

SECURITY AND INTELLIGENCE AGENCIES BILL, 2020

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SECURITY AND INTELLIGENCE AGENCIES ACT, 2020

AN ACT relating to the National Security Council, to provide for the establishment of regional and district security councils, to specify the agencies responsible for the security of the State and to provide for related matters.

PASSED by Parliament and assented to by the President:

National Security Council

Composition of National Security Council

1. The National Security Council established by article 83 of the Constitution consists of

- (a) the President;
- (b) the Vice-President;
- (c) the Ministers holding the portfolios of foreign affairs, defence, interior and finance and such other Ministers as determined by the President;

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- (a) the Chief of Defence Staff and two other members of the Armed Forces;
- (e) the Inspector-General of Police, the Commissioner of Police responsible for the Criminal Investigation Department and one other member of the Police Service;
- (j) the Director-General of the Prisons Service;
- (g) the Director of External Intelligence;
- (h) the Director of Internal Intelligence;
- (i) the Director of Military Intelligence;
- (j) the Commissioner of Customs, Excise and Preventive Service; and
- (k) three persons appointed by the President.

Procedure at meetings of the Council

2. (1) The President shall preside at meetings of the Council and in the absence of the President, the Vice-President shall preside.

(2) The President may, acting in consultation with the Council, invite such other persons as the President considers necessary for any deliberations of the Council.

(3) The person invited to participate in the deliberations of the Council under subsection (2) shall not vote on a matter for decision before the Council.

(4) The Council shall regulate the procedure at the meetings of the Council.

Secretary to the Council

3. The Secretary to the Cabinet is the Secretary to the Council.

Functions of the Council

4. The functions of the Council in accordance with article 84 of the Constitution include

- (a) considering and taking appropriate measures to safeguard the internal and external security of the country;
- (b) ensuring the collection of information relating to the security of the country and the integration of the domestic and foreign security policies relating to the Council so as to enable the security services and any other departments and agencies of the Government to co-operate more effectively in matters relating to national security;

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- (c) assessing and appraising the objectives, commitments and risks of the country in relation to the actual and potential military power in the interest of national security; and
- (a) taking appropriate measures regarding the consideration of policies on matters of common interest to the departments and agencies of the Government concerned with national security.

Committees of the Council

Establishment of regional and district security councils

5. (1) There shall be a security council for each region and district.
- (2) The regional and district security councils shall operate as committees of the Council and shall perform in the regions and districts the functions determined by the Council.
- (3) A regional security council is answerable to the Council in the performance of the functions of the regional security council.
- (4) A district security council is answerable to the relevant regional security council in the performance of the functions of that district security council.

Membership of regional security council

6. (1) A regional security council shall consist of
- (a) the Regional Minister, as the chairperson;
 - (b) the Deputy Regional Minister or Ministers;
 - (c) the regional officer of the Bureau of National Communications;
 - (a) the District Chief Executive of the District Assembly in the regional capital;
 - (e) the Garrison Commander of the Ghana Armed Forces in the region where applicable;
 - (j) the Commanding Officer of the Ghana Army Unit responsible for the region;
 - (g) the Regional Police Commander;
 - (h) the Regional Crime Officer;
 - (i) the Regional Commander of the Internal Intelligence Agency;

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- (j) the head of the Customs Division of the Ghana Revenue Authority in charge of the region, where applicable;
- (k) the Prisons Service Officer in charge of the region;
- (l) the Regional Commander of the Ghana Immigration Service;
- (m) the regional head of the National Disaster Management Organisation;
- (n) the Fire Officer in charge of the region; and
- (o) three other persons nominated by the Regional Minister in consultation with the Minister responsible for National Security, one of whom is a woman and another a community leader in the region with knowledge in human security.

(2) The Regional Co-ordinating Director is the Secretary to the regional security council.

(3) The regional security council shall regulate the procedure at the meetings of the regional security council.

Functions of regional security council

7. A regional security council shall in relation to the region

- (a) perform the functions of the Council assigned to that regional security council by the Council;
- (b) provide early warning to the Government of the existence or likelihood of a security threat to the region, the country or the Government;
- (c) in consultation with the Council, take appropriate measures to ensure peace in conflict areas in each region;
- (a) take measures to ensure peace building in the region; and
- (e) take immediate steps to ensure law and order and assist the population in the event of an emergency or a disaster.

Membership of district security council

8. (1) A district security council consists of

- (a) the District Chief Executive, as the chairperson;
- (b) the Divisional Police Commander, where applicable;
- (c) the District Police Commander;
- (a) the District Crime Officer;

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- (*ε*) the District Officer of the Bureau of National Communications;
- (*υ*) the head of the Customs Division of the Ghana Revenue Authority in charge of the district, where applicable;
- (*g*) the Divisional Commander of the Internal Intelligence Agency, where applicable;
- (*h*) the District Officer of the Internal Intelligence Agency;
- (*i*) the Immigration Officer in charge of the district;
- (*υ*) the Fire Officer in charge of the district;
- (*k*) the District Head of the National Disaster Management Organisation;
- (*ι*) the designated officer of the Military Unit responsible for the district; and
- (*m*) three other persons nominated by the District Chief Executive in consultation with the Regional Minister and the Minister responsible for National Security, one of whom is a woman and another a community leader, in the district, with knowledge in human security.

(2) The District Co-ordinating Director is the Secretary to the district security council.

(3) The district security council shall regulate the procedure for the meetings of the district security council.

Functions of district security council

9. A district security council shall in relation to the district

- (*a*) perform the functions of the Council assigned to that district security council by the Council;
- (*b*) provide early warning to the Government of the existence or likelihood of a security threat to the district, the country or the Government;
- (*c*) in consultation with the regional security council, take appropriate measures to ensure peace in conflict areas in the district;
- (*a*) take measures to ensure peace building in the district; and
- (*ε*) take immediate steps to ensure law and order and assist the population in the event of an emergency or a disaster.

Establishment of committees

10. (1) The Council may establish committees consisting of members of the Council or non-members or both, to perform a function of the Council.

(2) Without limiting subsection (1), the Council shall establish the following Committees:

- (a) National Security Committee;
- (b) Public Order and Civil Protection Committee;
- (c) Joint Intelligence Committee; and
- (a) Ministerial Security Co-ordinating Committee.

(3) A committee of the Council shall meet at the times and places determined by the chairperson.

(4) A committee of the Council shall regulate the procedure for the meetings of that committee.

(5) A committee of the Council may co-opt a person to attend a meeting of the committee but that person shall not vote on a matter for decision at the meeting.

National Security Committee

11. (1) The National Security Committee consists of

- (a) the Minister responsible for National Security, as the chairperson;
- (b) the Co-ordinator;
- (c) the Chief of Defence Staff of the Ghana Armed Forces;
- (a) the Inspector-General of Police;
- (e) the Director of the Internal Intelligence Agency;
- (j) the Director of the External Intelligence Agency;
- (g) the Director of the Bureau of National Communications;
- (h) the Comptroller-General of the Ghana Immigration Service; and
- (i) the Commissioner of the Customs Division of the Ghana Revenue Authority.

(2) The Chief Director of the Ministry is the Secretary to the National Security Committee.

Functions of National Security Committee

12. The National Security Committee shall
- (a) ensure the overall security in the country;
 - (b) ensure cybersecurity in consultation with the appropriate agencies in the country;
 - (c) recommend policy options and guidance to the Council on matters relevant to the security and economic well-being of the country;
 - (a) recommend a framework for the integration of intelligence into the domestic, foreign and security policies of the country;
 - (e) facilitate the exchange and sharing of information, co-operation and collaboration between the security and intelligence agencies and other departments and agencies in matters relating to national security;
 - (j) recommend measures to ensure the security of the borders of the country; and
 - (g) advise the Council on any matter referred to the National Security Committee by the Council.

Public Order and Civil Protection Committee

13. (1) The Public Order and Civil Protection Committee consists of

- (a) the Minister responsible for the Interior as the chairperson;
- (b) the Co-ordinator;
- (c) the Inspector-General of Police;
- (a) an officer of the Police Service not below the rank of Deputy Commissioner of Police nominated by the Inspector-General of Police;
- (e) the Chief of Defence Staff;
- (j) an officer of the Ghana Armed Forces not below the rank of Colonel nominated by the Chief of Defence Staff;
- (g) the Comptroller-General of the Ghana Immigration Service;
- (h) the Chief Fire Officer of the Ghana Fire Service; and
- (i) the Director-General of the National Disaster Management Organisation.

(2) The Chief Director of the Ministry of the Interior is the Secretary to the Public Order and Civil Protection Committee.

Functions of Public Order and Civil Protection Committee

14. The Public Order and Civil Protection Committee shall
- (a) review the security situation in respect of the maintenance of public order and civil protection;
 - (b) recommend policy options to the Council and advise the Council on matters relating to public order and civil protection;
 - (c) co-ordinate and facilitate measures for response to national emergencies, disaster management and events that undermine the internal stability or economic well-being of the State;
 - (a) recommend to the Council, national security strategies on disaster risk reduction and national resilience to the effects of disasters; and
 - (e) advise the Council on any matter referred to the Public Order and Civil Protection Committee by the Council.

Joint Intelligence Committee

15. (1) The Joint Intelligence Committee consists of
- (a) the Co-ordinator as the chairperson;
 - (b) the Director of the Internal Intelligence Agency;
 - (c) the Director of the External Intelligence Agency;
 - (a) the Director of the Bureau of National Communications;
 - (e) the Director-General of Defence Intelligence;
 - (j) the Director-General of the Criminal Investigations Department of the Ghana Police Service;
 - (g) the Comptroller-General of the Ghana Immigration Service;
 - (h) the Chief Executive Officer of the Financial Intelligence Centre;
 - (i) the Director-General of the Narcotics Control Commission;
 - (j) the Executive Director of the Economic and Organised Crime Office; and
 - (k) the head of Research and Analysis of the Ministry.

(2) The head of Legal Affairs of the Ministry is the Secretary to the Joint Intelligence Committee.

Functions of Joint Intelligence Committee

16. The Joint Intelligence Committee shall

- (a) oversee the organisation of intelligence activities within and outside the country to ensure efficiency and prompt adaptation to changing requirements;
- (b) submit once every six months through the Minister, for consideration by the Council, statements on the requirements and priorities for intelligence gathering and other tasks to be undertaken by the intelligence agencies;
- (c) co-ordinate inputs from the intelligence agencies and make recommendations to the Council for inter-agency operations;
- (d) monitor and give an early warning of the development of direct or indirect foreign threats to the national interest;
- (e) review domestic threats to security referred to the Joint Intelligence Committee by the Council; and
- (f) advise on any matter referred to the Joint Intelligence Committee by the Council.

Ministerial Security Co-ordinating Committee

17. The Ministerial Security Co-ordinating Committee consists of

- (a) the Minister responsible for National Security as the chairperson;
- (b) the Minister responsible for Defence; and
- (c) the Minister responsible for the Interior.

Functions of the Ministerial Security Co-ordinating Committee

18. The Ministerial Security Co-ordinating Committee shall

- (a) consider matters related to the defence, security and the stability of the State that have sensitive intelligence value and advise the National Security Council on decision making;
- (b) deliberate on sensitive and strategic intelligence, security and defence policy issues;

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- (c) co-ordinate the procurement of intelligence, security and defence requirements to optimise synergy; and
- (a) deliberate and ensure the implementation of the plans of national strategies including
 - (i) the National Security Strategy;
 - (ii) the National Defence Strategy;
 - (iii) the National Border Security Strategy;
 - (iv) the Maritime Security Strategy;
 - (v) the Counter Terrorism Framework;
 - (vi) the Cybersecurity Strategy; and
 - (vii) the National Emergency Response Strategy.

Intelligence Agencies

National security intelligence agencies

19. (1) The Departments existing immediately before the coming into force of this Act and known as the Bureau of National Investigation now referred to as the National Intelligence Bureau and the Research Department respectively are continued in existence under this Act as the Internal and External Intelligence Agencies of the State.

(2) The Bureau of National Communications forms part of the national security intelligence agencies.

(3) The Council shall, by publication in the *Gazette*, determine any other agency that is to form part of the national security intelligence agencies.

Governing body of the intelligence agencies

20. The governing body of the intelligence agencies is the National Security Council.

Functions of the national security intelligence agencies

21. (1) The Internal Intelligence Agency shall
- (a) through the Minister, brief the President, the National Security Council and any other relevant stakeholder on intelligence gathered internally, relevant to the national security interests of the country;

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- (b) collect, analyse, evaluate and securely disseminate intelligence gathered internally and perform covert actions;
 - (c) be responsible for
 - (i) counter espionage, and activities for the internal security of the country; and
 - (ii) intelligence gathered internally in order to prevent and counter violent extremism, including terrorism, in the country;
 - (a) provide intelligence to aid the formulation of Government policy and programmes;
 - (e) provide Government with feedback from the populace;
 - (j) gather intelligence to counter threats from organised crime and any other form of criminal activity;
 - (g) conduct investigations in collaboration with the relevant security agencies into serious offences and matters of national importance;
 - (h) support the provision of security protection for
 - (i) the Presidency;
 - (ii) visiting diplomats or persons with diplomatic immunity; and
 - (iii) designated public officials; and
 - (i) perform any other function for intelligence purposes as directed by the Council or the Minister.
- (2) The External Intelligence Agency shall
- (a) through the Minister, brief the President, the National Security Council and any other relevant stakeholder on intelligence gathered externally, relevant to the national security interests of the country;
 - (b) collect, analyse, evaluate and securely disseminate intelligence gathered externally and perform covert actions;
 - (c) collect intelligence on economic issues and any other issue of strategic relevance to national development;
 - (a) provide intelligence from external sources in order to prevent and counter violent extremism, including terrorism, in the country;

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- (*e*) engage in acts of espionage to advance the national interest at the international level;
 - (*f*) conduct due diligence on foreign entities and vet persons of interest including an Ambassador designate or a High Commissioner designate;
 - (*g*) liaise with foreign intelligence services for the purpose of intelligence sharing and the provision of opportunities for technical assistance and training;
 - (*h*) provide external intelligence insights to aid in the formulation of foreign policy and assist the decision-making process of Government on foreign engagements;
 - (*i*) provide intelligence to aid in combatting all forms of criminal activity; and
 - (*j*) perform any other function for intelligence purposes as directed by the Council or the Minister.
- (3) The Bureau of National Communications shall
- (*a*) monitor, collect, analyse, retain and disseminate as appropriate, information and intelligence from the cyberspace, the electronic media, electromagnetic signals and other emissions and any equipment producing such signals to
 - (i) counter threats to security or national well-being;
 - (ii) prevent the commission of a serious offence; or
 - (iii) deter the commission of a serious offence;
 - (*b*) establish and maintain a nationwide information and communications system that deploys the appropriate combination of connectivity, networking, encryption and any other security measure to facilitate secure intelligence sharing among security and intelligence stakeholders;
 - (*c*) develop capacity to check, monitor and analyse at the national and international levels, technological advances in the information industry, communications industry and any other related industry in order to identify potential impacts on national security and national well-being;

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- (a) in consultation with the relevant State defence agencies, law enforcement agencies and security and intelligence agencies, determine technological enhancement requirements for an improved effectiveness and efficiency of defence, security, intelligence and law enforcement operations;
- (e) provide advice and direction on national security strategies to State agencies relating to the mitigation of adverse impacts of information and communication technology practices on national security and the national well-being; and
- (j) perform any other function for intelligence purposes as directed by the Council or the Minister.

Administrative Provisions

Appointment of Directors-General

22. (1) There shall be appointed a Director-General for each of the intelligence agencies provided under this Act, who shall be the head of the relevant agency.

(2) The President shall in accordance with article 195 of the Constitution appoint the Directors-General, on the terms and conditions determined by the President.

Functions of Directors-General

23. A Director-General appointed under section 22

- (a) is responsible for the efficient and effective performance of the functions of the intelligence agency of which the Director-General is the head;
- (b) shall control and administer the intelligence agency under the Director-General, subject to the directions given by the President or the Council; and
- (c) shall pursue and ensure political party neutrality of the intelligence agency in the performance of the functions of the intelligence agency.

Appointment of other staff and employees of intelligence agencies

24. (1) The President shall, in accordance with article 195 of the Constitution, appoint any other staff and employees required for the effective performance of the functions of the intelligence agencies.

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(2) The President may, in accordance with clause (2) of article 195 of the Constitution, delegate the power of appointment under this section.

(3) Other public officers may be seconded or transferred to any of the intelligence agencies.

(4) An intelligence agency shall have control over the selection, training and appropriate induction of a candidate into the relevant intelligence agency in accordance with the conditions of service of the intelligence agency.

(5) The rank and seniority of a person who is recruited into any of the intelligence agencies shall be determined under the conditions of service of that intelligence agency.

Secondment of public officer

25. (1) Subject to the rules and regulations of the Public Service, a directive for the secondment of a public officer to any of the intelligence agencies shall be issued by the institution of that public officer acting in accordance with the advice of the Minister given in consultation with the Director-General of the relevant intelligence agency.

(2) A public officer who is seconded to any of the intelligence agencies shall, during the period of secondment, function under the sole and direct supervision of the Director-General of the relevant intelligence agency.

(3) A public officer who is seconded to any of the intelligence agencies shall

(a) be bound by the Code of Conduct of the intelligence agency; and

(b) undergo an in-house training or orientation that the Director-General may consider necessary for the effective performance of the duties of that public officer within the intelligence agency.

(4) The rank and seniority of a public officer who is seconded to an intelligence agency shall be determined under the conditions of service of that intelligence agency with reference to the correlation of ranks between that intelligence agency and the institution of that public officer.

Transfer of public officer

26. (1) Subject to the rules and regulations of the Public Service, a directive for the transfer of a public officer to any of the intelligence agencies shall be issued by the institution of that public officer acting in accordance with the advice of the Minister given in consultation with the Director-General of the relevant intelligence agency.

(2) A public officer who is transferred to an intelligence agency shall hold office on the terms and conditions specified in the letter of appointment.

(3) A public officer who is transferred to an intelligence agency ceases to be an employee of the institution from which that public officer was transferred.

(4) The rank and seniority of a public officer who is transferred to an intelligence agency shall be determined under the conditions of service of that intelligence agency with reference to the correlation of ranks between that intelligence agency and the institution of that public officer.

Appointment of National Security Co-ordinator

27. (1) The President shall, in accordance with article 195 of the Constitution, appoint an officer to be designated as the National Security Co-ordinator.

(2) The National Security Co-ordinator shall hold office on the terms and conditions specified in the letter of appointment.

Functions of the Co-ordinator

28. The Co-ordinator shall

- (a) ensure the provision of timely and effective logistics, skill and training in support of the national security requirements of the country;
- (b) co-ordinate, on behalf of the Minister on a day-to-day basis, the operational activities of the intelligence agencies, and the regional and district security councils;
- (c) co-ordinate, on behalf of the Minister, the implementation of national security policies adopted by the Council including the National Security Strategy, Counter-Terrorism Strategy and any other related action plans;

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- (a) receive, collate and evaluate reports from the intelligence agencies and disseminate related information on a need-to-share basis within Government and to other relevant stakeholders;
- (e) assist the relevant intelligence agencies to gather internal and external intelligence to detect and prevent threats to the security of the State;
- (j) oversee the integrity of the collection, reporting and assessment efforts and processes of the intelligence agencies to ensure that each operation has the necessary approval and is in compliance with existing enactments;
- (g) brief the Minister within twenty-four hours of any significant operational matter brought to the attention of the Co-ordinator;
- (h) be accountable to the Minister for the operational funds of the Ministry; and
- (i) perform any other function directed by the Minister.

Appointment of Deputy National Security Co-ordinator

29. (1) The President shall, in accordance with article 195 of the Constitution, appoint an officer to be designated as the Deputy National Security Co-ordinator.

(2) The Deputy National Security Co-ordinator shall hold office on the terms and conditions specified in the letter of appointment.

(3) The Deputy National Security Co-ordinator shall assist the National Security Co-ordinator in the performance of the functions of the Co-ordinator.

Staff for office of the Co-ordinator

30. (1) The President shall, in accordance with article 195 of the Constitution, appoint any other employee that the President considers necessary for the effective performance of the functions of the office of the Co-ordinator.

(2) The President may, in accordance with clause (2) of article 195 of the Constitution, delegate the power of appointment of public officers under this section.

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(3) Other public officers may be transferred or seconded to the office of the Co-ordinator.

Responsibilities and Roles for National Security

Functions of the Minister

31. The Minister shall, in addition to the functions specified in the Civil Service Act, 1993 (P.N.D.C.L. 327) and any other enactment, perform the following functions:

- (a) oversee the security and intelligence agencies and provide appropriate orientation, guidance and direction to the security and intelligence agencies and the national security apparatus;
- (b) oversee the development and implementation of national security policies adopted by the Council or as directed by the President;
- (c) ensure the presentation of the National Security Strategy to Parliament once every four years;
- (a) ensure that all activities of the national security apparatus are carried out in compliance with domestic and international laws;
- (e) communicate national security issues to Parliament, the general public and international partners;
- (j) co-ordinate and ensure the delivery of appropriate strategic responses to terrorists acts, cyber-attacks and any other security incident that is considered to be prejudicial to national security;
- (g) in consultation with the Co-ordinator and the Directors-General of the intelligence agencies,
 - (i) determine the staff requirements of the intelligence agencies;
 - (ii) set objectives and targets for the intelligence agencies; and
 - (iii) monitor compliance with the objectives and targets; and
- (h) perform any other function directed by the Council.

Functions of Chief Director

32. The Chief Director of the Ministry shall, in addition to the functions specified under section 20 of the Civil Service Act, 1993 (P.N.D.C.L. 327) and any other enactment, perform the following functions:

- (a) provide administrative and technical support for the defence and enhancement of national security in compliance with domestic and international laws;
- (b) account to the Minister for the non-operational budget of the Ministry; and
- (c) perform any other function directed by the Minister.

Complaints Tribunal

Investigation of complaints

33. (1) A person who is aggrieved by an omission of an intelligence agency may submit a written or oral complaint to the Director-General of that intelligence agency.

(2) The Director-General shall examine the complaint and take appropriate action within a period not exceeding thirty days from the date of receipt of the complaint.

(3) A person who has made a complaint to a Director-General under this section may, where

- (a) action is not taken on the complaint within the period specified, or
- (b) that person is dissatisfied with the action taken by the Director-General

submit a written complaint to the Chief Justice who shall refer the complaint to the tribunal provided for under section 34.

Complaints tribunal

34. (1) The Chief Justice shall on receipt of a complaint, appoint within a period of sixty days, a tribunal of three persons to examine and determine the issues in the complaint.

(2) The tribunal shall consist of

- (a) a Justice of the High Court, a retired Justice of the High Court or a lawyer who qualifies to be appointed a Justice of the High Court; and

- (*l*) two other persons one of whom is a person with considerable knowledge of the area of the subject matter of the complaint and operation of intelligence agencies in general.

Examination of complaints

35. (1) The tribunal shall examine and determine a complaint referred to the tribunal by the Chief Justice.

- (2) The tribunal shall not determine a complaint which
 - (*a*) the tribunal considers frivolous or vexatious or is not made in good faith,
 - (*b*) is the subject matter of an action before a Court, or
 - (*c*) the tribunal considers to be prejudicial to national security.

Proceedings at investigation

36. (1) The tribunal may exclude from the proceedings of the tribunal, persons other than parties to the proceedings and the lawyers of those persons, where the tribunal considers it necessary in the interest of defence, public safety, public order, public morality or the protection of the private lives of persons concerned in the proceedings.

(2) The tribunal may call a witness who, and request the production of documents, which the tribunal considers necessary in the interest of justice.

(3) A witness appearing before the tribunal shall be paid travelling and any other allowances determined by the Chief Justice.

(4) The tribunal shall give a fair hearing to the persons appearing before the tribunal, and for that purpose, the rules of procedure of the High Court shall apply to proceedings of the tribunal with the modifications that are necessary.

Notification to the Director-General

37. The tribunal shall not commence the examination of a complaint referred to the tribunal by the Chief Justice, unless the tribunal has submitted to the Director-General of the intelligence agency concerned, a written notice together with the substance of the complaint.

Representation before tribunal

38. A person appearing before the tribunal may
- (*a*) make a representation to the tribunal,

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- (b) be represented by a lawyer chosen by that person, and
- (c) produce the evidence that person considers necessary for the investigations.

Decision of the tribunal

39. (1) On the conclusion of an investigation of a complaint, the tribunal shall notify the Director-General concerned and the complainant of the decision of the tribunal.

(2) Where the tribunal decides that compensation in the form of money should be paid to the complainant, the tribunal shall direct that the money is paid from public funds.

Appeal to the Court of Appeal

40. An appeal against a decision of the tribunal lies as of right to the Court of Appeal.

Warrants

Application for warrant

41. (1) Where a Director-General of an intelligence agency or an employee designated by the Director-General has reasonable grounds to believe that a warrant is required to enable the agency to perform a function under this Act, the Director-General or the designated employee may apply for the issue of a warrant.

(2) The application for the warrant shall be made in writing to a Justice, the chairperson of a tribunal or a senior police officer not below the rank of a superintendent.

Matters to be specified in an application for warrant

42. (1) An application for a warrant shall specify
- (a) the facts relied on to justify the belief, or reasonable grounds, that a warrant is required to enable the intelligence agency to investigate a threat to security or to perform functions under this Act;
 - (b) that the urgency of the matter is of a nature that it would be impracticable to carry out the investigation using other investigative procedures or that without a warrant under this section, it is likely that information of importance relating to a threat to security or the performance of the functions under this Act would not be obtained;

- (c) where the purpose is to intercept communications
 - (i) the type of communication proposed to be intercepted, the type of information, records, documents or things proposed to be obtained and the powers in paragraphs (a) and (b) proposed to be used; and
 - (ii) the identity of the person, if known, whose communication is proposed to be intercepted or who has possession of the information, record, document or thing proposed to be obtained;
 - (a) the person or class of persons to whom the warrant is proposed to be directed;
 - (e) a general description of the place where the warrant is proposed to be executed, if a general description of that place can be given;
 - (j) the period, not exceeding sixty days, for which the warrant requested is to be in force where necessary; and
 - (g) a previous application made in relation to a person identified pursuant to subparagraph (ii) of paragraph (c), the date on which the application was made, the name of the Justice to whom the application was made and the decision of the Justice in respect of the application.
- (2) A warrant authorising the interception of communications shall be signed personally by a Justice of the Superior Court of Judicature.

Effect of warrant

43. (1) A warrant issued under section 42 shall authorise a person in a class of persons to whom the warrant is issued, to exercise the powers specified in the warrant for the purpose of intercepting communications, obtaining information, records, documents or things of the type specified in the warrant.

(2) The warrant shall further authorise the provision of assistance to the person exercising the powers specified in the warrant by a person who believes that, on reasonable grounds, that person is exercising the powers in accordance with a warrant.

Use of internal grievance procedure

44. Despite the provisions of this Act on redress of grievances, an employee of an intelligence agency shall at the first instance resort to the internal grievance procedure set out in the conditions of service and Code of Conduct of that intelligence agency, before resorting to the procedure set out under this Act.

Financial Provisions

Expenses of Council and intelligence agencies

45. Parliament shall provide from the Consolidated Fund the moneys required for the expenses of the Council and the intelligence agencies.

Accounts and audit

46. (1) The Council shall keep the books, records and returns of accounts and other documents relevant to the accounts in the form approved by the Auditor-General.

(2) The Council shall submit the accounts of the Council to the Auditor-General for audit at the end of the financial year.

(3) The Auditor-General shall, within six months after the end of the immediately preceding financial year, audit the accounts and forward a copy each of the audit report to the Minister and the Council.

(4) The financial year of the Ministry is the same as the financial year of the Government.

Annual reports and other reports

47. (1) The Council shall, within thirty days after receipt of the audit report, submit to the Minister an annual report covering the activities and the operations of the national security intelligence agencies for the year to which the report relates.

(2) The annual report shall include

- (a) activities and operations of the national security and intelligence agencies;
- (b) the report of the Auditor-General; and
- (c) any other information that may be required by the Minister in conformity with the Public Financial Management Act, 2016 (Act 921) or that may be relevant to enhance transparency and accountability.

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(3) The Minister shall, within thirty days after the receipt of the annual report from the Council, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Council shall also submit to the Minister any other reports which the Minister may require in writing.

Retirement benefits

48. An employee of an intelligence agency under this Act is entitled to the retirement benefits specified in the conditions of service of that intelligence agency.

Miscellaneous Provisions

Oaths

49. (1) A Director-General, any other employee of an intelligence agency and a committee of the Council shall, before the commencement of functions under this Act, take the oath of allegiance and the oath of secrecy on taking office, as provided in the Schedule.

(2) A Director-General, any other employee of an intelligence agency, and a committee of the Council shall, on ceasing to be an employee or a member of a regional or district security council or a member of a committee of the Council be sworn out of office in accordance with the oath, as provided in the Schedule.

Authorised disclosure of information

50. (1) An employee of an intelligence agency shall not disclose any information obtained in the performance of a function under this Act except as required by this Act or any other enactment.

(2) Despite subsection (1), an intelligence agency may permit the disclosure of information by an employee under this Act

- (a) to a public officer who has authority to investigate an alleged contravention of a law or to the Attorney-General, if the information is required for an investigation or prosecution;
- (b) to the Minister responsible for Foreign Affairs, if the information relates to the conduct of the international affairs of the country;
- (c) to the Minister responsible for Defence or a person designated by the Minister if the information is relevant to the defence of the country;

- (a) to the Chief Justice, if the information is required by a court of competent jurisdiction; or
- (e) to a Minister of State or person in the public service, if in the opinion of the Director-General the disclosure of the information is essential in the public interest, and the public interest outweighs an invasion of privacy that may result from the disclosure.

Offences to disclose information and identity

51. (1) Subject to the Constitution and to section 50, a person shall not disclose any information obtained by that person or to which that person had access in the performance of functions under this Act or to which that person had access in the administration or enforcement of this Act and from which there can be inferred the identity of

- (a) any other person who is or was a confidential source of information or assistance to the intelligence agency, or
- (b) a person who is or was an employee engaged in covert operational activities of the intelligence agencies.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a term of imprisonment of not less than five years and not more than ten years.

Disclosure before Parliament

52. (1) An employee of an intelligence agency shall not be required to produce before Parliament a document or any other evidence where

- (a) the Speaker certifies that the
 - (i) document or the other evidence belongs to a class of documents or evidence, the production of which is injurious to the public interest; or
 - (ii) disclosure of the evidence or of the contents of the document will be injurious to the public interest; or
- (b) the Council certifies that the
 - (i) document or any other evidence belongs to a class of documents or evidence the production of which is prejudicial to the security of the Republic; or
 - (ii) disclosure of the evidence or of the contents of the document will be prejudicial to the security of the Republic.

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(2) Where there is doubt as to the nature of a document or any other evidence referred to in subsection (1), the Speaker or the Council shall refer the matter, in accordance with article 135 of the Constitution, to the Supreme Court for determination whether the production, or the disclosure of the contents, or the document or any other evidence would be injurious to the public interest or prejudicial to the security of the Republic.

Application of Evidence Act, 1975 (N.R.C.D. 323)

53. The provisions on disclosure of information in this Act are without prejudice to the privilege conferred on a person under the Evidence Act, 1975 (N.R.C.D.323) in relation to disclosure of evidence.

Protection of employees

54. Subject to the Constitution, an employee of an internal intelligence agency has in the performance of functions under this Act, the same rights and powers as are conferred by law on a police officer in the performance of functions and has the same protections.

Regulations

55. (1) The Council may, by legislative instrument, make Regulations for the effective implementation of this Act.

(2) Without limiting subsection (1), the Regulations may provide for

- (a) conditions of service of employees of the intelligence agencies;
- (b) matters on discipline of the employees;
- (c) matters relating to reporting procedures; and
- (a) matters relating to the Scheme of Service of the intelligence agencies.

Interpretation

56. In this Act, unless the context otherwise requires,

“civil protection” means safeguarding the citizens from military or armed attacks and natural disasters by the use of emergency operations such as prevention, mitigation, preparation, response, or emergency evacuation and recovery;

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- “conflict area” means an area of actual or potential political, economic, social or security instability which is declared as such by the national, regional or district security council;
- “Co-ordinator” means the National Security Co-ordinator appointed under section 27;
- “Council” means the National Security Council established by article 83 of the Constitution and referred to in section 1;
- “committee of the Council” includes
- (a) a regional security council;
 - (b) district security council;
 - (c) the National Security Committee;
 - (d) the Public Order and Civil Protection Committee;
 - (e) the Joint Intelligence Committee; and
 - (f) the Ministerial Security Co-ordinating Committee;
- “community leader” means a person who represents a community;
- “cybersecurity” means the practice of defending computers, servers, mobile devices, electronic systems, networks, and data from malicious attacks;
- “covert action” means a secret activity undertaken to influence the course of political, economic and security events, as a government intelligence operation, where it is intended that the role of the government will not be apparent or acknowledged publicly;
- “Director-General” means the Director-General of an intelligence agency;
- “District Chief Executive” includes a Municipal Chief Executive and Metropolitan Chief Executive;
- “District Co-ordinating Director” includes a Municipal Co-ordinating Director and Metropolitan Co-ordinating Director;
- “district security council” means the district security council established under section 5 and includes a metropolitan security council and a municipal security council;

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- “employee” means a person who is appointed as an employee of an intelligence agency or has become an employee of an agency under this Act whether by transfer, secondment or otherwise;
- “espionage” means the practice of spying by a government to obtain political, economic and military information to enhance state security;
- “foreign entity” means a recognised organisation, agency or body established in a foreign state;
- “functions” include powers and duties;
- “Government Communication” means the exchange of information and information systems between Government, Ministries, Departments and Agencies;
- “human security” means identifying and addressing widespread and cross-cutting challenges that affect the survival, livelihood and dignity of persons, by deploring people-centred, comprehensive, context-specific and prevention-oriented responses to strengthen the protection and empowerment of persons;
- “intelligence agencies” means the intelligence agencies referred to in section 19;
- “Justice” means a Justice of the Superior Court of Judicature;
- “Minister” means the Minister responsible for National Security;
- “Ministry” means the Ministry of National Security;
- “national security apparatus” means a distinct structure with functional elements based on dynamic and structural value for the effective running of national security;
- “National Security Strategy” means a document prepared periodically by the Government to outline the major national security concerns of the country and the plans Government has to deal with the major national security concerns;

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“national well-being” means the creation of conditions by the nation for the population to thrive and involves the quality of life, prosperity and positive physical and mental health of the population;

“organised crime” means a recurring serious offence committed by two or more persons working in concert;

“persons of interest” means identified persons involved in a criminal investigation who have not been arrested or formally accused of a crime;

“regional security council” means the regional security council established under section 5;

“security service” means the services connected with national security as determined by the Council;

“serious offence” includes

- (a) participation in an organised criminal group, terrorism and terrorist financing, money laundering, human trafficking, people smuggling, sexual exploitation, illicit trafficking in narcotic drugs, illicit arms trafficking, trafficking in stolen and other goods, corruption and bribery, serious fraud, counterfeiting and piracy of products, smuggling, extortion, forgery, insider trading and market manipulation,
- (b) murder, grievous bodily harm, robbery or stealing where these are predicate offences for a serious offence, and
- (c) any other similar offence or related prohibited activity punishable with imprisonment for a period of not less than five years and not more than twenty-five years;

“threats to security” include

- (a) espionage or sabotage that is against the Republic or is detrimental to the interest of the Republic, or activities directed towards or in support of that espionage or sabotage;

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- (b) foreign influenced activities within or relating to the Republic that are detrimental to the interest of the Republic and are clandestine or deceptive or involve a threat to a person;
- (c) activities within or relating to the Republic directed towards or in support of the threat or use of acts of serious violence against a person or property for the purpose of achieving a political objective within the Republic or a foreign state; or
- (a) cybercrime in the nature of
 - (i) online information theft, identity theft, online predatory crime, cyber-terrorism, phishing, hacking;
 - (ii) an unauthorised computer access that targets a computer network or device, or that uses a computer network to advance criminal activity in the country; or
 - (iii) any other activity of domestic or foreign origin that seeks to undermine or compromise the integrity or technical efficacy of the information and communication technology network of the State; and

“violent extremism” means the belief and action of a person who supports or uses ideologically-motivated violence to further radical ideological, religious or political aims.

Repeal and savings

57. (1) The Security and Intelligence Agencies Act, 1996 (Act 526) is repealed.

(2) Despite the repeal of Act 526, Regulations, notices, orders, directions, appointments or any other act lawfully made or done under the repealed enactment and in force immediately before the coming into force of this Act shall, with such modifications as are made by this Act, be considered to have been made or done under this Act and shall continue to have effect until reviewed, cancelled or terminated.

Consequential amendments

58. (1) A reference to the Bureau of National Investigations in any enactment or document existing before the coming into force of this Act shall be construed as a reference to the Internal Intelligence Agency.

(2) A reference to a Director of an intelligence agency in any enactment or document existing before the coming into force of this Act shall be construed as a reference to the Director-General of the intelligence agency concerned.

(3) A reference to the Research Department in any enactment or document existing before the coming into force of this Act shall be construed as a reference to the External Intelligence Agency.

Transitional provisions

59. (1) An employee or staff appointed under section 30 to assist the Co-ordinator in the performance of the functions of the Co-ordinator shall, on the coming into force of this Act, be considered as an employee or staff appointed under section 24.

(2) Despite subsection (1), the terms and conditions of service of an employee or staff appointed under section 24 or 30 shall not, on the coming into force of this Act, derogate from the terms and conditions of service of that employee or staff at the time of appointment.

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SCHEDULE
(section 49)
Forms of Oath
OATH OF OFFICE

I,.....do (in the name of the Almighty God swear) (solemnly affirm) that I will faithfully and impartially to the best of my abilities perform the functions required of me as the Director-General /a member of a committee of the Council / an employee) of the intelligence agencies. So help me God.

OATH OF SECRECY ON TAKING OFFICE

I,, do (in the name of the Almighty God swear) (solemnly affirm) that I will not, without due authority, disclose or make known to a person an information acquired by me by reason of the functions performed by me on behalf of or under the direction of the intelligence agencies or by reason of an office or employment held by me pursuant to the Security and Intelligence Agencies Act, 2020 (Act....). So help me God.

OATH OF ALLEGIANCE

I,do (in the name of the Almighty God swear) (solemnly affirm) that I will bear true faith and allegiance to the Republic of Ghana, to the President of Ghana, to the Government of Ghana, as by law established, that I will uphold the sovereignty and integrity of the Republic of Ghana and that I will preserve, protect and defend the Constitution of the Republic of Ghana. So help me God.

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OATH OF SECRECY ON LEAVING OFFICE

I,, having retired or resigned from my appointment in or having had my appointment terminated by an intelligence agency do hereby (in the name of the Almighty God swear) (solemnly affirm) that I will not directly or indirectly communicate or reveal any matter to any person which was considered by me or came to my knowledge in the discharge of my official duties save as may be required for or as may be specifically required by law. So help me God.

Date of *Gazette* notification: 22nd April, 2020

SECURITY AND INTELLIGENCE AGENCIES BILL, 2020

MEMORANDUM

The object of the Bill is to provide for matters relating to the National Security Council, the establishment of regional and district security councils, and to specify the agencies responsible for the security of the State.

The Security and Intelligence Agencies Act, 1996 (Act 526) has been in existence for over twenty-four years. Act 526, in its current form, does not adequately reflect the security architecture of the country. There is the need for the re-structuring of the national security architecture to adequately respond to emerging national security challenges and to adequately cater for national security policy direction.

The Bill seeks to repeal the Security and Intelligence Agencies Act, 1996 (Act 526) to establish the required national security architecture to address emerging national security challenges and takes cognisance of other significant matters not catered for in Act 526.

In view of the national security architecture, the current functions of the intelligence agencies and membership and functions of the regional and district security councils are woefully inadequate. The lines of reportage between the intelligence agencies, the national security architecture and other Ministries, Departments and Agencies necessitate a holistic review to ensure clear channels of reportage. The required changes to Act 526 necessitate a repeal of Act 526. A new and comprehensive piece of legislation is therefore required.

In this regard, the Bill provides for an expansion of the functions of the intelligence agencies, establishes additional committees of the National Security Council and outlines the functions and specifies the respective roles of the Minister responsible for National Security, the National Security Co-ordinator and the Chief Director of the Ministry of National Security.

Furthermore, the Bill seeks to expand the membership and functions of the regional and district security councils to include the contribution of important stakeholders such as the National Disaster Management Organisation and community leaders with knowledge in human security. The Bill also mandates the regional and district security councils to consult,

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when appropriate, with important local stakeholders such as the National Peace Council, the Regional House of Chiefs and religious and other opinion leaders.

The Bill expands the existing role of the intelligence agencies to include the combating of significant new threats such as cybercrime and terrorism. As a result, the change in the nomenclature of the Bureau of National Investigation to the National Intelligence Bureau denotes activities that are more skewed towards intelligence-oriented tasks. The Bill creates an additional agency known as the Bureau of National Communications with functions to address emerging electronic threats, signal intelligence and information assurance.

The Bill provides clear guidelines on the channels of reportage between the intelligence agencies, the national security architecture and other Ministries, Departments and Agencies. In this regard, four committees of the National Security Council, namely, the National Security Committee, the Public Order and Civil Protection Committee, the Joint Intelligence Committee and the Ministerial Security Co-ordinating Committee are established.

The Bill expands the functions of the National Security Co-ordinator and the Deputy National Security Co-ordinator and provides for a revised complaints procedure of the intelligence agencies.

Clauses 1 to 4 provide for matters related to the National Security Council. *Clause 1* provides for the composition of the National Security Council established under article 83 of the Constitution.

The procedure at meetings of the Council is provided for in *clause 2*. The President is to preside at meetings of the Council and in the absence of the President, the Vice-President is to preside. The Council is to regulate the procedure at the meetings of the Council.

Clause 3 designates the Secretary to the Cabinet as the Secretary to the Council.

The functions of the Council in accordance with article 84 of the Constitution are provided for in *clause 4* of the Bill. The functions of the

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Council include considering and taking appropriate measures to safeguard the internal and external security of the country and ensuring the collection of information relating to the security of the country and the integration of the domestic and foreign security policies relating to the Council so as to enable the security services and any other departments and agencies of the Government to co-operate more effectively in matters relating to national security. Other functions of the Council are to assess and appraise the objectives, commitments and risks of the country in relation to the actual and potential military power in the interest of national security and the taking of appropriate measures regarding the consideration of policies on matters of common interest to the departments and agencies of the Government concerned with national security.

Clauses 5 to 18 provide for the committees of the Council. *Clause 5* establishes a security council for each region and district in the country. The regional and district security councils are to operate as committees of the Council and perform in the regions and districts, the functions determined by the Council.

The membership of a regional security council is provided for in *clause 6*. The Regional Co-ordinating Director is the Secretary to the regional security council. The regional security council is to regulate the procedure at the meetings of the regional security council.

A regional security council is to, in relation to the region, perform the functions of the Council assigned by the Council, provide early warning to the Government of the existence or likelihood of a security threat to the region, the country or the Government and in consultation with the Council, take appropriate measures to ensure peace in conflict areas in each region, *clause 7*. The regional security council is also to take measures to ensure peace building in the region and take immediate steps to ensure law and order and assist the population in the event of an emergency or a disaster.

The membership of a district security council is provided for in *clause 8*. The District Co-ordinating Director is the Secretary to the district security council. The district security council is to regulate the procedure for the meetings of the district security council.

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The functions of a district security council as provided in *clause 9* include performing the functions of the Council assigned by the Council, providing early warning to the Government of the existence or likelihood of a security threat to the district, the country or the Government, and taking measures to ensure peace building in the district.

The standard provision on the establishment of committees is provided for in *clause 10*. The Council is also to establish the National Security Committee, Public Order and Civil Protection Committee, the Joint Intelligence Committee and the Ministerial Security Co-ordinating Committee.

The membership of the National Security Committee is provided for in *clause 11*. The Chief Director of the Ministry is the Secretary to the National Security Committee.

The functions of the National Security Committee are provided for in *clause 12*. The National Security Committee is to, among others, ensure the overall security in the country, ensure cybersecurity in consultation with the appropriate agencies in the country and recommend policy options and guidance to the Council on matters relevant to the security and economic well-being of the country. The National Security Committee is also required to recommend a framework for the integration of intelligence into the domestic, foreign and security policies of the country and recommend measures to ensure the security of the borders of the country.

The membership of the Public Order and Civil Protection Committee is provided for in *clause 13*. The Chief Director of the Ministry of the Interior is the Secretary to the Public Order and Civil Protection Committee.

The functions of Public Order and Civil Protection Committee are provided for in *clause 14*. The Public Order and Civil Protection Committee is to, among others, review the security situation in respect of the maintenance of public order and civil protection and recommend policy options to the Council and advise the Council on matters relating to public order and civil protection. The Public Order and Civil Protection Committee is also mandated to co-ordinate and facilitate measures for

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response to national emergencies, disaster management and events that undermine the internal stability or economic well-being of the State and generally advise the Council on any matter referred to the Public Order and Civil Protection Committee by the Council.

The membership of the Joint Intelligence Committee is provided for in *clause 15*. The head of Legal Affairs of the Ministry is the secretary to the Joint Intelligence Committee.

The functions of Joint Intelligence Committee as outlined in *clause 16* include overseeing the organisation of intelligence activities within and outside the country to ensure efficiency and prompt adaptation to changing requirements; and the co-ordination of inputs from the intelligence agencies and making recommendations to the Council for inter-agency operations. The Joint Intelligence Committee is also required to monitor and give early warning of the development of direct or indirect foreign threats to the national interest, review domestic threats to security referred to the Joint Intelligence Committee by the Council and advise on any matter referred to the Joint Intelligence Committee by the Council.

Clause 17 establishes the Ministerial Security Co-ordinating Committee. The Ministerial Security Co-ordinating Committee consists of the Minister responsible for National Security as the chairperson and the Ministers responsible for Defence and the Interior. The Ministerial Co-ordinating Committee is to consider matters that have sensitive intelligence value related to defence, security and the stability of the State in order to advise on decision making, deliberate on sensitive and strategic intelligence, security and defence policy issues and co-ordinate the procurement of intelligence security and defence requirements in order to optimise synergy, among others, *clause 18*.

Clauses 19 to 21 deal with the intelligence agencies. The national security intelligence agencies are provided for in *clause 19*. The national security agencies consist of the Internal Intelligence Agency which was formerly the Bureau of National Intelligence, the External Intelligence Agency which was formerly the Research Department and the Bureau of National Communications. The Council is to, by publication in the

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Gazette, determine any other agency that is to form part of the national security intelligence agencies.

Clause 20 designates the National Security Council as the governing body of the intelligence agencies.

Clause 21 outlines the functions of the national security intelligence agencies. *Subclause (1)* of *clause 21* enumerates the functions of the Internal Intelligence Agency to include the collection, analysis, evaluation and dissemination of intelligence, gathered internally and the performance of covert actions. The responsibility for counter espionage and activities for the internal security of the country; and intelligence gathered internally in order to prevent and counter violent extremism including terrorism, in the country and the gathering of intelligence to counter threats from organised crime and any other form of criminal activity also form part of the functions of the Internal Intelligence Agency.

The Internal Intelligence Agency is further required to conduct investigations in collaboration with the relevant security agencies in respect of serious offences and matters of national importance; support the provision of security protection for the Presidency, visiting diplomats or persons with diplomatic immunity and designated public officials, and perform any other function for intelligence purposes as directed by the Council or the Minister.

In *subclause (2)* of *clause 21*, the External Intelligence Agency is responsible for the collection, analysis, evaluation and the secure dissemination of intelligence gathered externally and the performance of covert actions as well as the collection of intelligence on economic issues and any other issue of strategic relevance to national development. The provision of intelligence from external sources in order to prevent and counter violent extremism, including terrorism in the country and engagement in acts of espionage to advance the national interest at the international level is also a function of the External Intelligence Agency.

The External Intelligence Agency is further required to conduct due diligence on foreign entities and vet persons of interest including an Ambassador designate or a High Commissioner designate; provide

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external intelligence insights to aid in the formulation of foreign policy and assist the decision-making process of Government on foreign engagements; and provide intelligence to aid in combatting all forms of criminal activity, among others.

In *subclause (5) of clause 21*, the Bureau of National Communications is required to monitor, collect, analyse, retain and disseminate as appropriate, information and intelligence from cyberspace, the electronic media, electromagnetic signals and other emissions and any equipment producing such signals in order to counter threats to security or national well-being, prevent the commission of a serious offence or deter the commission of a serious offence.

The Bureau of National Communication is further required to establish and maintain a nationwide information and communications system that deploys the appropriate combination of connectivity, networking, encryption and any other security measure to facilitate secure intelligence sharing among security and intelligence stakeholders; in consultation with the relevant State defence agencies, law enforcement agencies and security and intelligence agencies, determine technological enhancement requirements for an improved effectiveness and efficiency of defence, security, intelligence and law enforcement operations; and provide advice and direction on national security strategies to State agencies relating to the mitigation of adverse impacts of information communication technology practices on national security and national wellbeing.

Administrative provisions are dealt with in *clauses 22 to 30*. The appointment of a Director-General for each of the intelligence agencies by the President in accordance with article 195 of the Constitution is provided for in *clause 22*.

The Director-General is responsible for the efficient and effective performance of the functions of the intelligence agency of which the Director-General is the head and also the control and administration of the intelligence agency under the Director-General, subject to the directions given by the President or the Council, *clause 23*. The Director-General is

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also to pursue and ensure political party neutrality of the intelligence agency in the performance of the functions of the intelligence agency.

The appointment of other staff and employees of intelligence agencies is provided for in *clause 24*. This is to be done by the President in accordance with article 195 of the Constitution. An intelligence agency is to have control over the selection, training and appropriate induction of a candidate into the relevant intelligence agency in accordance with the conditions of service of the intelligence agency.

Matters dealing with the secondment and transfer of a public officer to any of the intelligence agencies are provided for in *clauses 25 and 26*, respectively.

The appointment of the National Security Co-ordinator is provided for in *clause 27*. The National Security Co-ordinator is to, in *clause 28*, among others, ensure the provision of timely and effective logistics, skill and training in support of the national security requirements of the country and co-ordinate, on behalf of the Minister on a day-to-day basis, the operational activities of the intelligence agencies and the regional and district security councils. Additionally, the National Security Co-ordinator is to co-ordinate, on behalf of the Minister, the implementation of national security policies adopted by the Council including the National Security Strategy, Counter-Terrorism Strategy and any other related action plans and brief the Minister within twenty-four hours of any significant operational matter brought to the attention of the Minister. The National Security Co-ordinator is required to account to the Minister for the operational funds of the Ministry.

The appointment of a Deputy National Security Co-ordinator is provided for in *clause 29*. The Deputy National Security Co-ordinator is required to assist the National Security Co-ordinator in the performance of the functions of the National Security Co-ordinator.

Provision is made in *clause 30* for staff for the office of the National Security Co-ordinator. The *clause* also makes room for other public officers to be transferred or seconded to the office of the National Security Co-ordinator.

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The roles and responsibilities for national security are provided for in clauses 31 and 32. The functions of the Minister are provided for in clause 31. In addition to the functions specified in the Civil Service Act, 1993 (P.N.D.C.L.327) and any other enactment, the Minister is required to oversee the security and intelligence agencies as well as provide appropriate orientation, guidance and direction to the security and intelligence agencies and the national security apparatus. The Minister is also required to oversee the development and implementation of national security policies adopted by the Council or as directed by the President. The presentation of the National Security Policy to Parliament once every four years and the communication of national security issues to Parliament, the general public and international partners also form part of the responsibilities of the Minister.

The Minister is further required to co-ordinate and ensure the delivery of appropriate strategic responses to terrorists acts, cyber-attacks and any other security incident that is considered to be prejudicial to national security and in consultation with the National Security Co-ordinator and the Directors-General of the intelligence agencies, determine the staff requirements of the intelligence agencies, and set objectives and targets for the intelligence agencies. Furthermore, the Minister is required to monitor compliance with the objectives and targets and perform any other function directed by the Council.

The functions of the Chief Director of the Ministry are provided for in clause 32. In addition to the functions specified under section 20 of the Civil Service Act, 1993 (P.N.D.C.L. 327) and any other enactment, the Chief Director is to provide administrative and technical support for the defence and enhancement of national security in compliance with domestic and international laws. The Chief Director is to account to the Minister for the non-operational budget of the Ministry.

Clauses 33 to 40 provide for a Complaints Tribunal. Investigation of complaints is dealt with in clause 33. A person who is aggrieved by an omission of an intelligence agency may submit a written or oral complaint to the Director-General of that intelligence agency. The Director-General is to examine the complaint and take appropriate action within a period

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not exceeding thirty days from the date of receipt of the complaint. In the event that action is not taken on the complaint within the period specified, or that the person is dissatisfied with the action taken by the Director-General, the complainant is entitled to submit a written complaint to the Chief Justice. The Chief Justice is to refer the complaint to the tribunal provided for under *clause 34*.

By virtue of *clause 34*, the Chief Justice is required to, on receipt of a complaint, appoint within a period of sixty days, a tribunal of three persons to examine and determine the issues in the complaint. The tribunal is to consist of a Justice of the High Court, a retired Justice of the High Court or a lawyer who qualifies to be appointed a Justice of the High Court and two other persons, one of whom is a person with considerable knowledge of the area of the subject matter of the complaint and operation of intelligence agencies in general.

In *clause 35*, the tribunal is to examine and determine a complaint referred to the tribunal by the Chief Justice. However, the tribunal is not to determine a complaint which the tribunal considers frivolous, vexatious or is not made in good faith. The tribunal is also not to consider a complaint which is the subject matter of an action before a Court, or which the tribunal considers to be prejudicial to national security.

The proceedings in the course of an investigation are dealt with in *clause 36*. The tribunal is to give a fair hearing to persons appearing before the tribunal, and for that purpose, the rules of procedure of the High Court are to apply to proceedings of the tribunal with the necessary modifications.

The tribunal is not to commence the examination of a complaint referred to the tribunal by the Chief Justice, unless the tribunal has submitted to the Director-General of the intelligence agency concerned, a written notice together with the substance of the complaint, *clause 37*.

A person appearing before the tribunal is entitled to make a representation to the tribunal, be represented by a lawyer chosen by that person, and produce the evidence that person considers necessary for the investigations, *clause 38*.

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Decisions of the tribunal are dealt with in *clause 39*. The *clause* places an obligation on the tribunal to notify the Director-General concerned and the complainant of the decision of the tribunal on the conclusion of an investigation of a complaint. In a case where the tribunal decides that compensation in the form of money should be paid to the complainant, the tribunal is to direct that the money be paid from public funds.

Clause 40 provides for an appeal against a decision of the tribunal to lie as of right to the Court of Appeal.

Clauses 41 to 44 make provision for warrants. *Clause 41* provides for an application for a warrant by a Director-General of an intelligence agency or an employee designated by the Director-General. The application for a warrant is to be made in writing to a Justice, the chairperson of a tribunal or a senior police officer not below the rank of a superintendent or above.

Matters to be specified in an application for a warrant are provided for in *clause 42*. An application for a warrant under the *clause* is to specify, among others, the facts relied on to justify the belief, or reasonable grounds, that a warrant is required to enable the intelligence agency investigate a threat to security or to perform functions under the Bill, the person or class of persons to whom the warrant is proposed to be directed and a general description of the place where the warrant is proposed to be executed, if a general description of that place can be given. An application may also be for the purpose of interception of communications, in which case the warrant authorising the interception of communications is to be signed personally by a Justice of the Superior Court of Judicature.

A warrant issued under the Bill is to authorise a person in a class of persons to whom the warrant is issued, to exercise the powers specified in the warrant for the purpose of intercepting communications, obtaining information, records, documents or things of the type specified in the warrant, *clause 43*.

Clause 44 outlines the internal grievance procedure which employees of the intelligence agencies are to resort to before proceeding to court for redress.

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Financial provisions are provided in *clauses 45 to 48*. The expenses of the Council and intelligence agencies are provided for in *clause 45*. Parliament is to provide from the Consolidated Fund the moneys required for the expenses of the Council and the intelligence agencies.

Standard provisions on accounts and audit as well as annual reports and other reports are dealt with in *clauses 46 and 47* respectively.

Provision is made in *clause 48* for the entitlement of retirement benefits for an employee of an intelligence agency as specified in the conditions of service of that intelligence agency.

The miscellaneous provisions are dealt with in *clauses 49 to 58*. *Clause 49* makes it mandatory for a Director-General and any other employee of an intelligence agency, a member of a regional or district security council and a member of any committee of the Council to, before the commencement of functions under the Bill, take the oath of allegiance and the oath of secrecy before taking office and on ceasing to perform the functions of the office.

Clause 50 makes provision for the authorised disclosure of information. An employee of an intelligence agency is prohibited from disclosing any information obtained in the performance of a function under the Bill except as required by the Bill or any other enactment. The *clause* also provides for situations in which an intelligence agency may permit the disclosure of information by an employee.

Offences and penalties in relation to the disclosure of information and the identity of a person are provided for in *clause 51*.

Clause 52 makes provision for situations in which an employee of an intelligence agency is not required to produce before Parliament a document or any other evidence. The *clause* also provides for a redress mechanism in cases where there is any doubt as to the nature of a document or any other evidence to be produced. In such cases, the Speaker or the Council is required to refer the matter to the Supreme Court in accordance with article 135 of the Constitution.

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Clause 53 makes provision for the application of the Evidence Act, 1975 (N.R.C.D. 323) in relation to disclosure of evidence.

Under *clause 54*, an employee of an internal intelligence agency has, in the performance of functions under the Bill, the same rights, powers and protection conferred by law on a police officer in the performance of functions.

The power of the Council to make Regulations for the effective implementation of the Bill is provided for in *clause 55*. The Regulations may provide for conditions of service of employees of the intelligence agencies, matters on discipline of the employees, reporting procedures and the Scheme of Service of the intelligence agencies.

Clause 56 provides for the interpretation of words and phrases used in the Bill.

Clause 57 repeals the Security and Intelligence Agencies Act, 1996 (Act 526) and saves, among others, Regulations made under Act 526.

Finally, *clause 58* provides for consequential amendments and *clause 59* deals with transitional provisions.

HON. ALBERT KAN-DAPAAH
Minister responsible for National Security

Date: 20th April, 2020