

OFFICE OF THE PRESIDENT

No. 2080

2 December 1994

NO. 39 OF 1994: NATIONAL STRATEGIC INTELLIGENCE ACT, 1994.

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:

ACT

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

(English text signed by the President.)

(Assented to 23 November 1994.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Definitions

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

(i) "Agency" means the National Intelligence Agency established by section 3 of the Intelligence Services Act, 1994; (i)

(ii) "Cabinet" means the Cabinet of the Republic of South Africa referred to in section 88 of the Constitution; (xiii)

(iii) "Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); (x)

(iv) "Co-ordinator for Intelligence" means the person appointed under section 5; (xii)

(v) "counter-intelligence" means measures and activities conducted, instituted or taken to impede and to neutralise the effectiveness of foreign or hostile intelligence operations, to protect classified intelligence and to counter subversion, sabotage and terrorism aimed at, or against personnel, strategic installations or resources of the Republic; (xxii)

(vi) "covert collection" means the acquisition of information which cannot be obtained by overt means and for which complete and continuous secrecy is a requirement; (ii)

(vii) "crime intelligence" means intelligence used in the prevention of crime or to conduct criminal investigations and to prepare evidence for the purpose of law enforcement and the prosecution of offenders; (xiv)

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

(ix) "domestic intelligence" means intelligence on any internal activity, factor or development which is detrimental to the national stability of the Republic, as well as threats or potential threats to

the constitutional order of the Republic and the safety and the well-being of its people; (iii)

(x) "domestic military intelligence" means intelligence required for the planning and conduct of military operations within the Republic to ensure security and stability for its people; (iv)

(xi) "evaluate" means the process of determining and assessing whether or not information is possibly correct, probably correct or factually correct; (ix)

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

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

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

(xv) "National Intelligence Structures" means-

(a) Nicoc;

(b) the Intelligence Division of the National Defence Force, established under the Defence Act, 1957 (Act No. 44 of 1957);

(c) the National Investigation Service of the South African Police Service;

(d) the Agency; and

(e) the Service; (xv)

(xvi) "national security intelligence" means intelligence which relates to or may be relevant to the assessment of any threat or potential threat to the security of the Republic in any field; (xviii)

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

(xviii) "Nicoc" means the National Intelligence Co-ordinating Committee established by section 4; (xix)

(xix) "regulation" means a regulation made under this Act; (xx)

(xx) "Service" means the South African Secret Service established by section 3 of the Intelligence Services Act, 1994; (viii)

(xxi) "South African Police Service" means the service referred to in section 214 of the Constitution; (xxi)

(xxii) "this Act" includes the regulations. (xi)

Functions relating to intelligence

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

(a) to gather, correlate, evaluate and analyse domestic intelligence, in order to-

(i) identify any threat or potential threat to the security of the Republic or its people;

(ii) supply intelligence regarding any such threat to Nicoc;

(b) to fulfil the national counter-intelligence responsibilities and for this purpose to conduct and co-ordinate counter-intelligence and to gather, correlate, evaluate, analyse and interpret information regarding counter-intelligence in order to-

(i) identify any threat or potential threat to the security of the Republic or its people;

(ii) inform the President of any such threat;

(iii) supply (where necessary) intelligence relating to any such threat to the South African Police Service for the purposes of investigating any offence or alleged offence; and

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

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

(a) to gather, correlate, evaluate and analyse foreign intelligence, excluding foreign military intelligence, in order to-

(i) identify any threat or potential threat to the security of the Republic or its people;

(ii) supply intelligence relating to national strategic intelligence to Nicoc;

(b) to institute counter-intelligence measures within the Service; and

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

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

(a) to gather, correlate, evaluate and use crime intelligence in support of the functions of the South African Police Service as contemplated in section 215 of the Constitution; and

(b) to institute counter-intelligence measures within the South African Police Service, in order to supply crime intelligence relating to national strategic intelligence to Nicoc.

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

(a) gather, correlate, evaluate and use foreign military intelligence, and supply foreign military intelligence relating to national strategic intelligence to Nicoc, but the National Defence Force shall not gather intelligence of a non-military nature in a covert manner;

(b) gather, correlate, evaluate and use domestic military intelligence excluding covert collection, except when employed for service referred to in section 227(1)(e) of the Constitution and under conditions set out in section 3(2) of this Act, and supply such intelligence to Nicoc; and

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

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

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

(a) other than the National Defence Force when employed for service referred to in section 227(1)(a), (b) or (e) of the Constitution or when discharging the counter-intelligence responsibilities entrusted to its Intelligence Division; and

(b) other than a police service established under any Act of Parliament, when a member of such service is investigating any offence relating to the security of the Republic or is performing any other function relating to the security of the Republic, shall not gather departmental intelligence within the Republic in a covert manner: Provided further that such department of State-

(i) other than the National Defence Force through its Intelligence Division;

(ii) other than a police service established under any Act of Parliament, when a member of such a service is, with the knowledge and approval of Nicoc, investigating an offence relating to the security of the Republic or is performing any other function relating to the security of the Republic;

(iii) other than the Agency, when a member of the Agency is performing its counter-intelligence responsibility contemplated in section 2(1)(b), with the knowledge and approval of the Service, shall not gather departmental intelligence outside the Republic in a covert manner.

(2) Notwithstanding subsection (1), the National Defence Force through its Intelligence Division may, whenever the President on the advice of the Minister of Defence is of the opinion that conditions are such that the said Force has to prepare itself for possible employment for service referred to in section 227(1) (e) of the Constitution and upon having been authorised by the Co-ordinator for Intelligence acting with the concurrence of Nicoc and the Cabinet, gather domestic military intelligence in a covert manner within the geographical area and the time-scales specified in such authorisation.

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

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

Establishment of National Intelligence Co-ordinating Committee

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

- (a) the Co-ordinator for Intelligence appointed under section 5;
- (b) the Director-General of the Agency;
- (c) the chief of the Intelligence Division of the National Defence Force;
- (d) the head of the National Investigation Service of the South African Police Service;
- (e) the Director-General of the Service, or their alternates, and such members of departments of State who are co-opted by Nicoc on a permanent or an ad hoc basis.

(2) It shall be the function of Nicoc-

- (a) to co-ordinate the intelligence supplied by the members of the National Intelligence Structures to Nicoc and interpret national strategic intelligence for use by the State and the Cabinet for the purposes of-
 - (i) the detection and identification of any threat or potential threat to the national security of the Republic;
 - (ii) the protection and promotion of the national interests of the Republic;
 - (iii) advising the Cabinet;
- (b) for the purposes of the functions contemplated in paragraph (a) to-
 - (i) co-ordinate and prioritise intelligence activities within the National Intelligence Structures;
 - (ii) advise the Cabinet on the intelligence policy and functions within the National Intelligence Structures;
- (c) to prepare and interpret a national intelligence estimate for purposes referred to in paragraph (a) for consideration by the Cabinet;
- (d) to produce and disseminate current intelligence which may have an influence on any state policy with regard to matters referred to in paragraph (a);

(e) to formulate for approval by the Cabinet, a policy relating to national strategic intelligence and, after consultation with the departments of State entrusted with the maintenance of the security of the Republic, to co-ordinate the flow of national security intelligence between such departments; and to make recommendations to the Cabinet on intelligence priorities.

(3) The Agency shall provide the logistical, technical and administrative support of Nicoc.

Co-ordinator for Intelligence

5. (1) The President shall appoint a person as Co-ordinator for Intelligence, who shall be the chairperson of Nicoc.

(2) The Co-ordinator for Intelligence shall-

(a) be responsible for the functions of Nicoc referred to in section 4;

(b) liaise with and inform and advise the Cabinet of the activities of Nicoc on matters pertaining to national strategic intelligence;

(c) establish after consultation with the President such structures and committees as are necessary for the administration and timeous and efficient utilisation of national, regional and local intelligence;

(d) be accountable to the President;

(e) provide national strategic intelligence to the President; and on request of any department of State, task the Agency to co-ordinate the gathering of departmental intelligence and without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the National Intelligence Structures and which constitutes departmental intelligence to the department concerned.

Regulations

6. The President may make regulations as to any matter which is necessary or expedient to be prescribed in order that the purpose of this Act may be achieved.

Repeal of laws

7. The Security Intelligence and State Security Council Act, 1972 (Act No. 64 of 1972), is hereby repealed.

Short title and commencement

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