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CHAPTER 205

NATIONAL SECURITY INTELLIGENCE SERVICE ACT

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CHAPTER 205

NATIONAL SECURITY INTELLIGENCE SERVICE ACT

[Date of assent: 31st December, 1998.]

[Date of commencement: 19th January, 1999.]

An Act of Parliament to provide for the establishment of the National Security Intelligence Service; to define its powers, functions and duties; to regulate the administration and control of the Service; to provide for the issue of warrants authorising certain actions to be taken by the Service in the national interest, and for connected purposes

[Act No. 11 of 1998, Act No. 2 of 2002, L.N. 4/1999.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the National Security Intelligence Service Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**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 Complaints Commission established under Part III;

“**Council**” means the National Security Intelligence Council established by section 23;

“**director**” means a director of any of the divisions of the Service established under section 8;

“**Director-General**” means the Director-General of the Service, appointed under section 6;

“**disciplined force**” means any of the armed forces, a police force, a prison service, the National Youth Service or any other force established for the Republic;

“**intelligence**” means information which relates to or may be relevant to any internal or external threat or potential threat to the security of Kenya in any field;

“**Minister**” means the Minister of State for the time being responsible for matters relating to the National Intelligence and Security;

“**ministerial intelligence**” means information which relates to any power, duty or function concerning the security of Kenya which by or under any law

has been entrusted to any Government Ministry, Department or agency and which information may be required by that Ministry, Department or agency in the exercise of any such power or the performance of any such duty or function;

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

“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;

“sensitive information” includes any information—

- (a) which is likely to disclose the identity of, or provide details of, sources of information, other assistance or operational methods available to the Service;
- (b) which relates to particular operations which have been, are being or are proposed to be undertaken by the Service in pursuance of any of its functions; 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 National Security Intelligence Service established under section 4;

“threat to the security of Kenya” 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 Kenya 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 by unlawful means;
- (c) any act or threat of violence or unlawful harm that is directed at or intended to achieve, bring about or promote any constitutional, political, industrial, social or economic objective or change in Kenya and includes any conspiracy, incitement or attempt to commit any such act or threat; and
- (d) any foreign-influenced activity within or related to Kenya that—
 - (i) is detrimental to the interests of Kenya; and
 - (ii) is clandestine or deceptive or involves any threat whatsoever to the State or its citizens or any other person lawfully resident in Kenya;

“vetttable post” means a post in any Government Ministry, Department or agency requiring the holder thereof to have, in the performance of his official duties, access to sensitive or classified information.

[Act No. 2 of 2002, Sch.]

3. Application

Unless the context otherwise requires, the provisions of this Act shall apply in respect of the Director-General, the directors and all members of staff of the Service, whether working within or outside Kenya.

PART II – ESTABLISHMENT, FUNCTIONS AND POWERS OF THE SERVICE

4. Establishment and composition of the Service

(1) There is established a Service to be known as the National Security Intelligence Service.

(2) The Service shall comprise—

- (a) the Director-General appointed under section 6;
- (b) the directors of the divisions of the Service established under section 8;
- (c) such other officers and staff of the Service as may be appointed pursuant to the provisions of section 9.

5. Powers and functions of Service

(1) The powers and functions of the Service shall, subject to subsection (2), be to—

- (a) investigate, gather, evaluate, correlate, interpret, disseminate and store information, whether inside or outside Kenya, for the purposes of—
 - (i) detecting and identifying any threat or potential threat to the security of Kenya;
 - (ii) advising the President and the Government of any threat or potential threat to the security of Kenya;
 - (iii) taking steps to protect the security interests of Kenya whether political, military or economic;
- (b) gather ministerial intelligence at the request of any Government Ministry, Department or agency and without delay, to evaluate and transmit as appropriate to that Ministry, Department or agency such intelligence and any other intelligence at the disposal of the Service and which constitutes ministerial intelligence;
- (c) regulate, in co-operation with any Government Ministry, Department or agency entrusted with any aspect of the maintenance of the security of Kenya, the flow of security intelligence and the co-ordination between the Service and that Ministry, Department or agency of functions relating to such intelligence;
- (d) assist with the carrying out of security vetting investigations for the security clearance of persons who hold or may hold vettable posts 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;
 - (iii) security measures in Government Ministries, Departments or agencies; and
 - (f) 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.
- (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 written law; or
 - (b) limiting the continuation, establishment or functions of an intelligence capability connected to any Government Ministry, Department or agency in respect of any function relating to ministerial intelligence; or
 - (c) depriving or derogating from any duty or function of any body or committee instituted by the President.

6. Director-General

(1) There shall be a Director-General of the Service who shall be appointed by the President, on such terms and conditions of service as the President may, in consultation with the Public Service Commission, determine.

(2) The Director-General shall hold office for one term of five years but shall be eligible for reappointment for one further term of a period not exceeding five years.

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

(4) If a Director-General resigns or otherwise vacates his office before the expiry of his term of office, the President shall appoint another person in his place.

(5) Where the Director-General is unable to perform the functions of his office due to any temporary incapacity which is likely to be prolonged, the President may appoint a substitute for the Director-General until such time as the President determines that the incapacity has ceased.

(6) The President shall terminate the appointment of a Director-General who—

- (a) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;
- (b) is convicted of an offence and sentenced to imprisonment for a term exceeding three months;
- (c) is adjudged or otherwise declared to be of unsound mind;
- (d) becomes for any reason incompetent or incapable of properly performing the functions of his office:

Provided that the appointment of a Director-General shall not be terminated under this paragraph until the question of his removal has been referred to the

Commission and the Commission has recommended to the President that the Director-General ought to be removed from office on grounds of incompetence or incapability as aforesaid.

(7) Where the question of removing a Director-General has been referred to the Commission under subsection (6), the President may suspend the Director-General from the exercise of the functions of his office and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the Commission recommends to the President that the Director-General should not be removed.

7. Powers and functions of the Director-General

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 and the Government on threats and potential threats to the national security;
- (c) in consultation with the President and the Government, ensure that a good relationship is established and maintained between the Service and every Government Ministry, Department or agency and any other institution approved by the President;
- (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 under this Act or any other written law and that no information is gathered by the Service except in so far as may be necessary for the proper performance of its said functions;
- (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 of any political party or other organisation in Kenya; and
- (f) as far as is reasonably practicable, take steps to ensure that intelligence collection methods, sources of information and the identity of the members of staff of the Service are protected from unauthorised disclosure.

8. Divisions of the Service and directors

(1) There shall be an internal intelligence division of the Service which shall be responsible for gathering domestic intelligence in the execution of the functions of the Service under this Act.

(2) There shall be an external intelligence division of the Service which shall be responsible for gathering—

- (a) foreign intelligence and counter intelligence including information otherwise unobtainable;
- (b) intelligence on political, economic, sociological and technical aspects of foreign intelligence affecting the national security; and
- (c) intelligence in relation to organized crime.

(3) There shall be such other divisions of the Service as may be necessary for the proper performance of the functions of the Service under this Act.

(4) Each of the divisions of the Service shall be headed by a director appointed pursuant to the provisions of section 9.

(5) The director shall be the administrative head of the division of the Service in respect of which he is appointed and shall, subject to the control and directions of the Director-General, be responsible for the efficient management, administration and control of the division.

9. Officers and other staff of the service

There shall be such officers and other staff of the Service as the Director-General in consultation with the Council, deems necessary for the proper and efficient discharge of the functions of the Service.

10. Powers and functions of directors, officers and staff of the Service

The officers and other staff of the Service may exercise such powers and shall perform such duties as are by or under this Act or any other written law conferred or imposed upon them and shall, in the performance of their functions, obey all lawful directions which they may from time to time, receive from any person having the authority to give such directions.

11. Oaths and affirmations

The Director-General and every officer of the Service on being appointed to the Service shall, before assuming the duties of his office, make and subscribe to the oaths or affirmations prescribed in the Schedule—

- (a) in the case of the Director-General, before the President; and
- (b) in the case of every other officer, before the Director-General.

12. Certificate of identity and appointment

The Director-General shall cause to be issued to every officer of the Service on appointment, a certificate of identity and appointment in such form as the Director-General may prescribe, which shall be the evidence of such appointment for the purposes of this Act.

13. Scheme of Service

(1) The Public Service Commission shall, in consultation with the Director-General, prescribe a scheme of service setting out the terms and conditions for the appointment of the officers and other staff of the Service which shall provide for—

- (a) appointments, confirmations of appointments, promotions, resignations and termination of appointments;
- (b) scales of salaries and allowances; and
- (c) the designations and grades of the officers and other staff of the Service.

14. Disciplinary code

(1) The Director-General shall issue and maintain a disciplinary code for the Service which shall provide for—

- (a) disciplinary offences;
- (b) the investigation, hearing and determination of disciplinary offences and the hearing of any appeals therefrom; and
- (c) the delegation by the Director-General to other officers of such disciplinary powers as he may deem necessary.

(2) The disciplinary code shall provide for the following disciplinary penalties or any combination thereof—

- (a) dismissal from the Service;
- (b) reduction in rank or grade as the case may be;
- (c) suspension from duty for a specified period;
- (d) reprimand (including severe reprimand);
- (e) admonition; or
- (f) 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 Government procedure.

15. Conduct of officers of Service

(1) No officer of the Service shall—

- (a) engage in the activities of any political party or act as an agent of any such party; or
- (b) in the performance of his functions or the exercise of his powers under this Act—
 - (i) subject any person to torture or to any other cruel, inhuman or degrading treatment; or
 - (ii) enter or search any private premises except with a warrant duly issued pursuant to the provisions of section 22.

(2) An officer who contravenes the provisions of paragraph (b)(i) of subsection (1) commits a felony.

(3) An officer who contravenes any of the provisions of paragraphs (a) or (b)(ii) of subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years.

16. Prohibition of false representations as to association with Service

Any person who, without prior written approval of the Director-General, in connection with any activity carried on by him takes, assumes, uses or in any manner publishes any name, description, title or symbol indicating or conveying or purporting to indicate or convey or which is calculated or is likely to lead other persons to believe or infer that such activity is carried on under or by virtue of the

provisions of this Act or under the patronage of the Service, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years.

17. Offences in connection with officers or staff of Service

Any person, who—

- (a) not being the Director-General, a director or other member of staff of the Service, by words, conduct or demeanour falsely represents himself to be the Director-General, a director or other member of staff of the Service; or
- (b) exercises or attempts to exercise undue influence over the Director-General, a director or other member of staff of the Service which is calculated to prevent the Director-General, director or other officer or member of staff from carrying out his duties or encouraging him or her to perform any act which is in conflict with his duties; or
- (c) is an accomplice to the commission of any act whereby any lawful order given to any member of staff or any regulation or directive or other rule may be evaded,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years.

18. Prohibition of disclosure of identity

Any person who has at his disposal information which he has obtained or to which he had access by virtue of—

- (a) the performance of his duties or functions under this Act; or
- (b) his position as a person who holds or has held any office in the Service, and from which the identity of any person who—
 - (i) is or was a confidential source of information to the Service; or
 - (ii) is or was a member of staff of the Service 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 is authorised to disclose it or to whom it may lawfully be disclosed, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding fourteen years.

19. Prohibition of access to premises of the Service

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

(2) The President may take or cause to be taken such measures as he may deem necessary for the security of, or the application of a prohibition of or a restriction on access to, any land or premises referred to in subsection (1), and may in connection with any measures so taken cause such notices to be published or such warning notices to be erected as he may, in each particular case, deem necessary.

(3) Any person who enters upon or is on any land or enters upon or is on or in any premises in contravention of a prohibition or restriction under subsection (1), commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

20. Prohibition of unauthorized disclosure of information

(1) Without prejudice to the provisions of any other written law, an officer or employee of the Service shall not disclose or use any information gained by him by virtue of his employment otherwise than in the strict course of his official duties or with the authority of the Director-General.

(2) A person who, 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 shall not disclose the warrant, or disclose or use any information gained by or conveyed to him when acting pursuant to the warrant, otherwise than as authorized by the warrant or by the Director-General.

(3) A person who acquires knowledge of any information knowing that it was gained as a result of any warrant or seizure in accordance with such warrant shall not disclose that information otherwise than in the course of his duty.

(4) Any person who contravenes any of the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

21. Obstruction of officers of the Service

Any person who assaults, resists or wilfully obstructs any officer of the Service or any person acting under the direction of such officer in the due execution of his duties under this Act commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years.

22. Warrants for entry, search or seizure

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

(2) An application under subsection (1) shall specify—

- (a) the purpose for which the warrant is sought;
- (b) whether other investigative procedures have been tried and have failed or are unlikely to succeed, or whether the urgency of the matter is such that it would be impracticable to carry out the investigation using any other investigative procedures or that without a warrant it is likely that information of importance with respect to the investigation would not be obtained;

- (c) the type of information, material, record, document or thing proposed to be obtained and the power referred to in subsection (4) proposed to be exercised for that purpose;
- (d) the identity of the person, if known, who has possession of the information, material, record, document or thing proposed to be obtained;
- (e) the persons or class of persons to whom the warrant is proposed to be directed; and
- (f) a general description of the place where the warrant is proposed to be executed, if a general description of that place can be given.

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

(4) Without prejudice to subsection (3), a warrant issued under that subsection may authorise Service to obtain any information, material, record, document or thing and for that purpose—

- (a) to enter any place, or obtain access to anything;
- (b) to search for or remove, examine or record in any other manner the information, material, record, document or thing.

(5) There shall be specified in every warrant issued under subsection (3)—

- (a) the type of information, material, record, document or thing authorised to be obtained;
- (b) the identity of the person, if known, who has possession of the information, material, record, document or thing to be obtained;
- (c) the person or class of persons to whom the warrant is directed;
- (d) a general description of the place where the warrant may be executed, if a general description of that place can be given;
- (e) the period for which the warrant is in force; and
- (f) such terms and conditions as the judge considers expedient in the public interest.

(6) A warrant issued under this section shall be valid for a period not exceeding one month at a time and the period for which it has been issued shall be specified in the warrant.

(7) The judge who issued a warrant or a judge 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).

(8) An application for a warrant or the extension of a warrant issued under this section shall be heard and a warrant issued without any notice to the person, body or organisation to which the application applies and without hearing such person, body or organisation.

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

(10) A person aggrieved by the issue 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.

23. The National Security Intelligence Council

(1) There is established a Council to be known as the National Security Intelligence Council which shall consist of—

- (a) the Minister;
- (b) the Minister for the time being responsible for matters relating to foreign affairs;
- (c) the Minister for the time being responsible for matters relating to finance;
- (d) the Attorney-General; and
- (e) the Permanent Secretary, Secretary to the Cabinet and Head of the Public Service.

(2) The Director-General shall be the secretary to the Council.

(3) The functions of the Council shall be—

- (a) to advise the Service generally on all matters pertaining to—
 - (i) national security and intelligence policies;
 - (ii) the administration of the Service;
 - (iii) the expenditure of the Service; and
- (b) to perform such other functions as are conferred on it by this Act or by any other written law.

(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.

(5) The Minister 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.

PART III – THE COMPLAINTS COMMISSION

24. Complaints against the Service

Any person aggrieved by anything done by the Director-General or by a director, officer or, other member of staff of the Service in the exercise of the powers or the performance of the functions of the Service under this Act may make a complaint in respect thereof to the Commission in such manner as may be prescribed.

25. Complaints Commission

(1) There is established a Commission to be known as the Complaints Commission which shall consist of the following members, all of whom shall be appointed by the President on the advice of the Judicial Service Commission—

- (a) a chairman who shall be a person who holds or has held or is qualified to hold office as a judge of the High Court or of the Court of Appeal;
- (b) four other members of whom—
 - (i) one shall be an advocate of not less than seven years' standing; and
 - (ii) one shall be a religious leader of national repute.

(2) The chairman or a member of the Commission shall hold office for a period of three years but shall be eligible for reappointment:

Provided that no chairman or member shall hold office for more than two terms.

(3) The chairman or a member of the Commission may resign his office by writing under his hand addressed to the President which resignation shall take effect from the date of receipt of the letter of resignation by the President.

(4) If the chairman or a member of the Commission vacates office before the expiry of his term of office, the President shall appoint another person in his place.

(5) Where the chairman or a member is unable to perform the functions of his office due to any temporary incapacity which is likely to be prolonged, the President may appoint a substitute for the chairman or member until such time as the President determines that the incapacity has ceased.

26. Powers and functions of the Commission

(1) The functions of the Commission shall be—

- (a) to inquire into complaints against the Service made under section 24; and
- (b) to inquire into any matter referred to it by the President under this Act and make its recommendation thereon to the President.

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

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

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

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

- (b) take all the necessary precautions to prevent the disclosure of—
 - (i) any information which in its opinion may not be disclosed in the course of or in relation to any inquiry; and
 - (ii) the source of any such information.

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

(5) If at any stage during the course of an inquiry, the Commission is of the opinion that there is evidence of any breach of duty or misconduct by any officer of the Service, it shall forthwith inform the President and the Council or the Director-General and subject to the provisions of this Act, appropriate disciplinary action shall be taken against such officer.

(6) The Commission shall inform the complainant in writing of its conclusions and shall make a report of its findings to the President and the Council with such recommendations as it considers appropriate.

27. Proceedings, findings, etc. of Commission privileged

(1) No proceedings shall lie against the chairman or any member of the Commission in respect of anything done *bona fide* in the performance of the functions or the exercise of the powers of the Commission under this Act.

(2) No chairman or member of the Commission shall be called upon to give evidence in any court or in any proceedings of a judicial nature, in respect of anything in his knowledge by virtue of the powers or the functions of the Commission under this Act.

(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.

(4) A person aggrieved by any decision of the Commission may appeal to the High Court within fourteen days.

PART IV – MISCELLANEOUS PROVISIONS

28. Destruction of irrelevant records, etc.

(1) Subject to subsection (2), any person who obtains or seizes any information, material, record, document or other thing for the purposes of this Act shall, as soon as reasonably practicable after he has obtained or seized it, destroy any copy that he may make of it or any part thereof, and any record thereof, whether in writing or otherwise except so far as the information recorded therein relates, directly or indirectly, to the detection of activities prejudicial to the national security, or comprises foreign intelligence information essential to the national security.

(2) Any person who fails to comply with subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

29. Functions of Ministries, Departments, etc. in relation to security intelligence

It shall be the duty of every Government Department, Ministry or 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 performing its functions under this Act 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.

30. Annual report

The Director-General shall, within three months after the end of each year, furnish to the President and to the Council a report of the activities of the Service during that year.

31. Regulations

The President may make regulations, not inconsistent with this Act, prescribing anything required by this Act to be prescribed or generally for the better carrying out of the provisions of this Act.

SCHEDULE

[Section 11.]

OATH/AFFIRMATION OF ALLEGIANCE

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

DATED this day of, 20

Name of Officer Signature

SWORN/AFFIRMED by the said at

BEFORE

OATH/AFFIRMATION OF SECRECY

I, (full names) DO HEREBY SWEAR BY THE ALMIGHTY GOD/SOLEMNL Y 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

SCHEDULE—*continued*

direction of the National Security Intelligence Service or by reason of any office or employment held by me pursuant to the National Security Intelligence Service Act SO HELP ME GOD.

DATED this day of, 20

Name of Officer Signature

SWORN/AFFIRMED by the said at

BEFORE

CHAPTER 205

NATIONAL SECURITY INTELLIGENCE SERVICE ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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RESTRICTED AREA

[L.N. 127/2001.]

SCHEDULE

National Security Intelligence Service Headquarters
at Ruaraka, Nairobi

**NATIONAL SECURITY INTELLIGENCE SERVICE
(COMPLAINTS COMMISSION) REGULATIONS, 2006**

ARRANGEMENT OF REGULATIONS

Regulation

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15. Service of notices, etc.
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SCHEDULE – FORMS

[Subsidiary]

**NATIONAL SECURITY INTELLIGENCE SERVICE
(COMPLAINTS COMMISSION) REGULATIONS, 2006**

[L.N. 112/2006.]

1. Citation

These Regulations may be cited as the National Security Intelligence Service (Complaints Commission) Regulations, 2006.

2. Complaints

(1) A complaint to the Commission under section 24 of the Act shall clearly set out the details of the complaint and shall be as prescribed in Form I in the Schedule.

(2) Subject to section 26(3) of the Act, the Commission shall not proceed with an inquiry on a complaint if in the opinion of the Commission the complaint—

- (a) is trivial, frivolous, vexatious or made in bad faith;
- (b) concerns or relates to an act or thing which occurred prior to the coming into operation of the Act;
- (c) concerns or relates to any matter prejudicial to the security of the State or the Head of State.

3. Summons to be signed by Chairman, etc.

All summons for the attendance of witnesses or other persons, or for the production of documents shall be signed by the Chairman, a member of the Commission or the secretary to the Commission and shall be in the form prescribed in Form II in the Schedule.

4. Commencement of inquiry

(1) Upon receipt of a complaint, the Commission shall forward the complaint and its particulars to the Director-General.

(2) The Director-General shall within a period of thirty days from the date of receipt of the complaint from the Commission respond to the complaint in writing.

(3) If at the expiry of thirty days the Director-General shall not have responded to the complaint, or if the Commission is dissatisfied with the Director-General's response, the Commission shall commence inquiry into the complaint.

5. Making of representations before Commission

(1) The complainant and Director-General or his representative shall be given opportunity to make representations before the Commission, to present evidence and to call witnesses.

(2) A person appearing before the Commission may do so in person or be represented by counsel.

6. Evidence in proceedings

(1) The counsel assisting the Commission shall present evidence relating to a complaint before the Commission.

(2) The Commission may call for any further evidence on any point relating to any matter before it and may recall any witness for further examination.

(3) Hearsay evidence which in the opinion of the Commission is likely to adversely affect the reputation of any person shall not be received by the Commission.

7. Witness expenses

All persons summoned to attend and give evidence, or to produce books, plans or documents, at any sitting of the Commission shall be entitled to reimbursement of expenses as they would have been entitled to if they had been summoned to attend at the High Court in a criminal trial.

8. No person to be compelled to incriminate self

No person giving evidence in the proceedings of the Commission shall be compelled to incriminate himself.

9. Quorum and decisions of Commission

(1) The quorum of the Commission shall be three members.

(2) In the event of equal division on any question requiring to be decided by the Commission, the Chairman or the acting Chairman, as the case may be, shall have a second or casting vote.

10. Secretary and staff of the Commission

(1) The President shall in consultation with the Director-General appoint an officer of the Service to be secretary to the Commission.

(2) The secretary to the Commission shall perform all the administrative duties of the Commission and such other duties as the chairman may direct.

(3) The Director-General shall provide the Commission with such other staff as may be necessary for the proper discharge of the functions of the Commission.

11. Assisting counsel

(1) The Attorney-General shall provide the Commission with an assisting counsel who shall assist the Commission in investigating complaints, and who shall be responsible for presentation of evidence relating to any complaint before the Commission.

(2) The assisting counsel shall perform such other duties as the Chairman may direct.

12. Remuneration and allowances

The Commissioners, the secretary to the Commission, the assisting counsel and other staff of the Commission shall—

- (a) be paid such remuneration and allowances as the President may determine;
- (b) be entitled to reimbursement of travel and subsistence expenses incurred in the course of performing their duties.

13. Oaths or affirmations

(1) The Chairman, a member of the Commission and the secretary to the Commission shall prior to embarking on their duties, make and subscribe before the Chief Justice, an oath or affirmation of office prescribed in Form III in the Schedule and an oath or affirmation of secrecy prescribed in Form IV in the Schedule.

(2) The assisting counsel and other staff of the Commission shall prior to embarking on their duties subscribe before the chairman an oath or affirmation of secrecy prescribed in Form IV in the Schedule.

14. Adjournment of sittings

The Commission may of its own motion, or upon application by any party, adjourn a sitting of the Commission upon such terms as the Commission thinks fit.

[Subsidiary]

15. Service of notices, etc.

Service of any notice or document may be effected by any method authorized by law.

16. Commission may dispense with certain requirements

The Commission may dispense with or vary any requirements of these rules respecting notices, affidavits, documents, service or the period within which anything may be done in any case where it appears to the Commission to be just or expedient to do so.

SCHEDULE

NATIONAL SECURITY INTELLIGENCE SERVICE ACT

[Cap. 205.]

FORM I

(r. 2)

NATIONAL SECURITY INTELLIGENCE SERVICE COMPLAINTS COMMISSION

COMPLAINT

Complaint No. of 20.....

Name and address of complainant

Nature of complaint

Details of complaint

(May use extra sheet and attach any relevant document)

Signature

Dated this day of 20.....

Note.-All complaints must be signed and shall be addressed to the Secretary, National Security Intelligence Service Complaints Commission, P.O. Box 30091, NAIROBI.

FORM II

(r. 3)

NATIONAL SECURITY INTELLIGENCE SERVICE ACT

[Cap. 205.]

NATIONAL SECURITY INTELLIGENCE SERVICE COMPLAINTS COMMISSION

WITNESS SUMMONS

Complaint No. of 20.....

To:

You are required to attend before the National Security Intelligence Service Complaints Commission at

on day of 20.....

at (time) from day to day until the above-matter is disposed of, to give evidence on behalf of

SCHEDULE, FORM 11—continued

and also to bring with you and to produce at the time and place aforesaid
(Specify documents to be produced)

Given under my hand at Nairobi this day of 20

Chairman/Member/Secretary

FORM III

(r. 14)

OATH/AFFIRMATION OF OFFICE

I,
(full names) having been appointed to serve in the National Security Intelligence Service Complaints Commission established under section 25 of the National Security Intelligence Service Act, 1998, do hereby swear by the almighty God/solemnly and sincerely affirm that I shall faithfully, and impartially, and to the best of my ability, discharge the trust and perform the duties devolving upon me by virtue of that appointment. So help me God.

Dated this day of 20

Name of officer Signature

SWORN/AFFIRMED by the said at

BEFORE

FORM IV

(r. 14)

NATIONAL SECURITY INTELLIGENCE SERVICE ACT

[Cap. 205.]

NATIONAL SECURITY INTELLIGENCE SERVICE COMPLAINTS COMMISSION

OATH/AFFIRMATION OF SECRECY

I,
(full names) having been appointed to serve in the N.S.I.S. Complaints Commission established under section 25 of the National Security Intelligence Service Act, 1998, do swear in the name of the almighty God/solemnly affirm that I shall faithfully, fully, and impartially, and to the best of my ability, discharge the trust and perform the duties devolving upon me by virtue of that appointment and that I will not, without due authority disclose or make known to any person any information acquired by me by reason of the duties devolving upon me by virtue of my appointment. So help me God.

Dated this day of 20

Name of officer Signature

SWORN/AFFIRMED by the said at

BEFORE