

NATIONAL STRATEGIC INTELLIGENCE ACT 39 OF 1994

[ASSENTED TO 23 NOVEMBER 1994]
[DATE OF COMMENCEMENT: 1 JANUARY 1995]

(English text signed by the President)

as amended by

National Strategic Intelligence Amendment Act 37 of 1998
General Intelligence Law Amendment Act 66 of 2000
National Strategic Intelligence Amendment Act 67 of 2002
General Intelligence Laws Amendment Act 52 of 2003

ACT

To define the functions of members of the National Intelligence Structures; to establish a National Intelligence Co-ordinating Committee and to define its functions in respect of intelligence relating to the security of the Republic; and to provide for the appointment of a Co-ordinator for Intelligence as chairperson of the National Intelligence Co-ordinating Committee, and to define his or her functions; and to provide for matters connected therewith.

1 Definitions

In this Act, unless the context otherwise indicates-

'Agency' means the National Intelligence Agency as referred to in section 3 (1) of the Intelligence Services Act, 2002 (Act 65 of 2002);

[Definition of 'Agency' substituted by s. 1 (a) of Act 37 of 1998 and by s. 1 (a) of Act 52 of 2003.]

'Cabinet' means the Cabinet of the Republic of South Africa referred to in section 91 (1) of the Constitution;

[Definition of 'Cabinet' substituted by s. 1 (b) of Act 37 of 1998.]

'Constitution' means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

[Definition of 'Constitution' substituted by s. 1 (c) of Act 37 of 1998.]

'Co-ordinator for Intelligence'

[Definition of 'Co-ordinator for Intelligence' deleted by s. 1 (d) of Act 37 of 1998.]

'counter-intelligence' means measures and activities conducted, instituted or taken to impede and to neutralise the effectiveness of foreign or hostile intelligence operations, to protect intelligence and any classified information, to conduct security screening investigations and to counter subversion, treason, sabotage and terrorism aimed at or against personnel, strategic installations or resources of the Republic;

[Definition of 'counter-intelligence' substituted by s. 1 (a) of Act 67 of 2002.]

'covert collection' means the acquisition of information which cannot be obtained by overt means and for which complete and continuous secrecy is a requirement;

'crime intelligence' means intelligence used in the prevention of crime or to conduct criminal investigations and to prepare evidence for the purpose of law enforcement and the prosecution of offenders;

'departmental intelligence' means intelligence about any threat or potential threat to the national security and stability of the Republic which falls within the functions of a department of State, and includes intelligence needed by such department in order to neutralise such a threat;

'domestic intelligence' means intelligence on any internal activity, factor or development which is detrimental to the national stability of the Republic, as well as threats or potential threats to the constitutional order of the Republic and the safety and the well-being of its people;

'domestic military intelligence' means intelligence required for the planning and conduct of military operations within the Republic to ensure security and stability for its people;

'evaluate' means the process of determining and assessing whether or not information is possibly correct, probably correct or factually correct;

'foreign intelligence' means intelligence on any external threat or potential threat to the national interests of the Republic and its people, and intelligence regarding opportunities relevant to the protection and promotion of such national interests irrespective of whether or not it can be used in the formulation of the foreign policy of the Republic;

'foreign military intelligence' means intelligence regarding the war potential and military establishment of foreign countries (including their capabilities, intentions, strategies and tactics) which can be used by the Republic in the planning of its military forces in time of peace and for the conduct of military operations in time of war;

'Minister' means the President or the member of Cabinet designated by the President to assume the responsibility for intelligence services as contemplated in section 209 (2) of the Constitution;

[Definition of 'Minister' inserted by s. 1 (e) of Act 37 of 1998.]

'national intelligence estimate' means the product of the process of considering and weighing the possibilities, probabilities and facts disclosed by national security intelligence with regard to any situation, and of drawing conclusions from such possibilities, probabilities and facts;

'National Intelligence Structures' means-

(a) Nicoc;

the intelligence division of the National Defence Force, established under the Defence Act, 2002 (Act 42 of 2002);

[Para. (b) substituted by s. 1 (f) of Act 37 of 1998 and by s. 1 (c) of Act 52 of 2003.]

(c) the intelligence division of the South African Police Service;

[Para. (c) substituted by s. 1 (f) of Act 37 of 1998.]

(d) the Agency; and

(e) the Service;

'national security intelligence' means intelligence which relates to or may be relevant to the assessment of any threat or potential threat to the security of the Republic in any field;

'national strategic intelligence' means comprehensive, integrated and estimative intelligence on all the current and long-term aspects of national security which are of special concern to strategic decision-making and the formulation and implementation of policy and strategy at national level;

'Nicoc' means the National Intelligence Co-ordinating Committee established by section 4;

'prescribed' means prescribed by regulation;

[Definition of 'prescribed' inserted by s. 24 of Act 66 of 2000.]

'regulation' means a regulation made under this Act;

'relevant members of the National Intelligence Structures' means-

(a) the intelligence division of the National Defence Force;

(b) the intelligence division of the South African Police Service;

(c) the Agency; and

(d) the Service;

[Definition of 'relevant members of the National Intelligence Structures' inserted by s. 1 (b) of Act 67 of 2002.]

'Service' means the South African Secret Service as referred to in section 3 (1) of the Intelligence Services Act, 2002 (Act 65 of 2002);

[Definition of 'Service' substituted by s. 1 (b) of Act 52 of 2003.]

'South African Police Service' means the South African Police Service established by section 5 (1) of the South African Police Service Act, 1995 (Act 68 of 1995);

[Definition of 'South African Police Service' substituted by s. 1 (g) of Act 37 of 1998.]

'subversion' means any activity intended to destroy or undermine the constitutionally established system of government in the Republic of South Africa;

[Definition of 'subversion' inserted by s. 1 (c) of Act 67 of 2002.]

'this Act' includes the regulations.

2 Functions relating to intelligence

(1) The functions of the Agency shall, subject to section 3, be-

- (a) to gather, correlate, evaluate and analyse domestic intelligence, in order to-
 - (i) identify any threat or potential threat to the security of the Republic or its people;
 - (ii) supply intelligence regarding any such threat to Nicoc;
- (b) to fulfil the national counter-intelligence responsibilities and for this purpose to conduct and co-ordinate counter-intelligence and to gather, correlate, evaluate, analyse and interpret information regarding counter-intelligence in order to-
 - (i) identify any threat or potential threat to the security of the Republic or its people;
 - (ii) inform the President of any such threat;
 - (iii) supply (where necessary) intelligence relating to any such threat to the South African Police Service for the purposes of investigating any offence or alleged offence; and
 - (iv) supply intelligence relating to any such threat to the Department of Home Affairs for the purposes of fulfilment of any immigration function; and

[Sub-para. (iv) added by s. 2 (a) of Act 67 of 2002.]

- (v) supply intelligence relating to national strategic intelligence to Nicoc;

[Sub-para. (v) added by s. 2 (a) of Act 67 of 2002.]

- (c) the intelligence division of the South African Police Service; to gather departmental intelligence at the request of any interested department of State, and, without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the Agency and which constitutes departmental intelligence, to the department concerned and to Nicoc.

[Para. (c) substituted by s. 2 (a) of Act 37 of 1998.]

(2) It shall, subject to section 3, be the functions of the Service-

- (a) to gather, correlate, evaluate and analyse foreign intelligence, excluding foreign military intelligence, in order to-
 - (i) identify any threat or potential threat to the security of the Republic or its people;
 - (ii) supply intelligence relating to any such threat to Nicoc;

[Sub-para. (ii) substituted by s. 2 (b) of Act 37 of 1998.]

- (b) to institute-
 - (i) counter-intelligence measures within the Service; and
 - (ii) in consultation with the Agency, counter-intelligence measures outside the Republic; and

[Para. (b) substituted by s. 2 (c) of Act 37 of 1998.]

- (c) to gather departmental intelligence at the request of any interested department of State, and, without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the Service and which constitutes departmental intelligence, to the department concerned and to Nicoc.

[Para. (c) substituted by s. 2 (c) of Act 37 of 1998.]

(3) It shall be the function of the South African Police Service, subject to section 3-

- (a) to gather, correlate, evaluate, co-ordinate and use crime intelligence in support of the objects of the South African Police Service as contemplated in section 205 (3) of the Constitution;

[Para. (a) substituted by s. 2 (d) of Act 37 of 1998 and by s. 2 (b) of Act 67 of 2002.]

- (b) to institute counter-intelligence measures within the South African Police Service;

[Para. (b) substituted by s. 2 (b) of Act 67 of 2002.]

- (c) to supply crime intelligence relating to national strategic intelligence to Nicoc.

[Para. (c) added by s. 2 (c) of Act 67 of 2002.]

(4) The National Defence Force shall, subject to section 3-

- (a) gather, correlate, evaluate and use foreign military intelligence, and supply foreign military intelligence relating to national strategic intelligence to Nicoc, but the National Defence Force shall not gather intelligence of a non-military nature in a covert manner;
- (b) gather, correlate, evaluate and use domestic military intelligence excluding covert collection, except when employed for service as contemplated in section 201 (2) (a) of the Constitution and under conditions set out in section 3 (2) of this Act, and supply such intelligence to Nicoc; and

[Para. (b) amended by s. 2 (e) of Act 37 of 1998.]

- (c) institute counter-intelligence measures within the National Defence Force.

(1) The relevant members of the National Intelligence Structures may conduct a security screening investigation in the prescribed manner to determine the security competence of a person if such a person-

- (a) is employed by or is an applicant to an organ of state; or
- (b) is rendering a service or has given notice of intention to render a service to an organ of state, which service may-
 - (i) give him or her access to classified information and intelligence in the possession of the organ of state; or
 - (ii) give him or her access to areas designated national key points in terms of the National Key Points Act, 1980 (Act 102 of 1980).

[Sub-s. (1) amended by s. 2 (a) of Act 52 of 2003.]

(2) The Agency shall be responsible for security screening of persons contemplated in subsection (1) and, on request of the South African Police Service, the Service or the National Defence Force, persons employed by, applicants to or persons rendering a service to the South African Police Service, the Service or the Department of Defence.

(3) Notwithstanding the provisions of subsection (2), the Agency may request the assistance of the South African Police Service or the National Defence Force in the performance of the function contemplated in subsection (2).

(4) (a) In performing the security screening investigation contemplated in subsection (1), the relevant members of the National Intelligence Structures may use a polygraph to determine the reliability of information gathered during the investigation.

(b) For the purpose of this section, 'polygraph' means an instrument used to ascertain, confirm or examine in a scientific manner the truthfulness of a statement made by a person.

(5) The relevant members of the National Intelligence Structures may, in the prescribed manner, gather information relating to-

- (a) criminal records;
- (b) financial records;
- (c) personal information; or
- (d) any other information which is relevant to determine the security clearance of a person:

Provided that where the gathering of information contemplated in paragraphs (c) and (d) requires the interception and monitoring of the communication of such a person, the relevant members shall perform this function in accordance with the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act 70 of 2002).

[Sub-s. (5) amended by s. 2 (b) of Act 52 of 2003.]

(6) The head of the relevant National Intelligence Structure may, after evaluating the information gathered during the security screening investigation, issue, degrade, withdraw or refuse to grant a security clearance.

(7) The head of the relevant National Intelligence Structure may establish a security screening Advisory Board comprising of members or employees of the relevant National Intelligence Structure to assist him or her in the determination of the security competency of a person.

(8) (a) A person whose security clearance has been refused, withdrawn or degraded may in the prescribed manner appeal to the Minister responsible for the relevant National Intelligence Structure.

(b) Such appeal shall-

- (i) be lodged within 60 days from the date on which the decision was made known by the head of the relevant National Intelligence Structure or such later date as the Minister permits; and
- (ii) set out the grounds for the appeal.

(c) After considering the grounds of appeal and the head of the relevant National Intelligence Structure's reasons for the decision, the Minister responsible for the relevant National Intelligence Structure shall as soon as practicable-

- (i) confirm, set aside or vary the decision; or
- (ii) substitute any other decision for the decision of the relevant National Intelligence Structure.

(8A) The Minister responsible for the relevant National Intelligence Structure may establish a panel of appeal to assist him or her in the consideration of an appeal lodged in terms of this Act.

[Sub-s. (8A) inserted by s. 2 (c) of Act 52 of 2003.]

(9) The Director-General of the Agency may in the prescribed manner issue functional directives on-

- (a) usage and application of polygraph;
- (b) criteria for determining security competence; and
- (c) levels of security clearance.

(10) The directives contemplated in subsection (9) shall-

- (a) be issued with the approval of the Minister, who shall act in consultation with the Minister of Safety and Security and the Minister of Defence; and
- (b) notwithstanding any other law, apply to all the relevant National Intelligence Structures.

[Sub-s. (10) substituted by s. 2 (d) of Act 52 of 2003.]

[S. 2A inserted by s. 3 of Act 67 of 2002.]

3 Functions of other departments of State with reference to national security intelligence

(1) If any law expressly or by implication requires any department of State, other than the Agency or the Service, to perform any function with regard to the security of the Republic or the combating of any threat to the security of the Republic, such law shall be deemed to empower such department to gather departmental intelligence, and to evaluate, correlate and interpret such intelligence for the purpose of discharging such function: Provided that such department of State-

- (a) other than the National Defence Force when employed for service as contemplated in section 201 (2) of the Constitution or when discharging the counter-intelligence responsibilities entrusted to its intelligence division; and

[Para. (a) substituted by s. 3 (a) of Act 37 of 1998.]

- (b) other than a police service established under any Act of Parliament, when a member of such service is investigating any offence relating to the security of the Republic or is performing any other function relating to the security of the Republic,

shall not gather departmental intelligence within the Republic in a covert manner: Provided further that such department of State-

- (i) other than the National Defence Force through its intelligence division;

[Para. (i) amended by s. 3 (b) of Act 37 of 1998.]

- (ii) other than a police service established under any Act of Parliament, when a member of such a service is, with the knowledge and approval of Nicoc, investigating an offence relating to the security of the Republic or is performing any other function relating to the security of the Republic;
- (iii) other than the Agency, when a member of the Agency is performing its counter-intelligence responsibility contemplated in section 2 (1) (b), with the knowledge and approval of the Service,

shall not gather departmental intelligence outside the Republic in a covert manner.

(2) Notwithstanding subsection (1), the National Defence Force through its intelligence division may-

- (a) whenever the President on the advice of the Minister of Defence is of the opinion that conditions are such that the said Force has to prepare itself for possible employment for service as contemplated in section 201 (2) (a) of the Constitution; and
- (b) upon having been authorised by Nicoc acting with the concurrence of the Cabinet,

gather domestic military intelligence in a covert manner within the geographical area and the time-scales specified in such authorisation.

[Sub-s. (2) substituted by s. 3 (c) of Act 37 of 1998.]

(3) It shall be the duty of any department of State that comes into possession of national security intelligence or information which may be of value in the preparation of the national intelligence estimate referred to in section 4 (2) (c) to transmit such intelligence and information without delay to the relevant service forming part of the National Intelligence Structures, with an indication of the reliability of the source of such information.

(4) Subsection (3) shall not be construed as affecting the continued existence and functioning or the establishment of any intelligence service by any department of State for the purpose of performing its departmental intelligence functions under this Act.

4 Establishment of National Intelligence Co-ordinating Committee

(1) There is hereby established a National Intelligence Co-ordinating Committee, which shall consist of-

(a)

[Para. (a) deleted by s. 4 of Act 67 of 2002.]

(b) the Co-ordinator for Intelligence appointed under section 5 (1), who shall be the chairperson;

(c) the Director-General of the Agency;

(d) the Director-General of the Service;

(e) the chief of the intelligence division of the National Defence Force; and

(f) the head of the intelligence division of the South African Police Service,

[Para. (f) substituted by s. 25 of Act 66 of 2000.]

or the alternates of the persons mentioned in paragraphs (b) to (f), and such members of departments of State who are co-opted by Nicoc on a permanent or an *ad hoc* basis.

(2) The functions of Nicoc shall be-

(a) to co-ordinate the intelligence supplied by the members of the National Intelligence Structures to Nicoc and interpret such intelligence for use by the State and the Cabinet for the purposes of-

(i) the detection and identification of any threat or potential threat to the national security of the Republic;

(ii) the protection and promotion of the national interests of the Republic;

(b) for the purposes of the functions contemplated in paragraph (a)-

(i) to co-ordinate and prioritise intelligence activities within the National Intelligence Structures;

- (ii) to prepare and interpret intelligence estimates;
 - (c) to produce and disseminate intelligence which may have an influence on any state policy with regard to matters referred to in paragraph (a) for consideration by the Cabinet;
 - (d) after consultation with the departments of the State entrusted with the maintenance of the security of the Republic, to co-ordinate the flow of national strategic intelligence between such departments;
 - (e) at the request of any Department of State, to co-ordinate the gathering of intelligence and without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the National Intelligence Structures and which constitutes departmental intelligence, to the department concerned; and
 - (f) to make recommendations to the Cabinet on intelligence priorities.
- (3) The Agency shall provide logistical, technical and administrative support to Nicoc.

[S. 4 substituted by s. 4 of Act 37 of 1998.]

5 Co-ordinator for Intelligence

(1) The President shall appoint a person as Co-ordinator for Intelligence, who shall, subject to the directions and supervision of the Minister-

- (a) manage and administer the functions of Nicoc referred to in section 4 (2); and
- (b)

[Para. (b) deleted by s. 5 of Act 67 of 2002.]

(2) The National Intelligence Structures shall, at the request of the Co-ordinator for Intelligence, render such assistance as is necessary for the performance of his or her functions contemplated in subsection (1).

[S. 5 substituted by s. 5 of Act 37 of 1998.]

5A Functions of Minister

(1) The Minister shall, subject to subsection (2), do everything necessary for the efficient functioning, control and supervision of the co-ordination of intelligence supplied by the National Intelligence Structures.

(2) The Minister shall perform a function contemplated in subsection (1) which affects a function of the National Defence Force or the South African Police Service in consultation with the Minister responsible for that Force or Service, as the case may be.

(3) Subject to subsection (2), the Minister may, for the purposes of the functions contemplated in subsection (1), establish such support structures as are necessary-

- (a) for the efficient co-ordination of intelligence; and

(b) to assist the Minister to advise the President and the national executive.

[Sub-s. (3) substituted by s. 6 of Act 67 of 2002.]

(4) The Minister may delegate, the function contemplated in subsection (3) to the Co-ordinator for Intelligence.

[Sub-s. (4) added by s. 6 of Act 67 of 2002.]

(5) The Minister shall advise the President and the national executive on national strategic intelligence and co-ordination of intelligence.

[Sub-s. (4) added by s. 6 of Act 67 of 2002.]

[S. 5A inserted by s. 6 of Act 37 of 1998.]

6 Regulations

(1) The Minister may, after consultation with the Joint Standing Committee on Intelligence, subject to subsection (2), make regulations regarding-

- (a) the protection of information and intelligence;
- (b) the carrying out of security screening investigations by members of the National Intelligence Structures;
- (c) co-ordination of intelligence as an activity;
- (d) production and dissemination of intelligence for consideration by Cabinet and the executive;
- (e) the co-ordination of counter-intelligence by the Agency;
- (f) the co-ordination of crime intelligence; and
- (g) any other matter necessary for the effective administration of this Act.

(2) Any regulation which may affect a function of the National Defence Force or the South African Police Service shall be made in consultation with the Minister responsible for that Force or Service, as the case may be.

(3) A security screening investigation contemplated in subsection (1) (b) may entitle the relevant members of the National Intelligence Structures concerned to subject the person undergoing a security screening investigation to a polygraph examination as prescribed, in order to determine the reliability of information provided by him or her.

(4) A regulation made under this Act may not be published in the *Gazette*, but where such a regulation only affects the members of the National Intelligence Structures or their functioning, the affected parties must be notified in a manner determined by the Minister.

(5) A regulation made under this section may provide that any person who contravenes a provision

thereof or fails to comply therewith shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

[S. 6 substituted by s. 7 of Act 37 of 1998, amended by s. 26 of Act 66 of 2000 and substituted by s. 7 of Act 67 of 2002.]

7 Repeal of laws

The Security Intelligence and State Security Council Act, 1972 (Act 64 of 1972), is hereby repealed.

8 Short title and commencement

This Act shall be called the National Strategic Intelligence Act, 1994, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.