

OFFICE OF THE PRESIDENT

No. 2081

2 December 1994

NO. 40 OF 1994: COMMITTEE OF MEMBERS OF PARLIAMENT ON AND INSPECTORS-GENERAL OF 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 provide for the establishment of a Committee of Members of Parliament on Intelligence and to define its functions; and for the appointment of Inspectors-General of Intelligence and to define their functions; and to provide for matters connected therewith.

(Afrikaans 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) "accounting officer" means the Head of a Service; (xvi)
- (ii) "Agency" means the National Intelligence Agency established by section 3 of the Intelligence Services Act, 1994; (i)
- (iii) "Auditor-General" means the Auditor-General referred to in section 191 of the Constitution; (xiv)
- (iv) "chairperson" means the person appointed under section 2(4)(b) as chairperson of the Committee; (xx)
- (v) "Commission" means the Commission on Remuneration of Representatives referred to in section 207 of the Constitution; (xi)
- (vi) "Committee" means the Committee of Members of Parliament on Intelligence established by section 2; (x)
- (vii) "Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); (v)
- (viii) "counter-intelligence" means counter-intelligence as defined in section 1 of the National Strategic Intelligence Act, 1994; (xix)
- (ix) "Evaluation Committee" means the Secret Services Evaluation Committee established by section 2 of the Secret Services Act, 1978 (Act No. 56 of 1978); (ii)
- (x) "Head of a Service" means the Director-General of the Agency or of the South African Secret Service, the Chief of the National Defence Force or the Commissioner of the South African Police Service; (vii)
- (xi) "Inspector-General" means a person appointed under section 7; (viii)
- (xii) "intelligence" means the process of gathering, evaluation, correlation and interpretation of security information, including activities related thereto, as performed by the Services; (ix)

(xiii) "Minister" means the Minister to whom the portfolio of the Agency, the South African Secret Service, the National Defence Force or the South African Police Service has been allocated in terms of section 88 of the Constitution; (xii)

(xiv) "money" means all money whatsoever received or held by an accounting officer for or on behalf of the State; (iv)

(xv) "National Defence Force" means the Force established by section 224 of the Constitution; (xiii)

(xvi) "regulation" means a regulation made under this Act; (xv)

(xvii) "Services" means the Agency, the South African Secret Service, the Intelligence Division of the National Defence Force and the National Investigation Service of the South African Police Service; (iii)

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

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

(xx) "this Act" includes the regulations. (vi)

Establishment of Committee on Intelligence

2. (1) There is hereby established a Committee to be known as the Committee of Members of Parliament on Intelligence, which shall, subject to the Constitution, perform the oversight functions set out in this Act in relation to the intelligence and counter-intelligence functions of the Services, and report thereon to Parliament.

(2) The Committee shall consist of 11 members of Parliament.

(3) (a) Nine members of the Committee shall be appointed by the President in accordance with the principle of proportional representation as determined in accordance with the formula set out in section 228(3)(c) of the Constitution and with the concurrence of the leaders of the political parties entitled to be represented on the Committee according to that formula.

(b) Two members of the Committee shall be appointed by the President with the concurrence of the party or parties holding seats in Parliament but which are not represented on the Committee in terms of paragraph (a): Provided that if there is no such party, such members shall be appointed by the President with the concurrence of the leaders of the parties holding seats in Parliament.

(4) The President shall appoint one of the members appointed in terms of subsection (3) as chairperson of the Committee.

(5) A member of the Committee-

(a) shall, subject to paragraph (b), be appointed as a member until the Parliament to which he or she has been elected under the Constitution, is dissolved in terms of the Constitution;

(b) may, at the request of the leader of his or her party to the President, or if he or she conducted himself or herself in a manner which in the opinion of the President with the concurrence of the Committee constitutes a threat to the national security, be

substituted as a member of the Committee with another member of his or her party with the concurrence of the leader of that party;

(c) may resign by notice in writing to the President, in which event the President shall appoint a substitute in accordance with paragraph (b) and subsection (3);

(d) may receive such remuneration and allowances (if any) as the Commission may determine.

(6) The Committee shall meet at such times and follow such procedures as may be prescribed by regulation, but the chairperson shall have the power to determine when the Committee shall meet in camera.

(7) The Committee shall be assisted in the performance of its functions by an officer or officers in the Public Service designated for that purpose by the President, after consultation with the chairperson and the Heads of the Services, and the Inspectors-General.

Functions of Committee

3. (1) The functions of the Committee are-

(a) notwithstanding anything to the contrary contained in any other law or the common law, to obtain from-

(i) the Auditor-General, subject to the provisions of the Auditor-General Act, 1989 (Act No. 52 of 1989), an audit report regarding the accounts and financial statements of the accounting officer regarding money expended on the administration and functions of a Service and regarding the money invested in terms of section 5 of the Security Services Special Account Act, 1969 (Act No. 81 of 1969);

(ii) the Evaluation Committee a report on the secret services and intended secret services evaluated and reviewed by it, together with any comments or recommendations which the Evaluation Committee may deem appropriate;

(iii) any judge as defined in section 1 of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992), a report regarding the functions performed by him or her in terms of that Act including statistics regarding such functions, together with any comments or recommendations which such judge may deem appropriate: Provided that such report shall not disclose any information contained in an application or direction contemplated in section 3 of that Act;

(iv) each Minister, a report regarding the budget for the Service for which he or she is responsible;

(b) to consider and make recommendations on the report and certificate transmitted to it in terms of section 7(7)(d);

(c) to consider and make recommendations on all proposed legislation relating to a Service and any other intelligence and intelligence-related activities, and to initiate legislation in connection with such Service, intelligence and activities;

(d) to review and make recommendations on regulations made under section 6 of the National Strategic Intelligence Act, 1994, and regulations regarding the intelligence and counter-intelligence functions of a Service, made under section 29 of the Intelligence Services Act, 1994, section 87 of the Defence Act, 1957 (Act No. 44

of 1957), or section 33 of the Police Act, 1958 (Act No. 7 of 1958);

(e) to review and make recommendations regarding interdepartmental co-operation and the rationalisation and demarcation of functions relating to intelligence and counter-intelligence between the Agency, the South African Secret Service, the National Defence Force and the South African Police Service;

(f) to order investigation by and to receive a report from the Head of a Service or an Inspector-General regarding any complaint received by the Committee from any member of the public regarding anything which such member believes that a Service has caused to his or her person or property: Provided that the Committee is satisfied that such complaint is not trivial or vexatious or made in bad faith;

(g) to refer any matter in relation to a Service or intelligence activity which comes to its attention and which it regards as relevant to the promotion of, respect for, and protection of the rights entrenched in Chapter 3 of the Constitution to the Human Rights Commission established by section 115 of the Constitution, and to receive a report from such Commission concerning the matter;

(h) to consider and make recommendations regarding any matter falling within the purview of this Act and referred to it by the President, the Minister or Parliament;

(i) to request the officials or bodies referred to in subsection (1) (a), (b) and (f) to explain any aspect of a report;

(j) to deliberate upon, hold hearings, subpoena witnesses and make recommendations on any aspect relating to intelligence and the national security;

(k) to consult with any member of the Cabinet appointed in terms of the Constitution, regarding the performance of the functions of the Committee in terms of this Act.

Access to intelligence, information and documents

4. (1) The Committee shall, notwithstanding anything to the contrary contained in any other law or the common law, but subject to subsection (2) and the proviso to section 3(1) (a) (iii), in the performance of its functions, have access to intelligence, information and documents in the possession or under the control of a Service, on condition that-

(a) such access is necessary for the performance of such functions;

(b) such intelligence, information and documents shall be handled in accordance with the written security guidelines and measures of, or the conditions prescribed or determined by, the chairperson with the concurrence of the Heads of the Services; and

(c) such documents shall after inspection thereof be returned to a Service as determined by the Head of that Service.

(2) (a) Notwithstanding anything to the contrary contained in this Act or any other law, a Service shall not be obliged to disclose to the Committee-

(i) the name or identity of any person or body engaged in intelligence or counter-intelligence activities;

(ii) any intelligence, information or document in a form which could reveal the identity of any source of such intelligence,

information or document if that intelligence, information or document was provided to such Service under an express or implied assurance of confidentiality;

(iii) any intelligence or counter-intelligence method employed by a Service if such disclosure could reveal or lead to the revelation of the name or identity of any person or body engaged in intelligence or counterintelligence activities or the identity of the source of any intelligence, information or document: Provided that this provision shall not prevent the disclosure of any part of intelligence, information or a document if such part can be separated from the part which could reveal the name, identity or method referred to in subparagraphs (i) and (ii) and this subparagraph.

(b) In the event of a dispute arising from-

(i) the provisions of paragraph (a) as to whether or not the disclosure of any intelligence, information or document may reveal the name or identity of any person or body engaged in intelligence or counter-intelligence activities or intelligence or counter-intelligence methods employed or the identity of the source of intelligence, information or document; or

(ii) the provisions of subsection (1) (a) as to whether access to certain intelligence, information or any document is necessary to perform the functions of the Committee, such dispute shall be referred for determination to a committee composed of the Inspector-General responsible for a Service concerned, the Head of that Service, the chairperson of the Committee and the Minister responsible for that Service, which decision of the Committee shall be final.

(3) The Committee may, for the purposes of the performance of its functions, require a Minister, the Head of a Service or the Inspector-General of a Service to appear before it to give evidence, to produce any document or thing and answer questions put to him or her: Provided that such person shall-

(a) be given reasonable notice of such appearance;

(b) be given reasonable details regarding the purpose of such appearance; and

(c) have the right to be assisted by members of that Service.

Secrecy

5. (1) The Committee shall conduct its functions in a manner consistent with the protection of national security.

(2) No person shall disclose any intelligence, information or document the publication of which is restricted by law and which is obtained by that person in the performance of his or her functions in terms of this Act, except-

(a) to the extent to which it may be necessary for the proper administration of any provision of this Act;

(b) to any person who of necessity requires it for the performance of any function in terms of this Act;

(c) with the written permission of the chairperson, which permission may be given only with the concurrence of the Head of a Service and

the Inspector-General concerned; or

(d) as prescribed by regulation.

(3) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years.

Report to Parliament

6. (1) The Committee shall, within two months after 31 March in each year, submit to the President and to each Minister concerned a report on the activities of the Committee during the preceding year, together with the findings made by it and the recommendations it deems appropriate, and the President shall cause such report to be tabled in Parliament within 15 days of session of Parliament after the report was submitted to him or her.

(2) The Committee may at the request of the President or the Minister concerned or at any other time which the Committee deems necessary, furnish the President or such Minister with a special report concerning any matter relating to the performance of its functions.

Inspector-General

7. (1) The President shall appoint for each Service an Inspector-General of Intelligence-

(a) nominated by the Committee; and

(b) approved by the National Assembly and the Senate by a resolution adopted by a majority of at least 75 per cent of the members present and voting at a joint meeting: Provided that if any nomination is not approved as required in paragraph (b), the Committee shall nominate another person.

(2) An Inspector-General shall be a South African citizen who is a fit and proper person to hold such office.

(3) The remuneration and other conditions of employment of an Inspector-General shall be determined by the President with the concurrence of the Committee and such remuneration shall not be reduced, nor shall such conditions be adversely altered during his or her term of office.

(4) An Inspector-General may be removed from office by the President, but only on the grounds of misbehaviour, incapacity or incompetence determined by the Committee.

(5) An Inspector-General who is the subject of an investigation by the Committee in terms of subsection (4) may be suspended by the President pending a decision in such investigation.

(6) An Inspector-General shall be responsible to the President.

(7) The functions of an Inspector-General are, in relation to the Service in respect of which he or she is appointed-

(a) to monitor compliance by the Service with its policies;

(b) to review the activities of the Service;

(c) to perform all functions designated to him or her by the Minister concerned;

(d) to submit certificates to the Minister concerned pursuant to

subsection (11) (c); and

(e) to submit reports to the Committee pursuant to section 3(1) (f).

(8) Notwithstanding anything to the contrary contained in any other law or the common law, an Inspector-General shall have access to any intelligence, information or premises under the control of the Service in respect of which he or she has been appointed if such access is required by the Inspector-General for the performance of his or her functions, and he or she shall be entitled to demand from the Head of the Service and its employees such intelligence, information, reports and explanations as the Inspector-General may deem necessary for the performance of such functions,

(9) No access to intelligence, information or premises contemplated in subsection (3) may be withheld from an Inspector-General on any ground.

(10) An Inspector-General-

(a) shall comply with all security requirements applicable to the employees of the Service in respect of which he or she has been appointed; and

(b) shall serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice.

(11) (a) Each Head of a Service shall, in respect of every period of 12 months or such lesser period as is specified by the Minister concerned, submit to that Minister, at such times as the Minister may specify, a report on the activities of that Service during that period, and shall cause a copy of such report to be submitted to the Inspector-General appointed for that Service.

(b) (i) Each Head of a Service shall report to the Inspector-General appointed for that Service regarding any unlawful intelligence activity or significant intelligence failure of that Service and any corrective action that has been taken or is intended to be taken in connection with such activity or failure.

(ii) A Head of a Service shall submit the report referred to in subparagraph (i) to the Inspector-General concerned within a reasonable period after such unlawful intelligence activity or significant intelligence failure came to his or her attention.

(c) As soon as practicable after receiving a copy of a report referred to in paragraph (a), an Inspector-General shall submit to the Minister concerned a certificate stating the extent to which such Inspector-General is satisfied with the report and whether anything done by that Service in the course of its activities during the period to which the report relates, in the opinion of such Inspector-General-

(i) is unlawful or contravenes any direction issued by that Minister; or

(ii) involves an unreasonable or unnecessary exercise by that Service of any of its powers.

(d) As soon as practicable after receiving a report referred to in paragraph (a) and a certificate of the Inspector-General referred to in paragraph (c), the Minister concerned shall, subject to section 4(2), cause the report and certificate to be transmitted to the Committee.

(12) The Minister responsible for a Service may, after consultation with the Inspector-General concerned, appoint such persons as may be necessary for the performance of the functions of that office of the Inspector-General, on such conditions of employment as are applicable to members of that Service.

Regulations

8. The President may make regulations as to all matters which are necessary or expedient for the achievement of the purposes of this Act, including but not limited to-

- (a) the procedures to be followed regarding the hearing of evidence and the powers of the Committee in regard thereto;
- (b) an oath or affirmation of secrecy to be subscribed by members of the Committee, and staff appointed in terms of section 7(12);
- (c) anything which shall or may be prescribed under this Act.

Short title and commencement

9. This Act shall be called the Committee of Members of Parliament on and Inspectors-General of Intelligence Act, 1994, and shall come into operation on a date fixed by the President by proclamation in the Gazette.