

SECURITY AND INTELLIGENCE AGENCIES ACT, 1996 (ACT 526)

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THE FIVE HUNDRED AND TWENTY-SIXTH

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA

ENTITLED

THE SECURITY AND INTELLIGENCE AGENCIES ACT, 1996

AN ACT to make provision in respect of the National Security Council; to provide for the establishment of Regional and District Security Councils, to specify some of the state agencies responsible for implementing government policies on security of the State and attendant issues on or relating to the internal and external security of Ghana and to provide for related matters.

DATE OF ASSENT: 30TH DECEMBER, 1996

BE IT ENACTED by Parliament as follows—

PART I—NATIONAL SECURITY COUNCIL

Section 1—The National Security Council.

- (1) There shall be the National Security Council referred to in this Act as "the Council".
- (2) The Council shall consist of—
 - (a) the President;
 - (b) the Vice-President;
 - (c) the Ministers for the time being holding the portfolios of foreign affairs, defence, interior, and finance and such other Ministers as the President may determine;
 - (d) the Chief of Defence Staff and two other members of the Armed Forces;
 - (e) the Inspector-General of Police and two other members of the Police Service, one of whom shall be the Commissioner of Police responsible for Criminal Investigations Department;
 - (f) 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.

Section 2—Procedure at Meetings of the Council.

- (1) The President shall preside at meetings of the Council and in his absence the Vice-President shall preside.
- (2) The President may, acting in consultation with the Council, invite such persons as he considers necessary for any deliberations of the Council.
- (3) A person invited to participate in the deliberations of the Council under subsection (2) of this section shall not vote on any matter for decision before the Council.
- (4) The Council shall regulate the procedure at its meetings.

Section 3—Secretary to the Council.

The Secretary to the Cabinet shall be the secretary to the Council.

Section 4—Functions of the Council.

The functions of the Council shall include—

- (a) considering and taking appropriate measures to safeguard the internal and external security of Ghana;
- (b) ensuring the collection of information relating to the security of Ghana and the integration of the domestic, foreign and security policies relating to it so as to enable the security services and other departments and agencies of Government to co-operate more effectively in matters relating to national security;
- (c) assessing and appraising the objectives, commitments and risks of Ghana in relation to the actual and potential military power in the interest of national security; and
- (d) 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.

PART II—REGIONAL AND DISTRICT SECURITY COUNCILS

Section 5—Establishment of Regional and District Security Councils.

- (1) There shall be a Regional and District Security Council for each region and district of the country.
- (2) The Regional and District Security Councils referred to in this Act as "REGSECS" and "DISECS" respectively shall operate as committees of the Council and shall perform such functions of the Council in the regions and districts as the Council shall determine.
- (3) A REGSEC shall in the performance of its functions be answerable to the Council.
- (4) A DISEC shall in the performance of its functions be answerable to the relevant REGSEC.

Section 6—Membership of REGSEC.

- (1) A REGSEC shall consist of—
 - (a) the Regional Minister, who shall be the Chairman;
 - (b) the Deputy Regional Minister or Ministers;
 - (c) the chief executive of the Metropolitan, Municipal or District Assembly in the regional capital;
 - (d) an officer of the Armed Forces nominated by the Chief of Defence Staff;
 - (e) the Regional Police Commander;
 - (f) the Regional Crime Officer;
 - (g) the Regional Officer of the Internal Intelligence Agency specified in Part III of this Act;
 - (h) the Customs, Excise and Preventive Service officer in charge of the region, if any;
 - (i) the Prisons Service officer in charge of the region;
 - (j) the Immigration officer in charge of the region;
 - (k) the Fire officer in charge of the region; and
 - (l) two other persons nominated by the Regional Minister in consultation with the National Security Co-ordinator appointed under section 18 of this Act.
- (2) A REGSEC shall regulate the procedure at its meetings.

Section 7—Functions of REGSECS.

A REGSEC shall in relation to the region—

- (a) perform such functions of the Council as the Council may assign to it; and
- (b) provide early warning to Government of the existence or likelihood of any security threat to the region, to the country or to the Government.

Section 8—Membership and Procedure of DISEC.

- (1) A DISEC shall consist of—
 - (a) the District Chief Executive who shall be the Chairman;
 - (b) the District Police Commander;
 - (c) the District Crime Officer;
 - (d) the District representative of the Internal Intelligence Agency;
 - (e) the Customs, Excise and Preventive Service officer in charge of the district, if any;
 - (f) the Immigration officer in charge of the district;
 - (g) the Fire Officer in charge of the district; and
 - (h) two other persons nominated by the District Chief Executive in consultation with the Co-ordinator.
- (2) The DISEC shall regulate the procedure at its meetings.

Section 9—Functions of a DISEC.

A DISEC shall in relation to the district—

- (a) perform such functions of the Council as the Council may assign to it;
- (b) provide early warning to Government of the existence or likelihood of any security threat to the district, to the country or to the Government.

PART III—THE INTERNAL AND EXTERNAL INTELLIGENCE AGENCIES

Section 10—Continuation in Existence of National Security Intelligence agencies.

The Departments existing immediately before the coming into force of this Act and known as the Bureau of National Investigation and the Research Department respectively are hereby continued in

existence under this Act as the Internal and External Intelligence Agencies of the State, referred to in this Act as “the Intelligence Agencies”.

Section 11—Governing Body of the Intelligence Agencies.

The governing body of the Intelligence Agencies shall be the National Security Council.

Section 12—Functions of the Intelligence Agencies.

(1) The Intelligence Agencies shall have the following functions—

- (a) collect, analyses retain and disseminate as appropriate information and intelligence respecting activities that may constitute threats to the security of the State and the government of Ghana;
- (b) safeguard the economic well-being of the State against threats posed by the acts or omissions of persons or organisations both inside and outside the country;
- (c) protect the State against threats of espionage, sabotage, terrorism, hijacking, piracy, drug trafficking and similar offences;
- (d) protect the State against the activities of persons, both nationals and non-nationals, intended to overthrow the government of Ghana or undermine the constitutional order through illegal political, military, industrial or other means or through any other unconstitutional method; and
- (e) perform such other functions as may be directed by the President or the Council.

Section 13—Appointment of Directors.

(1) There shall be appointed for each of the Intelligence Agencies provided under this Act a Director who shall be the head of the relevant Agency.

(2) The Directors shall be appointed by the President in accordance with the advice of the Council given in consultation with the Public Services Commission and upon such terms and conditions as shall be determined by the appointing authority.

Section 14—Functions of the Directors.

A Director appointed under section 13 shall—

- (a) be responsible for the efficient and effective performance of the functions of the Intelligence Agency of which he is head;
- (b) control and administer the Intelligence Agency under him subject to such directions as the President or the Council may give;
- (c) pursue and ensure political party neutrality of his Intelligence Agency in the performance of its functions.

Section 15—Other Employees of the Intelligence Agencies.

(1) There shall be appointed by the President in accordance with the advice of the Council given in consultation with the Public Services Commission, such other staff and employees as shall be required for the effective performance of the functions of the Intelligence Agencies.

(2) The President may in accordance with article 195(2) 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.

Section 16—Committees.

The Council may for the discharge of the functions provided in this Act appoint committees composed of members of the Council or non-members or both and assign to the committee such of its functions as the Council may determine, except that a committee composed entirely of non-members may only advise the Council.

Section 17—Ministerial Responsibility for the Intelligence Agencies and Annual Report to Parliament.

(1) The President shall assign ministerial responsibility for the Intelligence Agencies to such Minister as the President shall consider appropriate.

(2) The Minister assigned responsibility under subsection (1) of this section shall in respect of each year submit a report to Parliament on the Intelligence Agencies.

PART IV—NATIONAL SECURITY CO-ORDINATOR.

Section 18—Appointment of National Security Co-ordinator.

(1) There shall be appointed by the President in accordance with the advice of the Council given in consultation with the Public Services Commission an officer to be designated as the National Security Co-ordinator referred to in this Act as "the Co-ordinator".

(2) The terms and conditions of service of the Co-ordinator shall be as stated in his letter of appointment.

Section 19—Functions of the Co-ordinator.

The functions of the National Security Co-ordinator shall be as follows—

(a) co-ordinate on a day-to-day basis the activities of the national, regional and district security councils and the activities of the Intelligence Agencies;

(b) collate and evaluate intelligence reports relating to national security and ensure dissemination of the information within the Government as appropriate;

(c) determine in consultation with the Directors of the Intelligence Agencies the manpower level requirements of the Intelligence Agencies;

(d) assist the relevant Intelligence Agency to gather defence intelligence both internal and external and use the information to detect and prevent threats to the security of the State; and

(e) perform such other functions relating to the functions specified in this section as the President or the Council may direct.

Section 20—Staff for Office of Co-ordinator.

(1) There shall be appointed to assist the Co-ordinator in the performance of his functions such employees as the appointing authority considers necessary.

(2) The employees shall be appointed by the President in accordance with the advice of the Council given in consultation with the Public Services Commission.

(3) The President may in accordance with Article 195(2) of the Constitution delegate the power of appointment of public officers under this Part.

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

PART V—COMPLAINTS TRIBUNAL AND WARRANTS

Section 21—Investigation of Complaints.

(1) A person who is aggrieved by any omission of an Intelligence Agency may submit a written or oral complaint to the Director of the Intelligence Agency concerned.

(2) The Director shall examine the complaint and take such action as is appropriate within a period not exceeding 30 days from the date of receipt of the complaint.

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

(a) no action is taken on the complaint within the period specified; or

(b) he is dissatisfied with the action taken by the Director, submit a written complaint to the Chief Justice who shall refer the complaint to the Tribunal provided for in this Act.

Section 22—Complaints Tribunal.

(1) The Chief Justice shall on receipt of a complaint, appoint within a period of 60 days, a Tribunal of three persons to examine and determine the issues in the complaint.

(2) The Tribunal shall comprise—

(a) a Chairman who shall be a High Court Judge, a retired High Court Judge or a lawyer who qualifies to be appointed a High Court Judge: and

(b) two other persons one of whom shall be a person with considerable knowledge of the area of the subject matter of the complaint and operation of intelligence activities in general.

Section 23—Examination of Complaints.

(1) The Tribunal shall examine and determine a complaint referred to it by the Chief Justice subject to the other provisions of this Part.

(2) The Tribunal shall not determine any complaints which—

(a) it considers frivolous or vexatious or is not made in good faith; or

(b) is the subject matter of an action before a court; or

(c) it considers to be prejudicial to the national security.

Section 24—Proceedings at Investigation.

- (1) The Tribunal may exclude from its proceedings persons, other than parties to the proceedings and their lawyers, where it 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 such witness and request the production of such documents as it considers necessary in the interest of justice.
- (3) Witnesses appealing before the Tribunal shall be paid such travelling and other allowances as the Chief Justice may determine.
- (4) The Tribunal shall give a fair hearing to all persons appearing before it and for that purpose, the rules of the High Court shall apply to proceedings of the Tribunal with such modifications as may be necessary.

Section 25—Notification to the Director.

The Tribunal shall not commence the examination of a complaint referred to it by the Chief Justice unless it has submitted to the Director of the Intelligence Agency concerned a written notice together with the substance of the complaint.

Section 26—Representation before Tribunal.

- (1) A person appearing before the Tribunal may—
 - (a) make a representation to the Tribunal;
 - (b) be represented by a lawyer of his choice;
 - (c) produce such evidence as he considers necessary for the investigations.

Section 27—Decision of the Tribunal.

- (1) On the conclusion of an investigation of a complaint by the Tribunal the Tribunal shall notify the Director concerned and the complainant of its decision.
- (2) Where the Tribunal decides that compensation in the form of money shall be paid to the complainant, the Tribunal shall direct that the money be paid from public funds.

Section 28—Appeal to the Court of Appeal.

An appeal against a decision of the Tribunal shall lie to the Court of Appeal.

Section 29—Application for Warrant.

- (1) Where a Director of an Intelligence Agency or an employee designated by him, has reasonable grounds to believe that a warrant is required to enable the Agency perform any of its functions under this Act, the Director 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 Judge, Chairman of a Tribunal or a senior police officer with the rank of Superintendent or above.

Section 30—Matters to be Specified in Application for Warrant.

- (1) An application for a warrant shall specify—
 - (a) the facts relied upon to justify the belief, or reasonable grounds, that a warrant under this Part is required to enable the Intelligence Agency to investigate a threat to the security of Ghana or to perform its duties and functions under this Act;
 - (b) that the urgency of the matter is such 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 the security of Ghana or the performance of the duties and functions under this Act would not be obtained;
 - (c) where the purpose is to intercept communication—
 - (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) of this section 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;
 - (d) 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;
 - (f) the period, not exceeding sixty days for which the warrant requested is to be in force where necessary;

(g) any previous application made in relation to a person identified pursuant to paragraph (c)(ii), the date on which the application was made, the name of the Judge to whom each application was made and the decision of the Judge in respect of the application.

(2) Every warrant authorising the interception of communications shall be issued under the hand of a Judge of the Superior Court.

Section 31—Effect of Warrant.

(1) A warrant issued under section 29 shall authorise every 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 any person who believes on reasonable grounds that the person is exercising the powers in accordance with a warrant.

PART VI—FINANCIAL AND MISCELLANEOUS PROVISIONS

Section 32—Expenses of Council and the Intelligence Agencies.

There shall be provided by Parliament from the Consolidated Fund such monies as may be required for the expenses of the Council and the Intelligence Agencies.

Section 33—Accounts and Audit.

(1) There shall be kept by the Co-ordinator of the Council books of account and proper records in relation to them.

(2) The books of account shall be audited by the Auditor-General each financial year.

Section 34—Retirement Benefit.

Officers and employees in the Intelligence Agencies shall with respect to their employment in the Intelligence Agencies be entitled to such retirement benefits as are for the time being applicable to the Police Service.

Section 35—Oaths.

(1) A Director and every other employee of an Intelligence Agency shall before the commencement of his duties under this Act, take the oath of allegiance and oath of secrecy provided in the Schedule to this Act.

(2) A Director and every other employee shall on ceasing to be an employee, be sworn out of office in accordance with the Oath provided in the Schedule to this Act.

Section 36—Authorised Disclosure of Information.

(1) An employee of an Intelligence Agency shall not disclose any information obtained in the performance of his duties under this Act except required by virtue of this Act or other enactment.

(2) Notwithstanding 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 for Foreign Affairs if the information relates to the conduct of the international affairs of the country;

(c) to the Minister for Defence or a person designated by him if the information is relevant to the defence of the country;

(d) to the Chief Justice if the information is required by a competent court of judicature;

(e) to any Minister of State or person in the public service if in the opinion of the Director the disclosure of the information is essential in the public interest and the public interest outweighs any invasion of privacy that may result from the disclosure.

Section 37—Offences to Disclose Information and Identity.

(1) Subject to the Constitution and section 36 of this Act, no person shall disclose any information that he obtained or to which he had access in the performance of his duties under this Act or to which he 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) any person who is or was an employee engaged in covert operational activities of the Intelligence Agencies.

(2) A person who contravenes subsection (1) of this section commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

Section 38—Disclose before Parliament.

(1) An employee of any of the Intelligence Agencies shall before not be required to produce before Parliament any document or other evidence where—

(a) the Speaker certifies—

(i) that the document or other evidence belongs to a class of documents or evidence, the production of which is injurious to the public interest; or

(ii) that disclosure of the evidence or of the contents of the document will be injurious to the public interest: or

(b) the National Security Council certifies—

(i) that the document or other evidence belongs to a class the production of which is prejudicial to the security of the State; or

(ii) that disclosure of the evidence or of the contents of the document will be prejudicial to the security of the State.

(2) Where there is doubt as to the nature of a document or other evidence such as is referred to in subsection (1) of this section, the Speaker or the National Security Council, as the case may be, shall refer the matter to the Supreme Court for determination whether the production, or the disclosure of the contents, of the document or other evidence would be injurious to the public interest or, as the case may be prejudicial to the security of the State.

Section 39—Application of Evidence Decree N.R.C.D. 323.

The provisions on disclosure of information in this Part is without prejudice to the privileges conferred on a person under Part VI of the Evidence Decree, 1975 (N.R.C.D. 323) in relation to disclosure of evidence.

Section 40—Protection of Employees.

Subject to the Constitution, an employee of any of the Internal Intelligence Agencies shall in the performance of his duties under this Act have the same rights and powers as are conferred by law on a police officer in the performance of his duties and shall have the same protection.

Section 41—Regulation.

(1) The Council may by legislative instrument make such regulations as it considers necessary for the effective implementation of this Act.

(2) Without limiting the effect of subsection (1) of this section regulations may provide for matters on discipline of employees.

(3) An instrument issued under this section shall be under the hand of the President or the Minister for the time being assigned responsibility for the Intelligence Agencies.

Section 42—Interpretation.

In this Act unless the context otherwise requires—

"Director" means the Director of any of the Intelligence Agencies;

"DISEC" means A District Security Council;

“employee” means a person who is appointed as an employee of the Intelligence Agencies or has become an employee of any of the Agencies under this Act whether by transfer, secondment or otherwise;

“Intelligence Agency” means the Internal or External Intelligence Agency established under this Act.

“Judge” means a Judge of a Superior Court;

"REGSEC" means a Regional Security Council;

“security services” means such services connected with national security as the Council may determine;

“Superior Court” means the Supreme Court, the Court of Appeal, the High Court, the Regional Tribunal;

“threats to the security of Ghana” includes—

- (a) espionage or sabotage that is against Ghana or is detrimental to the interest of Ghana or activities directed towards or in support of such espionage or sabotage;
- (b) foreign influenced activities within or relating to Ghana that are detrimental to the interest of Ghana and are clandestine or deceptive or involve a threat to any person; or
- (c) activities within or relating to Ghana directed towards or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective within Ghana or a foreign state.

Section 43—Saving Provision.

For the avoidance of doubt, a person employed for the Bureau of National Investigations or the Research Department immediately before the coming into force of this Act shall on the coming into force of this Act be an employee of the respective Intelligence Agency.

SCHEDULE

(Section 35)

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 duties required of me as (the Director / an employee) of the Ghana 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 any person any information acquired by me by reason of the duties performed by me on behalf of or under the direction of the Intelligence Agencies or by reason of any office or employment held by me pursuant to the Security and Intelligence Agencies Act, 1996. 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 Ghana; and that I will preserve, protect and defend the Constitution of the Republic of Ghana. So help me God.

OATH OF SECRECY ON LEAVING OFFICE

I, having resigned from my appointment in or having had my appointment terminated by, the Internal and External Intelligence Agency, do hereby (in the name of 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 former official duties save as may be required for or as may be specifically permitted by law. So help me God.

Date of Gazette Notification: 31st December, 1