intelligence priorities; and
 - (iii) security measures in offices, ministries and agencies; and
 - (f) perform such other duties and functions as may from time to time be determined by the President as being in the national interest.
- (2) The provisions of subsection (1) shall not be construed as -
- (a) depriving or derogating from any power, duty or function conferred upon or entrusted to any person or authority other than the Service by or under any other law;
 - (b) limiting the continuation, establishment or functions of an intelligence capability connected to any office, ministry or agency in respect of any function relating to ministerial intelligence; and
 - (c) depriving or derogating from any duty or function of a body or committee instituted by the President.

Powers, duties and functions of Director-General

6. (1) The Director-General shall -
- (a) be the principal advisor to the President and the Government on matters relating to national security and intelligence;
 - (b) report to the President or to the Cabinet, as the case may be, on threats and potential threats to the security of Namibia;
 - (c) in consultation with the President ensure that a good relationship is

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established and maintained between the Service and every office, ministry and agency, and any institution approved by the President;

- (d) 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 in terms of this Act or any other law and that no information is gathered by the Service except in so far as may be necessary for the proper performance of its functions in terms of this Act or any other law;
- (e) 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 particular section of the population or any political party or organisation in Namibia; and
- (f) as far as is reasonably practicable take steps to ensure that national security intelligence, intelligence collection methods, sources of information and the identity of staff members are protected from unauthorised disclosure.

(2) Subject to the provisions of this Act, the Director-General may, on the recommendation of the Means Committee and -

- (a) with the prior written approval of the President and of the Treasury -
 - (i) acquire or hire any land or premises, with or without any buildings thereon, which may be necessary for the efficient functioning of the Service, and erect and maintain any buildings so required; and
 - (ii) sell, let or otherwise dispose of any land or premises, with or without any buildings thereon, which are no longer required for the efficient functioning of the Service;
- (b) with the prior written approval of the President, establish such offices inside or outside Namibia and make such liaison arrangements with foreign services or agencies as he or she may deem necessary for the proper performance by the Service of its functions in terms of this Act or any other law.

(3) The Director-General shall annually, not later than 31 July of each year, submit to the President a report on the activities of the Service in terms of this Act during the period of 12 months preceding 31 March of that year and shall furnish such other information relating to anything done by the Service in terms of this Act as the President may require.

Powers, duties and functions of Director

7. The Director shall be the administrative head of the Service and shall, notwithstanding any other powers conferred or duties imposed upon him or her by or

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under this Act or any other law, but subject to the control and directions of the Director-General, be accountable for the efficient management, administration and control of the Service.

Appointment, promotion, discharge, demotion and transfer of staff members

8. (1) The Director-General may, after consultation with the Personnel Committee, but subject to the provisions of this Act, appoint any person as a staff member, and any such staff member may in accordance with those provisions be promoted, discharged, reduced in rank or grade or transferred.

(2) Subject to the provisions of section 37(3), no person may be appointed as a staff member before -

- (a) information with respect to that person has been gathered in the prescribed manner in a security vetting investigation by the Service; and
- (b) the Director, after evaluating the collected information, is reasonably of the opinion that such person may be appointed as a staff member without the possibility that such person might be a security risk or that he or she might act in a way prejudicial to the security interests of Namibia.

(3) If the Director is reasonably of the opinion that a person may be appointed as a staff member without the possibility that such person might be a security risk or might act in a way prejudicial to security interests, as contemplated in subsection (2)(b), he or she shall issue a document with respect to such person in which it is certified that such person has successfully undergone a security clearance and is regarded by him or her as security competent: Provided that the Director may withdraw such certificate if he or she should obtain information which, after evaluation by him or her, causes him or her no longer to be reasonably of the opinion that such staff member may be employed as a staff member without the possibility that such staff member could be a security risk or could possibly act in a way prejudicial to the security interests of Namibia.

(4) If -

- (a) a certificate referred to in subsection (3) is withdrawn; or
- (b) the Director-General is by written notice informed by the Director that he or she has obtained information with respect to any person deemed in terms of section 37(3) to have been appointed as a staff member which causes the Director to be reasonably of the opinion that such staff member could be a security risk or could possibly act in a way prejudicial to the security interests of Namibia,

such staff member shall be deemed unfit for further membership of the Service and the Director-General may -

- (i) discharge such staff member from the Service; or
- (ii) if the Commission has so recommended, transfer or appoint such staff member to any other post in any office, ministry or agency on such

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conditions as may be determined by the Director-General on the recommendation of the Commission.

(5) The Director-General, the Director and every staff member shall, before commencing his or her duties in terms of this Act, make and subscribe to -

- (a) an oath or solemn affirmation of allegiance; and
- (b) an oath or solemn affirmation of secrecy,

in the terms set out in Schedules 1 and 2, respectively, before -

- (i) in the case of the Director-General, the President; and
- (ii) in the case of the Director and of a staff member, the Director-General.

(6) Any document in the prescribed form purporting to have been signed by the Director-General and certifying that a person has been appointed as a staff member, shall be *prima facie* proof that that person has been so appointed.

Powers, duties and functions of staff members

9. (1) A staff member may exercise such powers and shall perform such duties as are by or under this Act or any other law conferred or imposed upon him or her, and shall in the performance of his or her functions obey all lawful directions which he or she may from time to time receive from a person having the authority to give such directions.

(2) No staff member shall be personally liable in respect of anything done or omitted to be done in good faith in the performance of his or her functions in terms of this Act.

Account and opening of bank accounts

10. (1) The Intelligence Account established by section 5 of the National Intelligence Act shall continue to exist under such name as the President may from time to time determine, which Account shall, notwithstanding anything to the contrary contained in any law, be credited with -

- (a) moneys appropriated by law;
- (b) interest derived from the investment of moneys referred to in section 14;
- (c) refunds of expenditure made at any time from the Account; and
- (d) moneys accrued to the Account from any other source.

(2) The Director may, with the prior written approval of the Director-General, open with a banking institution or banking institutions an account or accounts in respect of moneys in the Account, and where such an account or accounts have so been opened, the banking institution or banking institutions concerned shall not allow an overdraft on

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such an account or accounts: Provided that where such an account or accounts are opened with a banking institution or banking institutions outside Namibia, the prior written approval of the President shall also be obtained.

Utilisation of moneys in Account

11. The moneys in the Account shall be utilised for the defrayment of expenditure in connection with -

- (a) the administration of the Service; and
- (b) those services of a confidential nature approved from time to time by the President in writing as being in the national interest,

and such moneys shall subject to -

- (i) the provisions of this Act; and
- (ii) in the case of expenditure in connection with services referred to in paragraph (b), any conditions determined by the President,

be withdrawn from the Account.

Control of Account

12. Notwithstanding anything to the contrary contained in any law, but subject to the provisions of this Act, the Account shall be under the control of the Director who shall -

- (a) be accountable and responsible for the administration of the Account; and
- (b) keep proper account or cause proper account to be kept in accordance with the provisions of the State Finance Act, 1991 (Act 31 of 1991), of all moneys received or expended.

Audit

13. The Account shall, subject to the provisions of section 25(3) of the State Finance Act, 1991 (Act 31 of 1991), be audited by the Auditor-General.

Investment of balances

14. Notwithstanding the provisions of section 11, moneys standing to the credit of the Account which are not required for immediate use or as a reasonable working balance, may, with the prior written approval of the Director-General, but subject to the other provisions of this Act, be invested by the Director in the prescribed manner.

Unexpended balances in Account

15. Notwithstanding anything to the contrary contained in any law, any unexpended balance in the Account at the close of any financial year, including accrued

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interest on investment balances and other receipts, shall be carried forward as a credit in the Account to the next succeeding financial year.

Restriction on inspection, investigation, revision and audit

16. Notwithstanding anything to the contrary contained in any law, no inspection, investigation, revision or audit which in terms of any law has to be or may be done in connection with any matter or document concerning the Service or the Account, shall be done, unless the person who has to or may do such inspection, investigation, revision or audit has received a security clearance for that purpose.

Acquiring of services for particular task or period of time

17. The Director-General may, subject to the provisions of this Act, obtain the service of any person, body or organisation for the performance of a particular service or for any particular period.

Exemption of service facilities of Service from certain taxes, duties and fees

18. (1) No tax, duty or fee (other than customs, excise or sales duties leviable by law) shall be payable in terms of any law in respect of any service facility approved by the President, as contemplated in subsection (2), or in respect of any article on sale at such facility.

(2) The production of an official document signed by the Director-General and indicating that the President has approved any service facility for the purposes of this section, shall be conclusive proof that it is a service facility falling under this section.

(3) In this section "service facility" means any mess or institution of the Service or any premises temporarily or permanently used by the Service for providing recreation, refreshment or necessaries mainly for staff members or for the families of such staff members or for persons employed in any work in or in connection with any such mess, institution or premises.

Access to bank account of suspect

19. (1) If, on the basis of information provided by the Director-General in a written application, a judge is satisfied that there are reasonable grounds that a person, body or organisation being investigated by the Service is using a bank account for making financial transactions relating to activities for which such person, body or organisation is being investigated, the judge may, subject to the provisions of subsection (2), direct the banking institution concerned to release accounts of such financial transactions to the Director-General or to his or her duly appointed representative.

(2) A direction contemplated in subsection (1) may be issued by a judge only -

- (a) if the application referred to in that subsection is accompanied by a supporting affidavit stating the activities for which the person, body or organisation concerned is being investigated; and

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- (b) if the judge is convinced, on the grounds mentioned in the supporting affidavit, that the activities for which the person, body or organisation concerned is being investigated, relate to a threat or potential threat to the security of Namibia or to the commission of a serious offence.
- (3) A direction issued under subsection (1) shall be issued for a period not exceeding three months at a time, and the period for which it has been issued shall be specified in that direction.
- (4) The judge who issued a direction or a judge acting in his or her stead may, upon a written application made by the Director-General before the expiry of the period or extended period for which the direction has been issued, extend that period for a further period not exceeding three months at a time if the judge is convinced that the grounds on which the direction was issued, continue to exist.
- (5) An application referred to in subsection (1) or (4) shall be heard and a direction issued without any notice to the person, body or organisation to which the application applies and without hearing such person, body or organisation.
- (6) The provisions of subsection (1), in so far as they provide for a limitation on the fundamental right to privacy contemplated in Article 13 of the Namibian Constitution, are enacted upon the authority conferred by the said Article.
- (7) In this section "serious offence" means a serious offence contemplated in section 5(1)(a)(iii).
- (8) Any person who, without a direction issued under subsection (1), intentionally obtains or attempts to obtain accounts of financial transactions relating to activities for which a person, body or organisation is being investigated by the Service in terms of this Act, shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Prohibition of false representations as to association with Service

20. Any person who, without the prior written approval of the Director-General, in connection with any activity carried on by him or her takes, assumes, uses or in any manner publishes any name, description, title or symbol indicating or conveying or purporting to indicate or convey or 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, shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Offences in connection with members of Service

21. Any person, not being the Director-General or the Director or a staff member, who -

- (a) by words, conduct or demeanour pretends that he or she is the Director-General or the Director or a staff member;

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- (b) exercises or attempts to exercise undue influence over the Director-General or the Director or any staff member which is calculated to prevent him or her from carrying out his or her duties or encouraging him or her to perform any act which is in conflict with his or her duties; or
- (c) is an accomplice to the commission of any act whereby any lawful order given to any staff member or any regulation or directive or staff rule may be evaded,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Prohibition of disclosure of identity

22. Any person who has at his or her disposal information which he or she has obtained or to which he or she had access by virtue of -

- (a) the performance of his or her duties and functions in terms of this Act; or
- (b) his or her position as a person who holds or has held any office or employment in terms of this Act,

and from which the identity of any person -

- (i) who is or was a confidential source of information or assistance to the Service; or
- (ii) who is or was a staff member engaged in covert operational activities of the Service,

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, shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Prohibition of access to premises of Service

23. (1) The President may by notice in the *Gazette* or in such other manner as he or she may deem sufficient in the circumstances, prohibit or restrict access to any land or premises under the control of the Service.

(2) The President may take or cause to be taken such measures as he or she 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 or she may in each particular case deem necessary.

(3) Any person who enters upon or is on any land or enters upon or is on or

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in any premises in contravention of a prohibition or restriction in terms of subsection (1), shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Prohibition of interception and monitoring

- 24.** (1) Any person who, without a direction issued under subsection (2) -
- (a) intentionally and without the knowledge or permission of the dispatcher intercepts a communication which has been or is being or is intended to be transmitted by telephone or in any other manner over a telecommunications system; or
 - (b) intentionally monitors a conversation by means of a monitoring device so as to gather confidential or classified information concerning any person, body or organisation; or
 - (c) intentionally and without the permission of the person who is lawfully in charge or occupation of any premises enters upon the premises -
 - (i) to search the premises; or
 - (ii) to examine, copy, photograph or transcribe any record, document or other material on the premises; or
 - (iii) to remove any record, document or other material from the premises for the purposes of examining, copying, photographing or transcribing it,

with the purpose of gathering information concerning a threat or potential threat to the security of Namibia in the discharge of a function in terms of this Act,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Notwithstanding the provisions of subsection (1) or anything to the contrary contained in any law, a judge may, subject to the provisions of section 25, issue the Service with a direction authorising the Director-General, or any staff member or other person authorised thereto by the Director-General under section 26(1) -

- (a) to intercept a particular postal article or a particular communication which has been or is being or is intended to be transmitted by telephone or in any other manner over a telecommunications system;
- (b) to intercept all postal articles to or from a person, body or organisation or all communications which have been or are being or are intended to be transmitted by telephone or in any other manner over a telecommunications system to or from a person, body or organisation;

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- (c) to monitor in any manner by means of a monitoring device conversations by or with a person, body or organisation, whether a telecommunications system is being used in conducting those conversations or not; or
- (d) when reasonably necessary -
 - (i) to enter upon and search any premises;
 - (ii) to examine, copy, photograph or transcribe any record, document or other material on the premises; and
 - (iii) to remove any record, document or other material from the premises, for as long as is reasonably necessary, for the purposes of examining, copying, photographing or transcribing it.

(3) The provisions of section 26(3) and of subsection (2) of this section, in so far as they provide for a limitation on the fundamental right to privacy contemplated in Article 13 of the Namibian Constitution, are enacted upon the authority conferred by the said Article.

Issue of direction

25. (1) A direction contemplated in section 24(2) may be issued by a judge only -

- (a) upon a written application made by the Director-General; and
- (b) if the judge is convinced, on the grounds mentioned in subsection (2), that -
 - (i) the gathering of information concerning a threat or potential threat to the security of Namibia is necessary to enable the Service to properly investigate such threat or potential threat or to effectively perform its functions in terms of section 5 of this Act or any other law; and
 - (ii) such threat or potential threat cannot be properly investigated or such functions cannot be effectively performed in any other manner.

(2) An application referred to in subsection (1)(a) shall be accompanied by a supporting affidavit stating -

- (a) the facts relied on to justify on reasonable grounds the necessity for the issue of a direction so as to enable the Service to investigate a threat or potential threat to the security of Namibia or to effectively perform its functions in terms of section 5 of this Act or any other law;
- (b) that other investigative procedures have been tried and have failed, or why it appears that they are unlikely to succeed, or that the urgency of the matter is such that it would be impractical to carry out an investigation

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using only other investigative procedures or that without a direction it is likely that information of importance with respect to a threat or potential threat to the security of Namibia or the performance of the functions entrusted to the Service in terms of section 5 of this Act or any other law would not be obtained;

- (c) the type of postal article or communication proposed to be intercepted, the type of information, records, documents or other material proposed to be obtained or removed and the powers proposed to be exercised for that purpose;
- (d) the identity of the person, body or organisation, if known, whose communication is proposed to be intercepted or which is in possession of the information proposed to be obtained;
- (e) the person, body or organisation, or class or classes of persons, bodies or organisations, to which the direction is proposed to be applied; and
- (f) the place where the direction is proposed to be executed, if a general description of that place can be given.

(3) A direction issued under subsection (1) shall be issued for a period not exceeding three months at a time, and the period for which it has been issued shall be specified in that direction.

(4) The judge who issued a direction or a judge acting in his or her stead may, upon a written application made by the Director-General before the expiry of the period or extended period for which the direction 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 (1)(b).

(5) An application referred to in subsection (1)(a) or (4) shall be heard and a direction issued without any notice to the person, body or organisation to which the application applies and without hearing such person, body or organisation.

(6) 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 who issued the direction or a judge acting in his or her stead is convinced that the grounds on which the direction was issued, have ceased to exist, the judge shall cancel the direction.

Execution of direction

26. (1) If a direction has been issued under section 24(2), any staff member or other person authorised thereto by the Director-General, may execute that direction or assist with the execution thereof.

(2) The Director-General may authorise such number of staff members to assist with the execution of a direction as he or she may deem necessary.

(3) Any staff member or other person who executes a direction or assists with the execution thereof, may at any time enter upon any premises in order to install,

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maintain or remove a monitoring device, or to intercept or take into possession a postal article, or to intercept any communication, or to install, maintain or remove a device by means of which any communication can be intercepted, or to search the premises with the purpose of gathering information concerning a threat or potential threat to the security of Namibia, or to examine, copy, photograph or transcribe any record, document or other material on the premises or remove such record, document or other material from the premises, for as long as is reasonably necessary, for the purposes of examining, copying, photographing or transcribing it, for the purposes of this Act.

(4) If a direction contemplated in subsection (1) or a copy thereof is handed to the person, body or organisation responsible for -

- (a) any activity or activities mentioned in the direction; or
- (b) the rendering of any service or services to a person, body or organisation, or class or classes of persons, bodies or organisation, mentioned in the direction,

by a staff member or any other person who executes that direction or assists with the execution of that direction, the person, body or organisation concerned shall as soon as possible comply with the terms of that direction.

Directives regarding applications

27. The Judge-President of the High Court of Namibia may, after consultation with the Director-General, issue directives in which the manner and procedure of applications in terms of sections 19(1) and (4) and 25(1) and (4) are regulated.

Secrecy

28. (1) Any person, or any employee of a person, body or organisation, referred to in section 26(4) shall not disclose any information which he or she obtained -

- (a) in the performance of any function in terms of this Act; or
- (b) in the course of his or her employment and which is connected with the performance of any function in terms of this Act, whether that person or employee is involved in the performance of such function or not,

except -

- (i) to any person who of necessity requires it for the performance of his or her functions in terms of this Act;
- (ii) if he or she is a person who of necessity supplies it in the performance of his or her functions in terms of this Act; or
- (iii) such information which is required in terms of any law or as evidence in any court of law.

(2) Any person who contravenes a provision of subsection (1) shall be guilty

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of an offence and on conviction be liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Continued existence of Personnel Committee and Means Committee

29. (1) The Personnel Committee and the Means Committee established by section 42 of the National Intelligence Act shall continue to exist and shall from the commencement of this Act consist of -

- (a) in the case of the Personnel Committee -
 - (i) the Director, who shall be the chairperson; and
 - (ii) the Secretary to the Cabinet or any other person designated by him or her;
 - (b) in the case of the Means Committee -
 - (i) the Director, who shall be the chairperson; and
 - (ii) the Permanent Secretary: Finance or any other person designated by him or her.
- (2) The Personnel Committee and the Means Committee shall take care of -
- (a) matters entrusted to such committees by or under this Act; and
 - (b) such other functions entrusted from time to time to such committees by the President.

Functions of offices, ministries and agencies relating to security intelligence

30. It shall be the duty of every office, ministry and agency that comes into possession of national security intelligence or other intelligence related information which may be of value to the Service for the purposes of effectively performing its functions, to transmit such intelligence and information without delay to the Service with an indication of the reliability of the source of such intelligence or information.

Employment of Service in times of emergency

31. The President may during a state of emergency or of national defence contemplated in Article 26 of the Namibian Constitution employ the Service or any part thereof to counter any such emergency or to assist in the defence of Namibia, and may place the Service or any part thereof, while so employed, under the orders and directions of such person as he or she may for that purpose appoint.

Disclosure of information

32. (1) If the Director-General is requested by the Parliamentary Committee on Security (hereinafter in this section referred to as the Committee) to disclose

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any information to the Committee, he or she shall, subject to the provisions of subsection (2), disclose the information sought, provided -

- (a) each member of the Committee has received a security clearance pursuant to a security vetting investigation by the Service; and
- (b) if the information sought is sensitive or classified information, each member of the Committee has prior to such disclosure made and subscribed to an oath or solemn affirmation of secrecy before the Director-General in the terms set out in Schedule 3.

(2) If the President is reasonably of the opinion that it is not in the national interest that the information sought, as contemplated in subsection (1), be disclosed by the Director-General to the Committee at a specific time, he or she may determine that such information should not be disclosed, in which event such information -

- (a) shall not be disclosed within a period of six months from the date on which the President has determined that it should not be disclosed;
- (b) shall, after the expiry of the period of six months referred to in paragraph (a), but subject to the provisions of subsection (3), be disclosed to, either -
 - (i) the full Committee; or
 - (ii) only the chairperson and one other member of the Committee, which other member shall be a representative of the official opposition party,

as the President may determine;

- (c) shall, after the expiry of a period of one year from the date referred to in paragraph (a), but subject to the provisions of subsection (3), be disclosed to the full Committee, if such information has not previously been so disclosed.

(3) In the application of subsection (2)(b) and (c), the Director-General shall not disclose the information sought, unless each member of the Committee to whom such information is to be disclosed has satisfied the requirements specified in paragraphs (a) and (b) of subsection (1).

Regulations, directives and staff rules

33. (1) The President may by notice in the *Gazette* make regulations in relation to -

- (a) the acquisition of supplies, vehicles, other equipment and services;
- (b) the retirement of staff members on account of age;
- (c) the discharge of staff members on account of continued ill health;

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- (d) the discharge and reduction in rank or grade of staff members on account of inefficiency;
- (e) the transfer or discharge of staff members on account of public interest;
- (f) the discharge of staff members on account of absence without leave or valid cause;
- (g) the secondment of staff members;
- (h) the procedure with respect to the investigation of alleged misconduct of staff members;
- (i) the appointment and composition of boards of enquiry and the procedure at the proceedings of such boards;
- (j) appeals against the finding of boards of enquiry;
- (k) the attendance of witnesses at boards of enquiry and the representation of staff members thereat;
- (l) the savings regarding misconduct;
- (m) the suspension of staff members, including the non-entitlement of staff members to any salary, allowance, privilege or benefit for any period of suspension;
- (n) the manner in which notice may be given or by which a process may be served;
- (o) the assignment or attachment of salaries and allowances of staff members;
- (p) the establishment of decorations and medals, including offences in respect of such decorations and medals;
- (q) the performance of remunerative work outside the Service;
- (r) the political rights of staff members and the taking part of staff members in personnel associations, other employee organisation and political organisations;
- (s) the occupational health and safety of staff members at places of employment;
- (t) missing staff members; and
- (u) generally, all matters in respect of which the President considers it necessary or expedient to make regulations in order to achieve the objects of this Act.

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- (2) The Director-General may -
- (a) in consultation with the President, make directives in relation to -
- (i) the dividing of the Service into different components and the organisation of such components;
 - (ii) the determination of the amount, classes and grades of posts on the establishment of the Service, the classification of such posts as posts for occupation by staff members and the determination of the different ranks, grades, designations, scales of salary and other measures and requirements incidental to such posts and the occupation thereof;
 - (iii) the recruitment, selection, appointment in full-time or part-time capacities, confirmation of probation, promotion, continued employment in addition to the approved establishment, station, transfer, change-over, resignation, discharge, retirement, suspension or reduction in rank or grade of staff members;
 - (iv) the obtaining of services contemplated in section 17;
 - (v) the standards of physical and mental fitness and the medical examination of staff members;
 - (vi) the hours of attendance, overtime-payment, leave, allowances, bonuses, salary increases and other conditions of service (excluding housing loans and pensions) of staff members and the conditions under which they are entitled thereto;
 - (vii) the special conditions under which any person may be transferred and appointed from an institution instituted by law to the Service;
 - (viii) the granting to staff members of any financial or other reward or special increase or special promotion for extraordinary capability, excellent service or special qualifications;
 - (ix) the utilisation, evaluation, training, examination and development of staff members and the creation of the necessary training facilities;
 - (x) the granting to staff members of bursaries or other financial help for study purposes;
 - (xi) the granting of loans for purposes relating to the functions of the Service and the conditions under which such loans may be granted;
 - (xii) the medical, dental and hospital treatment of staff members and their dependents and retired staff members and their dependents;

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- (xiii) the definition of offences against duty and discipline, the behaviour of staff members and, generally, the control and discipline of the Service;
 - (xiv) the charging of staff members on account of misconduct;
 - (xv) the settlement of grievances of staff members;
 - (xvi) the administration of the Service, the promotion of efficiency in the Service and of the image of the Service;
 - (xvii) the powers, duties and functions of staff members and the exercise of their powers and the performance of their duties and functions; and
 - (xviii) generally, all matters in respect of which the Director-General considers it necessary or expedient to make directives in order to achieve the objects of this Act;
- (b) on the recommendation of the Means Committee, make directives in relation to -
- (i) the incurring of expenditure and the regulation of the collection, receipt, custody, banking, investment, payment and control of moneys in the Account;
 - (ii) the receipt and making of donations by the Service, the making of payments out of grace, the waiving of claims by the Service and the writing-off of a loss of State moneys and other State property;
 - (iii) the payment of salaries and the deductions to be made from the salaries, wages or allowances of staff members;
 - (iv) the obtaining and provision of supplies, accessories, other equipment and means of transport required for the Service, and the utilisation, care, safe custody, maintenance and control thereof;
 - (v) the recovery from a staff member of any deficiency, loss, damage or expense which he or she has unlawfully caused the State;
 - (vi) the establishment and operation of service facilities contemplated in section 18, and the control of the moneys thereof;
 - (vii) the control of moneys collected or received by staff members for the benefit of staff members or ex-staff members, or their dependents; and
 - (viii) generally, all matters in respect of which the Director-General

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considers it necessary or expedient to make directives in order to achieve the objects of this Act;

- (c) make directives in relation to -
- (i) the gathering of information in security vetting investigations by the Service;
 - (ii) the general security in the Service and the security requirements to which staff members shall conform;
 - (iii) returns, registers, records, books, forms, other documents and correspondence relating to the Service, as well as the custody, care, filing of and the control and disposal of such returns, registers, records, books, forms, other documents and correspondence; and
 - (iv) generally, all matters in respect of which the Director-General considers it necessary or expedient to make directives in order to achieve the objects of this Act; and
- (d) make staff rules with which staff members shall comply.

(3) Different regulations, directives and staff rules may be made with reference to different staff members and different categories of staff members.

(4) A directive or staff rule made under this section need not be published in the *Gazette*, but shall, in such manner as may be determined by the Director-General, be made known to the staff members to whom it applies.

(5) The Director-General may, in consultation with the President, to such an extent as he or she may deem fit authorise or condone any deviation from or non-compliance with any directive or staff rule.

Delegation of powers and assignment of duties

34. (1) The President may, subject to such conditions as he or she may determine, delegate any power, excluding any power conferred upon him or her by section 23(1) or (2) or 33(1), or assign any duty entrusted to him or her by or under this Act to the Director-General or the Director or any staff member, and any power exercised or duty performed in terms of such a delegation or an assignment shall be deemed to have been exercised or performed by the President.

(2) The Director-General may, subject to such conditions as he or she may determine, delegate any power or assign any duty entrusted to him or her by or under this Act to the Director or any staff member, and any power exercised or duty performed in terms of such a delegation or an assignment shall be deemed to have been exercised or performed by the Director-General.

(3) The Director may, subject to such conditions as he or she may determine, delegate any power or assign any duty entrusted to him or her by or under this Act to any staff member, and any power exercised or duty performed in terms of such a delegation

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or an assignment shall be deemed to have been exercised or performed by the Director.

(4) A delegation or an assignment under subsections (1), (2) and (3) shall not divest or relieve the President, the Director-General or the Director, as the case may be, of the power or duty so delegated or assigned.

Application of Labour Act, 1992, and Public Service Act, 1995, to Service

35. Notwithstanding anything to the contrary contained in the Labour Act, 1992 (Act 6 of 1992), and the Public Service Act, 1995 (Act 13 of 1995), the provisions of -

- (a) the Labour Act, 1992, except the provisions of sections 35, 39, 40, 41, 52, 106 and 107, shall not apply in respect of the administration of the Service and to staff members;
- (b) the Public Service Act, 1995, and the regulations and directives made thereunder, shall apply in respect of the administration of the Service and to staff members only in so far as such provisions, regulations and directives are not inconsistent with the provisions of this Act, and such provisions, regulations and directives shall not derogate from any power, duty or function conferred upon or entrusted to the Service or to the Director-General by or under this Act.

Limitation of actions, notification of proceedings and cause of action, and service of certain process

36. (1) Any civil proceedings against the State or any person in respect of anything done in pursuance of this Act, shall be instituted within a period of three years after becoming aware that the cause of action arose, and notice in writing of any such proceedings and of the cause thereof shall be given to the defendant not less than one month before it is instituted.

(2) If any notice contemplated in subsection (1) is given to the Director-General, it shall be deemed to be notification to the defendant concerned.

(3) Any process by which any proceedings contemplated in subsection (1) is instituted and in which the President is the defendant or respondent, may be served on the Director-General.

Repeal and amendment of laws, and savings

37. (1) Subject to the provisions of subsections (2), (3) and (4), the laws mentioned in Schedule 4 are hereby repealed or amended to the extent indicated in the third column thereof.

(2) Anything done under the National Intelligence Act, and which could have been done under a provision of this Act, shall be deemed to have been done under a corresponding provision of this Act.

(3) All persons who immediately before the commencement of this Act were employed as members or employees of the Namibia Security Intelligence Agency

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in terms of the National Intelligence Act, shall as from such commencement be deemed to have been appointed in terms of this Act as staff members of the Service, and the provisions of this Act shall apply to such staff members.

(4) The conditions of service under which a person contemplated in subsection (3) served immediately before the commencement of this Act, shall not be altered to his or her detriment, and after such commencement no such condition of service shall be so interpreted or applied that it is less favourable to him or her than it was immediately before such commencement.

Short title and commencement

38. This Act shall be called the Namibia Central Intelligence Service Act, 1997, and shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

**SCHEDULE 1
(Section 8(5)(a))**

**OATH OR SOLEMN AFFIRMATION OF ALLEGIANCE OF
DIRECTOR-GENERAL, DIRECTOR AND STAFF MEMBERS**

I,, do hereby swear/ solemnly affirm that I will faithfully and impartially to the best of my abilities perform the duties and functions required of me as Director-General/Director/staff member of the Namibia Central Intelligence Service.
(In the case of an oath: So help me God.)

**SCHEDULE 2
(Section 8(5)(b))**

**OATH OR SOLEMN AFFIRMATION OF SECRECY
OF DIRECTOR-GENERAL, DIRECTOR AND STAFF MEMBERS**

I,, do hereby swear/ solemnly affirm that I will not without being duly authorised thereto disclose to any person any information which I have obtained or to which I had access by virtue of the duties and functions performed by me on behalf of or under the direction of the Namibia Central Intelligence Service or by virtue of any office or employment held by me in terms of the Namibia Central Intelligence Service Act, 1997.
(In the case of an oath: So help me God.)

**SCHEDULE 3
(Section 32(1)(b))**

**OATH OR SOLEMN AFFIRMATION OF SECRECY OF
MEMBERS OF PARLIAMENTARY COMMITTEE ON SECURITY**

I,, a member of the Parliamentary Committee on Security, do hereby swear/ solemnly affirm that I will not communicate or divulge directly or indirectly any matters which are brought before the said Committee and which are entrusted to me under secrecy in terms of the Namibia Central Intelligence Service Act, 1997.
(In the case of an oath: So help me God.)

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**SCHEDULE 4
(Section 37(1))**

LAWS REPEALED OR AMENDED

| No. and year of law | Short title | Extent of repeal or amendment |
|-----------------------------|--|--|
| Act 84 of 1982 | Protection of Information Act, 1982 | <p>The amendment of section 1 by the substitution in the definition of "security matter" -</p> <p>(a) for the expression "Department of National Intelligence" of the expression "Namibia Central Intelligence Service"; and</p> <p>(b) for the expression "Department" of the expression "Service".</p> |
| Act 19 of 1987 | National Intelligence Act, 1987 | The repeal of the whole. |
| Proclamation AG. 25 of 1989 | Second Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation, 1989 | The amendment of the Annexure by the deletion of the entry relating to the National Intelligence Act, 1987. |
| Act 13 of 1995 | Public Service Act, 1995 | The amendment of Schedule 3 by the substitution in the first and second column for the expressions "Namibia Security Intelligence Agency" and "Director: Namibia Security Intelligence Agency" of the expressions "Namibia Central Intelligence Service" and "Director: Namibia Central Intelligence Service", respectively. |
| Act 16 of 1996 | Tender Board of Namibia Act, 1996 | The amendment of section 21 by the substitution in subparagraph (ii) of paragraph (a) for the expression "Namibia Security Intelligence Agency" of the expression "Namibia Central Intelligence Service". |