

# INTELLIGENCE AND SECURITY SERVICE ACT, 2007

No. 16



of 2007

## ARRANGEMENT OF SECTIONS

### PART I — *Preliminary*

#### SECTION

1. Short title and commencement
2. Interpretation
3. Application

### PART II — *Directorate of Intelligence and Security*

4. Establishment and composition of Directorate
5. Functions of Directorate
6. Director General
7. Powers and functions of Director General
8. Divisions of Directorate and directors
9. Personal protection officers
10. Officers and support staff
11. Powers and functions of officers and support staff
12. Oaths
13. Certificate of identity and appointment
14. Scheme of Service of Directorate
15. Disciplinary code
16. Conduct of officers and support staff
17. Prohibition of false representations as to association with Directorate
18. Offences in connection with officers and support staff
19. Prohibition of disclosure of identity
20. Prohibition of unauthorized disclosure of information
21. Powers of arrest
22. Powers of entry, search and seizure
23. Resisting or obstructing officers and support staff
24. Indemnity of members of staff of Directorate

### PART III — *Central Intelligence Committee*

25. Establishment and composition of Committee
26. Functions of Committee

### PART IV — *National Intelligence Community*

27. Establishment and composition of Community
28. Functions of Community

### PART V — *Intelligence and Security Council*

29. Establishment and composition of Council
30. Functions of Council

## PART VI — *Tribunal*

31. Establishment of Tribunal
32. Lodging of complaint
33. Proceedings of Tribunal
34. Appearance before Tribunal
35. Conclusion of proceedings
36. Appeals
37. Report of Tribunal

## PART VII — *Parliamentary Committee on Intelligence and Security*

38. Establishment, function, etc., of Parliamentary Committee
39. Composition and appointment of members
40. Report of Parliamentary Committee

## PART VIII — *General Provisions*

41. Threats to President, Vice President and former President and their immediate families
42. Ministerial responsibilities
43. Prohibition of access to premises of Directorate
44. Destruction of irrelevant records, etc.
45. Functions of Ministries, Departments, etc. in relation to intelligence and security
46. Penalty where no specific penalty provided
47. Regulations

### SCHEDULE

**An Act to provide for the establishment of the Directorate of Intelligence and Security and define its functions; to establish a Central Intelligence Committee and define its functions; to establish an Intelligence and Security Council and define its functions; to establish a Central Intelligence Community and define its functions; to establish a Tribunal and define its functions; to establish a Parliamentary Committee on Intelligence and Security and define its functions; and to provide for matters connected therewith or incidental thereto.**

*Date of Assent:* 16/11/07

*Date of Commencement:* ~~On Notice~~

1 April, 2008

ENACTED by the Parliament of Botswana.

## PART I — *Preliminary*

Short title  
and  
commence-  
ment

Interpretation

**1.** This Act may be cited as the Intelligence and Security Service Act, 2007, and shall come into operation on such date as the President may, by order published in the *Gazette*, appoint.

**2.** In this Act, unless the context otherwise requires —  
“classified information” means information of such a sensitive nature and value that the unauthorised publication or disclosure thereof would lead to a security risk being posed to the State;

- “Committee” means the Central Intelligence Committee established by section 25 (1);
- “Community” means the National Intelligence Community established by section 27 (1);
- “Council” means the Intelligence and Security Council established by section 29;
- “Deputy Director General” means the Deputy Director General of the Directorate;
- “director” means a director of any of the divisions of the Directorate established under section 8 (3);
- “Director General” means the Director General of the Directorate;
- “Directorate” means the Directorate of Intelligence and Security established by section 4;
- “immediate family” means the spouse and children who are under the age of 21 years;
- “intelligence” means information which relates to or may be relevant to any internal or external threat or potential threat to national security in any field;
- “members of staff of the Directorate” means the Director General, the Deputy Director General, directors, officers and support staff;
- “ministerial intelligence” means information which relates to any function concerning national security which by or under any law has been entrusted to any Government ministry, department or agency and which information may be required by that ministry, department or agency in the performance of any of its functions;
- “officer” means an officer of the Directorate;
- “Parliamentary Committee” means the Intelligence and Security Parliamentary Committee established under section 38;
- “security clearance” means an authorisation entitling a person to have access to information of a determined sensitivity or classification;
- “security vetting investigation” means a systematic procedure used to examine and appraise a person to determine his or her security competence, including the continued monitoring of that person;
- “support staff” means members of the Community who are not officers of the Directorate, but who are under the direction of the Director General, performing such duties as are provided for in this Act;
- “threat to national security” means —
- (a) any activity relating to espionage, sabotage, terrorism or subversion, or intention to engage in any such activity directed against, or detrimental to the interest of Botswana and includes any other activity performed in conjunction with any activity relating to espionage, sabotage, terrorism or subversion, but does not include any lawful advocacy, protest or dissent not performed in conjunction with any such activity;
  - (b) any activity directed at undermining, or directed at or intended to bring about the destruction or overthrow of, the constitutionally established system of the Government of Botswana by unlawful means;

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

Application

3. Unless the context otherwise requires, this Act applies to all members of staff of the Directorate.

## PART II — *Directorate of Intelligence and Security*

Establishment  
and composition  
of Directorate

4. (1) There is established, under the Office of the President, a Directorate to be known as the Directorate of Intelligence and Security.

(2) The Directorate shall comprise —

- (a) a Director General;
- (b) a Deputy Director General;
- (c) directors; and
- (d) such other officers and support staff as are referred to in section 10.

Functions of  
Directorate

5. (1) Subject to subsection (3), the functions of the Directorate are to —

- (a) investigate, gather, co-ordinate, evaluate, correlate, interpret, disseminate and store information, whether inside or outside Botswana, for the purposes of —
  - (i) detecting and identifying any threat or potential threat to national security,
  - (ii) advising the President and the Government of any threat or potential threat to national security,
  - (iii) taking steps to protect the security interests of Botswana whether political, military or economic;
- (b) gather ministerial intelligence at the request of any Government ministry, department or agency and, without delay, to evaluate and transmit as appropriate to that ministry, department or agency, such intelligence and any other intelligence at the disposal of the Directorate which constitutes ministerial intelligence;
- (c) regulate, in co-operation with any Government ministry, department or agency entrusted with any aspect of the maintenance of national security, the flow of intelligence and security, and the co-ordination between the Directorate and that ministry, department or agency of functions relating to such intelligence;

- (d) advise Government, public bodies and statutory bodies on the protection of vital installations and classified documents;
- (e) carry out security vetting investigations for the security clearance of persons who have or may have access to any sensitive or classified information;
- (f) make recommendations to the President in connection with —
  - (i) policies concerning intelligence and security,
  - (ii) intelligence and security priorities, and
  - (iii) security measures in Government ministries, departments or agencies;
- (g) provide personal protection to the former President, the former President's immediate family, the President, the President's immediate family, the Vice President, the Vice President's immediate family, visiting dignitaries and such other persons as the President may determine; and
- (h) subject to any other written law, perform such other duties and functions as may, from time to time, be determined by the President to be in the national interest.

(2) The Directorate shall not, in the performance of its functions, be influenced by considerations not relevant to such functions and no act shall be performed that could give rise to any reasonable suspicion that the Directorate is concerned in furthering, protecting or undermining the interests of any particular section of the population or of any political party or other organisation in Botswana.

(3) Subsection (1) shall not be construed as —

- (a) derogating from any power, duty or function conferred upon or entrusted to any person or authority other than the Directorate by or under any other written law;
- (b) limiting the continuation, establishment or functions of an intelligence capability connected to any Government ministry, department or agency in respect of any function relating to ministerial intelligence; or
- (c) derogating from any duty or function of any body or committee instituted by the President.

**6. (1)** There shall be a Director General who shall be appointed by the President on such terms and conditions as the President may, on the recommendation of the Council, determine.

Director  
General

(2) The Director General shall be responsible for the direction, control, administration and expenditure of the Directorate.

**7.** Without prejudice to section 6; the Director General shall —

- (a) be the principal advisor to the President and the Government on matters relating to national security and intelligence;
- (b) report to the President and the Government on threats and potential threats to national security;

Powers and  
functions of  
Director  
General

- (c) in consultation with the President and the Government, ensure that a good relationship is established and maintained between the Directorate and every Government ministry, department or agency and any other institution approved by the President;
- (d) take all reasonable steps to ensure that the actions of the Directorate are limited to those necessary for the proper performance of its functions under this Act or any other written law and that no information is gathered by the Directorate except as may be necessary for the proper performance of its functions; and
- (e) as far as is reasonably practicable, take steps to ensure that intelligence collection methods, sources of information and the identity of the members of staff of the Directorate are protected from unauthorised disclosure.

Divisions of  
Directorate  
and directors

8. (1) There shall be an Internal Intelligence Division of the Directorate which shall be responsible for gathering domestic intelligence in the execution of the functions of the Directorate under this Act.

(2) There shall be an External Intelligence Division of the Directorate which shall be responsible for gathering —

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

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

(4) Each of the divisions of the Directorate shall be headed by a director who shall be the administrative head of the division, and shall, subject to the control and directions of the Director General, be responsible for the efficient management, administration and control of the division.

Personal  
protection  
officers

9. (1) There shall be personal protection officers who shall protect —

- (a) the President and the Vice President, and their immediate families, and former Presidents and their spouses:  
Provided that —
  - (i) in the case of a spouse of a former President, protection shall terminate upon his or her divorce from, or death of, the former President, and
  - (ii) should the death of a President occur whilst in office or within one year after leaving the office, the spouse shall receive protection for one year from the time of such death;
- (b) visiting heads of foreign states or foreign governments; and
- (c) other distinguished foreign visitors to Botswana and senior Government officials when the President directs that such protection be provided.

(2) Notwithstanding anything to the contrary contained in any other law, intelligence and personal protection officers may carry and use such firearms as may be prescribed and may, in the course of their duties, use such arms in circumstances where the use of the arms is necessary and reasonably justifiable.

**10.** There shall be such officers and support staff as the Director General may consider necessary for the proper and efficient discharge of the functions of the Directorate.

Officers and support staff

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

Powers and functions of Officers and support staff

**12.** The Director General, the Deputy Director General, every officer and support staff on being appointed to the Directorate shall, before assuming the duties of his or her office, make and subscribe to the oaths or affirmations prescribed in the Schedule —

Oaths

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

**13.** The Director General shall cause to be issued to the Deputy Director General and every officer and support staff on appointment, a certificate of identity and appointment in such form as the Director General may prescribe which certificate shall be *prima facie* evidence of such appointment for the purposes of this Act.

Certificate of identity and appointment

**14.** The Director General shall prescribe a scheme of service of the Directorate setting out the terms and conditions for the appointment of the officers and support staff which scheme of service shall provide for —

Scheme of Service of Directorate

- (a) promotions, resignations and termination of appointments of officers and support staff;
- (b) scales of salaries and allowances of officers and support staff; and
- (c) the designation and grades of officers and support staff.

**15. (1)** The Director General shall issue and maintain a disciplinary code for the Directorate which disciplinary code shall provide for —

Disciplinary code

- (a) disciplinary offences;
- (b) the investigation, hearing and determination of disciplinary offences and the hearing of any appeals; and
- (c) the delegation, by the Director General, to officers and support staff, of such disciplinary powers as he or she may consider appropriate.

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

- (a) dismissal from the Directorate;
- (b) reduction in rank or grade;
- (c) suspension from duty for a specified period;
- (d) reprimand (including severe reprimand);
- (e) admonition; and
- (f) recovery of the cost or part thereof in respect of any loss or damage to the property of the Directorate caused by the default or negligence of any officer or support staff subject to disciplinary proceedings where such recovery has not been effected through any other Government procedure.

Conduct of  
officers and  
support staff

**16. (1)** An officer or support staff shall not —

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

(2) An officer or support staff who contravenes the provisions of subsection (1) shall be guilty of an offence.

Prohibition of  
false  
representations  
as to  
association  
with  
Directorate

**17.** A person who, without the prior written approval of the Director General, in connection with any activity carried on by him or her takes, assumes, uses or in any manner publishes any name, description, title or symbol which is calculated, or is likely to lead other persons to believe or infer that such activity is carried on under or by virtue of the provisions of this Act or under the patronage of the Directorate, shall be guilty of an offence.

Offences in  
connection with  
officers and  
support staff

**18.** A person who —

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

shall be guilty of an offence.

Prohibition of  
disclosure of  
identity

**19.** A person who discloses the identity of another person which he or she has obtained or to which he or she has had access by virtue of —

- (a) the performance of his or her duties or functions under this Act; or
- (b) his or her position as a person who holds or has held any office in the Directorate, and from which the identity of any person who —
  - (i) is or was a confidential source of information to the Directorate, or
  - (ii) is or was an officer or support staff engaged in covert operational activities of the Directorate,

can be inferred, and who discloses such information to any person other than a person to whom he or she is authorised to disclose it or to whom it may lawfully be disclosed, shall be guilty of an offence.

Prohibition of  
unauthorised  
disclosure of  
information

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



(2) No officer or support staff shall be required to produce, before any public body other than a Parliamentary Committee established under the Standing Orders of the National Assembly, any document or other evidence where —

(a) it is certified by the Director General —

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

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

(b) the Central Intelligence Committee certifies —

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

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

(3) A person aggrieved by a decision of the Director General or the Central Intelligence Committee may apply to the High 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 national security.

(4) A person who, by warrant, is authorized to obtain or seize any information, material, record, document or thing or any other source material or is requested to give any information, material, record, document or thing or any other source material or to make the services of other persons available to the Directorate shall not disclose the warrant, or disclose or use any information gained by or conveyed to him or her when acting pursuant to the warrant, otherwise than as authorised by the warrant or by the Director General.

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

(6) A person who contravenes any of the provisions of this section shall be guilty of an offence.

**21. (1)** An officer or support staff authorised in that behalf by the Director General may, without warrant, arrest a person if he or she reasonably suspects that that person has committed or is about to commit an offence referred to in this Act.

Powers of  
arrest

(2) Where, during an investigation by an officer or support staff, of a suspected offence, another offence is disclosed, the officer or support staff may, without warrant, arrest a person if he or she reasonably suspects that such person is guilty of that other offence, and he or she reasonably suspects that such other offence was connected with, or that either directly or indirectly its commission was facilitated by, the suspected offence.

- (3) An officer or support staff may —
  - (a) use such force as is reasonable in the circumstances in effecting an arrest under this section; and
  - (b) for the purpose of effecting an arrest, enter and search any premises or place if he or she has reason to believe that there is in the premises or place a person who is to be arrested.

(4) An officer or support staff shall not enter any premises or place under subsection (3) unless the officer or support staff has first stated that he or she is an officer or support staff and the purpose for which he or she seeks entry and produced his or her identity card to any person requesting its production.

(5) On compliance with the provisions of subsection (4), the officer or support staff may enter the premises or place by force, if necessary.

(6) Where an officer or any support staff has arrested a person under this section, he or she may —

- (a) search that person and the premises or place in which that person was arrested;
- (b) seize and detain anything which such officer or support staff has reason to believe to be, or to contain, evidence of any of the offences referred to in this Act.

(7) A person referred to in subsection (6) shall only be searched by a person of the same sex.

(8) An officer or support staff shall, as soon as is reasonably practicable, take a person arrested under this section to a police station to be dealt with in accordance with the provisions of the Criminal Procedure and Evidence Act.

(9) An officer or support staff who takes a person arrested under this section to the police station in terms of subsection (8) shall, at the same time that he or she takes that person, also handover, to the police, anything seized in terms of subsection (6) (b).

**22.** (1) Where the Director General believes, on reasonable grounds, that a warrant under this section is required to enable the Directorate to investigate any threat to national security or to perform any of its functions under this Act, the Director General shall apply to a senior magistrate or a judge of the High Court for a warrant in accordance with this section.

(2) If the magistrate or judge to whom an application is made under subsection (1) is satisfied that there are reasonable grounds for suspecting that there is in the premises, place, vessel, boat, aircraft or other vehicle anything which is or contains evidence of the commission of any of the offences referred to in this Act, he or she may by warrant direct the Director General, or any officer or support staff authorised by the Director General under this Act, to enter and search such premises, place, vessel, boat, aircraft or other vehicle and seize and detain anything which the Director General, or the officer or support staff authorised by the Director General, has reason to believe is or contains evidence of any of the offences referred to in this Act.

Cap. 08:02

Powers of  
entry, search  
and seizure

(3) Whenever the Director General, or an officer or support staff authorised by him or her under this Act, has reasonable cause to believe that there is in any premises, place, vessel, boat, aircraft or other vehicle any article or document —

- (a) which is evidence of the commission of an offence referred to in this Act;
- (b) in respect of which an offence has been, is being, or is about to be committed under this Act;
- (c) is being conveyed, or is concealed or contained in any package in the premises, place, vessel, boat, aircraft or other vehicle, for the purpose of being conveyed,

then and in any such case, if the Director General, or the officer or support staff authorised by him or her under this Act considers that the special exigencies of the case so require, he or she may without a warrant enter the premises, place, vessel, boat, aircraft or other vehicle, and search, seize and detain such article, document or package.

(4) The court mentioned in subsection (1) may, on application made by the Director General or an officer or support staff authorised by him or her to do so, issue a warrant under this section authorising the taking of such action as may be specified in the warrant in respect of anything so specified if the court considers it necessary for that action to be taken in order to obtain information which —

- (a) is likely to be of substantial value to the Directorate in the discharge of its functions; and
- (b) cannot be reasonably obtained through other means:

Provided that in the event the Directorate wishes to conduct an investigation of a personal or intrusive nature such as searches or interception of postal mail, electronic mail, computer or telephonic communications, the Director General or an officer or support staff authorised by him or her shall show cause to a court of Senior Magistrate or above or a Judge of the High Court and obtain an order in a secret hearing.

(5) In the exercise of the powers of search, seizure and detention under this section, the Director General, or any other officer of the Directorate may use such reasonable force as is necessary in the circumstances, and may be accompanied or assisted by such other person as he or she considers appropriate to assist him or her to enter into or upon any premises, place, vessel, boat, aircraft or other vehicle, as the case may be.

(6) A magistrate may, on the application, *ex parte*, of the Director General, by written notice require a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him or her to surrender to the Director General any travel document in his or her possession.

(7) If a person on whom a notice under subsection (6) has been served fails to comply with the notice, he or she may be arrested and taken before a magistrate.

(8) Where a person is taken before a magistrate under subsection (7), the magistrate shall, unless such person complies with the notice under subsection (6) or satisfies the magistrate that he or she does not possess a travel document, by warrant commit him or her to prison where he or she shall be safely kept until he or she complies with the notice.

(9) A person who has surrendered a travel document under this section may at any time make a written application to the Director General for its return, and every such application shall contain a statement of the grounds on which it is made.

(10) The Director General may, within 14 days of receipt of the application referred to in subsection (9) —

(a) grant the application either without conditions or subject to such conditions as to the further surrender of the travel document and the appearance of the applicant at any time and place in Botswana as may be specified by the Director General in a written notice served personally on the applicant; or

(b) refuse the application.

(11) A person aggrieved by the refusal of the Director General to return his or her travel document to him or her may appeal to a magistrate.

Resisting or  
obstructing  
officers and  
support staff

**23.** A person who assaults, resists or obstructs any officer of the Directorate or any person acting under the direction of such officer in the due execution of his or her duties under this Act shall be guilty of an offence and liable to imprisonment for a term not exceeding  $\frac{1}{2}$  years.

Indemnity of  
members of  
staff of  
Directorate

**24.** No action shall be brought against a member of staff of the Directorate (or any other person authorised by the Director General to perform any act under this Act), in respect of any act or thing done or omitted to be done in good faith, upon reasonable grounds, in the exercise of his or her duties under this Act.

### PART III — *Central Intelligence Committee*

Establishment  
and  
composition of  
Committee

**25. (1)** There is established a Committee to be known as the Central Intelligence Committee which shall consist of —

(a) the President who shall be the chairperson;

(b) the Vice President;

(c) the Minister responsible for intelligence and security;

(d) the Minister for Foreign Affairs and International Cooperation;

(e) the Permanent Secretary to the President;

(f) the Attorney General;

(g) the Commander of the Botswana Defence Force;

(h) the Director General;

(i) the Deputy Director General;

(j) the Commissioner of Police;

(k) the Deputy Commander of the Botswana Defence Force;

(l) the Assistant Chief of Staff of Military Intelligence; and

(m) the Deputy Commissioner of Police.

(2) A member of the Committee shall not be represented, on the Committee, by any other person in his or her absence.

(3) The Deputy Director General shall be the secretary to the Committee.

**26.** (1) The functions of the Committee shall be —

- (a) to guide the Directorate generally on all matters relating to national security and intelligence interests;
- (b) to approve intelligence and security assessments;
- (c) to advise the President on appropriate action to be taken, or policies to be formulated, in the interest of national security; and
- (d) to perform such other functions as are conferred on it by this Act or any other written law.

(2) For the better carrying out of its functions under this Act, the Committee may establish such functional committees as it may consider appropriate.

(3) The President may prescribe the manner of discharging the functions of the Committee under this section, including the procedure for meetings of the Committee.

Functions of  
Committee

#### **PART IV — *National Intelligence Community***

**27.** (1) There is established a Community to be known as the National Intelligence Community which shall consist of —

- (a) the Director General who shall be the chairperson;
- (b) the Deputy Director General;
- (c) the head of the Crime Intelligence Bureau
- (d) the Assistant Chief of Staff of Military Intelligence;
- (e) the Permanent Secretary in the ministry responsible for foreign affairs;
- (f) the Assistant Director responsible for intelligence in the Directorate on Corruption and Economic Crime;
- (g) the Chief Immigration Officer; and
- (h) the Commissioner General of the Botswana Unified Revenue Service.

(2) The Community shall be an advisory body to the Director General.

(3) The Deputy Director General shall be the Secretary to the Community.

**28.** The functions of the Community shall be to —

- (a) review and coordinate intelligence;
- (b) ensure that there is inter-agency exchange of intelligence; and
- (c) coordinate such activities as may be directed by the Director General.

Establishment  
and  
composition  
of Community

Functions of  
Community

#### **PART V — *Intelligence and Security Council***

**29.** There is established a Council to be known as the Intelligence and Security Council which shall consist of —

- (a) the Permanent Secretary to the President;
- (b) the Attorney General;
- (c) the Director General; and
- (d) the Deputy Director General who shall be the secretary to the Council.

Establishment  
and  
composition  
of Council

Functions of  
Council

- 30.** The functions of the Council shall be —
- (a) to review intelligence policies and activities; and
  - (b) to examine the expenditure, administration, complaints by, and oversee the legal framework of, the Directorate.

## PART VI — *Tribunal*

Establishment  
of Tribunal

- 31.** (1) There is established a Tribunal to receive complaints from a person who feels aggrieved by an act or omission of an officer of the Directorate.
- (2) The Tribunal established under subsection (1) shall consist of —
- (a) a Chairperson who shall be a High Court Judge, a retired High Court Judge or a legal practitioner who qualifies to be appointed as a High Court Judge; and
  - (b) two other persons, one of whom shall be a person who has considerable knowledge of the subject matter of the complaint and operation of security agencies.
- (3) Members of the Tribunal shall be appointed by the President after consultation with the Leader of the Opposition in the National Assembly.
- (4) Members of the Tribunal shall be paid such allowances as shall be determined by the President.

Lodging of  
complaint

- 32.** (1) The Tribunal shall not inquire into any complaint which —
- (a) relates to a matter that is the subject of judicial proceedings;
  - (b) it considers to be prejudicial to national security; or
  - (c) it considers to be frivolous and vexatious or is not made in good faith.
- (2) A person may lodge his or her complaint with the Registrar of the High Court who shall, within seven days, forward the same to the Chairperson of the Tribunal, with a copy to the Minister.
- (3) The Tribunal shall not commence the examination of a complaint referred to it unless it first submits to the Director General a written notice, together with the substance of the complaint.

Proceedings  
of Tribunal

- 33.** (1) The Tribunal shall sit as and when it has received a complaint.
- (2) The Tribunal may exclude from its proceedings any person, other than a party to the proceedings and his or her legal representative, where it considers it necessary in the interest of defence, public safety, public order, public morality or the protection of private lives of persons concerned in the proceedings.
- (3) The Tribunal may call such witnesses or request the production of such documents as in proceedings before the High Court.
- (4) A witness appearing before the Tribunal shall be entitled to the same allowances as those of a witness in proceedings before the High Court.
- (5) The High Court rules relating to the admissibility of evidence shall apply to proceedings before the Tribunal.

**34.** A person appearing before the Tribunal may —

- (a) appear in person; or
- (b) be represented by a legal practitioner of his or her choice; and
- (c) produce such evidence as he or she considers necessary for the purposes of the proceedings.

Appearance  
before  
Tribunal

**35.** (1) On the conclusion of the proceedings, the Tribunal shall notify the President, the Minister responsible for intelligence and security, the Director General and the complainant, of the results of the proceedings.

Conclusion of  
proceedings

(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 be paid from public funds.

(3) Where the Tribunal finds that the act or omission complained of is prejudicial to the complainant, the Tribunal shall issue an order prohibiting the continuation of the act or omission.

**36.** A person aggrieved by a decision of the Tribunal may, within 30 days of such decision being made, appeal to the Court of Appeal.

Appeals

**37.** (1) The Tribunal shall make an annual report on the discharge of its functions to the Minister responsible for intelligence and security and may at any time report to the Minister any matter relating to the functions of the Tribunal.

Report of  
Tribunal

(2) If it appears to the Minister, after consultation with the Tribunal, that the publication of any matter in a report would be prejudicial to the continued discharge of the functions of the Directorate, the Minister may exclude that matter from a copy of the report.

(3) The Minister shall lay before the National Assembly a copy of each annual report made by the Tribunal, together with a statement as to whether any matter has been excluded from the report.

## **PART VII — *Parliamentary Committee on Intelligence and Security***

**38.** (1) There is established a Parliament Committee, to be known as the Intelligence and Security Parliamentary Committee, to examine the expenditure, administration and policy of the Directorate.

Establishment,  
function, etc.  
of  
Parliamentary  
Committee

(2) The Parliamentary Committee shall have the same powers and privileges set out under the National Assembly (Powers and Privileges) Act.

Cap. 02:05

**39.** (1) The Parliamentary Committee shall consist of nine members who shall not be members of Cabinet and its quorum shall be five members.

Composition  
and  
appointment  
of members

(2) The Members of the Parliamentary Committee shall be appointed by the President after consultation with the Speaker of the National Assembly and the Leader of the Opposition in the National Assembly.

Report of  
Parliamentary  
Committee

(3) The members shall at their first meeting, elect from among their number, a Chairperson.

(4) The Parliamentary Committee shall relative to its size reflect the numerical strengths of the political parties represented in the National Assembly.

(5) A member of the Parliamentary Committee shall hold office for the duration of the Parliament in which he or she is appointed.

**40.** (1) The Parliamentary Committee shall make an annual report on the discharge of their functions to the President and may at any time report to him or her on any matter relating to the discharge of those functions.

(2) The Minister responsible for intelligence and security shall lay before the National Assembly a copy of each annual report made by the Parliamentary Committee under subsection (1) together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (3).

(3) If it appears to the Minister, after consultation with the Parliamentary Committee, that the publication of any matter in a report would be prejudicial to the continued discharge of the functions of the Directorate, the Minister may exclude that matter from the copy of the report as laid before the National Assembly.

## PART VIII — *General Provisions*

Threats to  
President, Vice  
President and  
Former  
President, and  
their immediate  
families

**41.** A person who knowingly and wilfully deposits for conveyance in the mail or for delivery from any post office or by any letter carrier any letter, paper, writing, print, missive or document containing any threat to take the life of, to kidnap, or to inflict bodily harm upon, the President, Vice President, former President or their immediate families, shall be guilty of an offence and liable to imprisonment for a term not exceeding 10 years.

Ministerial  
responsibilities

**42.** The President may delegate authority or shall assign ministerial responsibility for the Directorate to such minister as the President shall consider appropriate.

Prohibition of  
access to  
premises of  
Directorate

**43.** (1) The Minister may, by notice in the Gazette or in such other manner as he or she may consider appropriate in the circumstances, prohibit or restrict access to any land or premises under the control of the Directorate.

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

(3) A person who enters upon any land or premises in contravention of a prohibition or restriction under subsection (1), shall be guilty of an offence.



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

Destruction of irrelevant records, etc.

(2) A person who fails to comply with subsection (1) shall be guilty of an offence.

**45.** Every Government ministry, department or agency that comes into possession of any intelligence or security related information which may be of value to the Directorate for the purposes of performing its functions under this Act shall transmit such intelligence and information, without delay, to the Directorate with an indication of the reliability of the source of such intelligence or information.

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

**46.** Where a person is guilty of an offence for which no specific penalty is provided under this Act, that person shall be liable to imprisonment for a term not exceeding 12 years.

Penalty where no specific penalty provided

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

Regulations

SCHEDULE  
(section 12)

OATH/AFFIRMATION OF ALLEGIANCE

I ..... (*Full names*) DO HEREBY SWEAR BY THE ALMIGHTY GOD / SOLEMNLY AND SINCERELY AFFIRM THAT I shall be faithful and bear true allegiance to the President and the Republic of Botswana during my service in the Directorate of Intelligence and Security; THAT I will at all times do my best to preserve the national security of Botswana; THAT I shall discharge all the duties devolving upon me by virtue of my appointment according to law without fear, affection or ill-will; THAT I shall subject myself to the Intelligence and Security Service Act and to all other Acts, Orders and Regulations in force, relating to my Service in the Directorate of Intelligence and Security; SO HELP ME GOD.

DATED this..... day of .....

Name of officer ..... Signature .....

**OATH/AFFIRMATION OF SECRECY**

**DECLARATION TO BE SIGNED ON JOINING  
THE DIRECTORATE OF INTELLIGENCE AND SECURITY**

I ..... DO HEREBY SWEAR BY THE  
ALMIGHTY GOD / SOLEMNLY AND SINCERELY AFFIRM THAT I will not,  
without due authority, disclose or make known, to any person any information acquired  
by me by reason of the duties performed by me on behalf or under the direction of the  
Directorate of Intelligence and Security or by reason of any office or employment held  
by me pursuant to the Intelligence and Security Service Act, the Official Secrets Act and  
the National Security Act , SO HELP ME GOD.

Dated this ..... day of .....

Name ..... Signature ..... ID No.....

Sworn/Affirmed by the said .....

Before .....

PASSED by the National Assembly this 6th day of August, 2007.

**E. MPOFU,**  
*Clerk of the National Assembly.*