

Tanzania

Tanzania Intelligence and Security Service Act Chapter 406

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Tanzania Intelligence and Security Service Act

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Tanzania Intelligence and Security Service Act

Chapter 406

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[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]

[G.N. No. 106 of 1998; Acts Nos. 15 of 1996; 9 of 2000]

An Act to establish the Tanzania Intelligence and Security Service and to make provisions.

Part I – Preliminary provisions (ss. 1-3)

1. Short title

This Act may be cited as the Tanzania Intelligence and Security Service Act.

2. Application

This Act shall apply to Mainland Tanzania as well as to Tanzania Zanzibar.

3. Interpretation

In this Act, unless the context requires otherwise—

"active service" means the actual service given by a person or category of persons, whether direct or indirect, when that person or category of persons is under the temporary or permanent employment of the Service and which service is given in the course of performing the duties of or similar to those of an intelligence officer;

"Director-General" means the Director-General of the Service appointed under section 6;

"employee" in relation to the Service, means a person employed as an employee of the Service, and includes a person employed before the enactment of this Act;

"espionage" means such an offence as defined by the National Security Act;

"foreign state" means any state other than Tanzania;

"intercept" in relation to any communication not otherwise lawfully obtainable by the person making the interception, includes hear, listen to, record, monitor, or acquire the communication, or acquire its substance, meaning or purport, and "interception" has a corresponding meaning;

"Minister" means the Minister responsible for intelligence and security or, if no such Minister is appointed, the President;

"place" includes any conveyance;

"sabotage" means any such offence under the National Security Act ¹;

"security" means the protection of the United Republic from acts of espionage, sabotage and subversion, whether or not it is directed from or intended to be committed within the United Republic;

"security assessment" means an appraisal of the loyalty to Tanzania and, so far as it relates thereto, the reliability of an individual;

"the service" means the Tanzania Intelligence and Security Service established by section 4;

"subversion" means encouraging—

- (a) the overthrow by unlawful means of the Government of the United Republic or of the Revolutionary Government of Zanzibar;
- (b) the undermining by unlawful means of the authority of the State in the united Republic;

"terrorism" means planning, threatening, using or attempting to use violence to coerce, deter or intimidate—

- (a) the lawful authority of the State in the United Republic or any part of it.
- (b) the community throughout the United Republic or in any area in the United Republic,

for the purpose of furthering any political aim;

"threats to the security of the United Republic" means—

- (a) espionage, sabotage or other activities which are against Tanzania or are detrimental to the integrity, sovereignty or other interests of Tanzania or are activities directed toward or in support of such espionage or sabotage;
- (b) foreign influenced activities within or relating to Tanzania that are detrimental to the interests of Tanzania or are clandestine or deceptive or involve a threat to any person;
- (c) activities within or relating to Tanzania directed toward 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 Tanzania or a foreign state; and
- (d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Tanzania,

but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d).

Part II – The Tanzania Intelligence and Security Service (ss. 4-5)

4. Establishment of TISS

- (1) There is hereby established a department of Government within the office of the President which shall be known as the Tanzania Intelligence and Security Service or, when referred to in brief, by the acronym "TISS".
- (2) Subject to this Act, the intelligence and security department existing before the enactment of this Act shall be deemed to have been established and its employees and officers to have been recruited and appointed in pursuance of the relevant provisions of this Act.
- (3) The Director-General may, with the prior written approval of the Minister establish regional and district offices of the Service.

5. Functions of TISS

- (1) Subject to the control of the Minister, the functions of the Service shall be—
 - (a) to obtain, correlate, and evaluate intelligence relevant to security, and to communicate any such intelligence to the Minister and to persons whom, and in the manner which, the Director-General considers it to be in the interests of security;
 - (b) to advise Ministers, where the Director-General is satisfied that it is necessary to do so, in respect of matters relevant to security, so far as those matters relate to departments or portfolios of which they are in charge;
 - (c) to cooperate as far as practicable and necessary with such other organs of state and public authorities within or outside Tanzania as are capable of assisting the Service in the performance of its functions;
 - (d) to inform the President, and any other person or authority which the Minister may so direct, of any new area of potential espionage, sabotage, terrorism or subversion in respect of which the Director-General has considered it necessary to institute surveillance.
- (2) It shall not be a function of the Service—
 - (a) to enforce measures for security; or
 - (b) to institute surveillance of any person or category of persons by reason only of his or their involvement in lawful protest or dissent in respect of any matter affecting the Constitution, the laws or the Government of Tanzania.

Part III – The management of TISS (ss. 6-13)

6. The Director-General

- (1) There shall be a Director-General of Intelligence and Security who shall be appointed by the President.
- (2) The Director-General shall hold office under a contract of service during the pleasure of the President or such term not exceeding five years, and on such terms and conditions as to salary, allowances, superannuation benefits, and otherwise, as the President may deem fit or as may be provided for by or under the Public Service Retirement Benefits Act ².
- (3) Subject to subsection (4) the Director-General is eligible, on the expiration of a first or any subsequent term of office, to be re-appointed for a further term not exceeding five years.
- (4) No person shall hold office as Director-General for terms exceeding ten years in the aggregate.
- (5) The Director-General shall, subject to this Act and to any directions of a general or specific character given by the President, be the chief executive officer of the Service and responsible to the Minister for the efficient and proper working of the Service.

7. Officers and employees of TISS

- (1) Subject to this Act, and notwithstanding the provisions of the Civil Service Act ³—
 - (a) all officers and members of the Service; and

²

Cap. 371

³

Act No. 16 of 1989

- (b) all persons appointed or employed under the Civil Service Act, or any other written law, assigned to the intelligence or security service immediately before the enactment of this Act shall become employees of the Service with effect from the commencement of this Act.
- (2) Subject to this Act, the Director-General may, on behalf of the Government of the United Republic or of the Revolutionary Government of Zanzibar—
 - (a) employ under written agreements, such officers of intelligence and security as he thinks necessary;
 - (b) engage such other employees as he thinks necessary, for the purposes of this Act.
- (3) Every person referred to in subsection (1) shall, upon the commencement of this Act, continue to have employment benefits equivalent to that he had immediately before the commencement of this Act, until such time as those benefits are modified by the Service according to law.
- (4) The Director-General shall not employ any person as an officer save—
 - (a) in an office the grading and salary scale of which has been determined under section 8(1); and
 - (b) upon the terms and conditions of service in force under section 9 in relation to the employment of persons as officers at the date on which the person is employed.

8. Grading of officers

- (1) The salary scales applicable to officers in the Service, other than the office of Director-General, shall be such as are determined from time to time by the Director-General after consultation with the Chief Secretary, subject to any directions of the Minister in that behalf.
- (2) The designations of officers in the Service immediately before the enactment of this Act, and the salary scales then applicable to those officers shall be deemed to have been determined in pursuance of subsection (1).

9. Conditions of employment

- (1) Nothing in the Civil Service Act shall apply to the Director-General or the officers and employees of the Service.
- (2) Subject to this Act, the terms and conditions of employment of officers and employees of the Service shall be determined by the Director-General subject to any directions of the Minister in that behalf.
- (3) Notwithstanding subsection (1) an employee who attains the age of fifty-five may at any time voluntarily retire from the Service but an employee who does not opt to retire shall continue in the employment in the Service on pensionable terms until he attains the age of sixty years which is the age of compulsory retirement.
- (4) An employee who does not retire from Service upon attainment of fifty-five years shall not retire from Service except in the following cases—
 - (a) on medical evidence to the satisfaction of the employer that he is incapable of discharging his duties by reason of becoming invalid;
 - (b) on the satisfaction of the employer that retirement is otherwise necessary or unavoidable;
 - (c) on abolition of an office or on cessation to hold office in pursuance to the provisions of Article 72 of the Constitution⁴; or

- (d) on motion of the employer.
- (5) The Minister shall, not later than six months from the commencement of this Act, make regulations which shall constitute the code of conduct for all officers and employees of the Service in relation to the conduct, discipline, presentation, considerations, ethical standards and general directions to be adhered to in the carrying out of the functions and exercise of the powers conferred on the Service.
- (6) The regulations constituting the code of conduct for the Service shall be published only to members of the Service and in the manner which the Minister determines.

10. Role of Director-General

- (1) Subject to the powers of the President and the directions of the Minister in respect of any matter under this Act, the Director-General shall have the command, control, direction, general superintendence and management of the Service and all matters connected with it.
- (2) Subject to any orders issued by the President and unless the Minister directs otherwise in writing in relation to any matter, all orders and instructions to the Service which are required to give effect to the decisions and to carry out the policies and directions of the Government shall be issued by or through the Director-General.

11. Role of Minister

- (1) For the purposes of giving directions under section 10, the Minister may issue to the Director-General written directions with respect to the Service and a copy of any such direction shall, as soon as it is issued, be furnished to the Chief Secretary.
- (2) The Director-General shall consult with the Minister on matters concerning—
 - (a) the general operational policies of the Service; and
 - (b) any matter with respect to which consultation is required by directions issued under section 10 or section 11(1).
- (3) The Minister shall from time to time advise and brief the President with respect of directions issued under this and section 10 or which should, in the opinion of the Minister, be issued under this Act by the President, the Minister or any other relevant authority.

12. Process for resolution of staff disputes

Notwithstanding the Civil Service Negotiating Machinery Act ⁵ but subject to this Act the Director-General shall establish procedures respecting the consideration and adjudication of grievances in relation to employees of the Service.

13. Oaths

The Director-General and every Officer or employee of the Service shall, prior to embarking upon the duties of office, take an oath of allegiance and the oaths set out in the Schedule to this Act.

Part IV – Duties and powers of TISS (ss. 14-18)

14. Duty to collect, analyse and retain information

- (1) It shall be the duty of the Service to collect, by investigation or otherwise, to the extent that it is strictly necessary, and analyse and retain information and intelligence respecting activities that

may on reasonable grounds be suspected of constituting a threat to the Security of the united Republic or any part of it.

- (2) The Service shall, in relation to the information dealt with under subsection (1), report to and advise the Government.
- (3) The Service may—
 - (a) advise any Minister on matters relating to the security of Tanzania; or
 - (b) provide any Minister with information relating to security matters.

15. Power to investigate

- (1) The Service shall, subject to this Act, have power to investigate any person or body of persons whom or which it has reasonable cause to consider a risk or a source of risk of a threat to the state security.
- (2) The Service may conduct any investigations which are required for the purpose of providing security assessments pursuant to section 14.
- (3) The Service may, with the approval of the Minister, enter into an arrangement with—
 - (a) any person or body of persons;
 - (b) any local government or other authority;
 - (c) any police force or other policing organisation.
- (4) The Service may, with the approval of the President after consultation with the Minister for Foreign Affairs, enter into an arrangement with the government of a foreign state or an international organisation of states authorising the Service to provide the government, institution or organisation with security assessment.

16. Restriction on publication and broadcasting information

- (1) Subject to this Section no person shall, without the written consent of the Minister, publish or cause or allow to be published in a newspaper or other document, or broadcast or cause or allow to be broadcast by radio or television or otherwise, the fact that any person, other than the Director-General—
 - (a) is a member of the Service;
 - (b) is connected in any way with a member of the service.
- (2) The written consent of the Minister in relation to any proceedings in any court may be filed in the court and when so filed shall be sufficient authority to all persons to act in accordance with it.
- (3) Any person who fails or refuses to comply with the provisions of this section commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings.

17. Authorised disclosure of information

- (1) Information and intelligence obtained in the performance of the duties and functions of the Service pursuant to this Act shall not be disclosed by the Service except in accordance with this section.
- (2) The Service may disclose information referred to in subsection (1) for the purposes of the performance of its duties and functions under this Act or the administration or enforcement of this Act or as required by any other law and may also disclose that information—
 - (a) where the information may be used in the investigation or prosecution of an alleged offence under any law in force in the United Republic, to any public officer having jurisdiction to

investigate the alleged offence and to the Attorney-General or the law officer concerned with the proceedings in respect of the alleged offence;

- (b) where, in the opinion of the Minister, disclosure of the information to any Minister or public officer is essential in the public interest and that interest clearly outweighs any invasion of privacy that could result from the disclosure, to that Minister or public officer.

18. Co-operation

- (1) For the purpose of performing its duties and functions under this Act, the Service may, with the prior approval of the Minister—
 - (a) enter into an arrangement or otherwise co-operate with any department or other institutions of the Government or a local government authority;
 - (b) after consultation with the Minister for Foreign Affairs, enter into an arrangement or otherwise co-operate with the Government of a foreign state or its institution or an international organisation of states or its institution.
- (2) Where a written arrangement is entered into pursuant to subsection (1) of section 15(3) or (4), a copy of the arrangement shall be given to the Attorney-General.

Part V – Miscellaneous provisions (ss. 19-23)

19. Protection of officers and employees

- (1) The Director-General and all officers and employees of the Services shall each, performing his duties and functions under this Act, not be liable to any action for damages for any act done or omitted to be done by him *bona fide* in connection with the duties and functions of the Service.
- (2) If the Director-General is of the opinion that an officer or employee may, on a particular occasion have acted unlawfully in the purported performance of the duties and functions of the Service under this Act, he shall cause a report in respect of that matter to be submitted to the Minister.
- (3) The Minister shall cause to be given to the Attorney-General a copy of any report that he receives pursuant to subsection (2), together with any comment that he considers appropriate in the circumstances.

20. Protection of sources of information

- (1) No person shall disclose any information obtained in the course of the performance of functions under this Act, from which the identity of—
 - (a) any other person who is or was a confidential source of information or assistance to the Service shall be revealed;
 - (b) any person who is or was an employee or officer employed in covert operational activities of the Service can be inferred.
- (2) Any person who contravenes or fails or refuses to comply with the provisions of this section commits an offence and upon conviction is liable to a fine of not less than five hundred thousand shillings or imprisonment for a term not exceeding two years or to both the fine and the imprisonment.

21. Delegation of powers

- (1) Except where the contrary appears from the context of any law and subject to any special instructions of the Director-General, a Deputy Director-General or a Director, as the case may be, may exercise or discharge any of the powers or duties which the Director-General is by any law entitled to exercise or required to discharge.

- (2) Except where the contrary intention appears from the context of any special instructions of the Minister, the Director-General may authorise any officer of the Service, not being below the level of head of department, by name, office or appointment to exercise or discharge any of the powers or duties which the Director-General is by any law entitled to exercise or required to discharge.
- (3) For the avoidance of doubt, nothing in this section shall be deemed to derogate from any power of delegation conferred upon the Director-General by the provisions of any other law.

22. Regulations

- (1) The Minister may, after consultation with or upon the recommendation of the Director-General and with the consent of the President, make regulations providing for—
 - (a) the administration of the Service;
 - (b) description of equipment and other requirements to be provided for the purposes of the Service;
 - (c) the making and issue of reports, warrants or other documents for the purposes of the Act;
 - (d) such other matters as may or are required to be prescribed under this Act or as may be necessary expedient for rendering the Service efficient in the discharge of its duties;
 - (e) generally the better and effective carrying out of the provisions of this Act in relation to any matter, whether or not similar to those mentioned in this section, as to which it may be convenient to make regulations.
- (2) Any regulations made under subsection (1) shall be published only to members of the Service and in such manner as the Minister determines.

23. Offences

- (1) Any person who knowingly resists or obstructs any officer or employee of the Service acting in the execution of his duty commits an offence and upon conviction shall be liable to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both the fine and imprisonment.
- (2) Any officer or employee of the Service who—
 - (a) deserts;
 - (b) wilfully disobeys a lawful command of an officer whom it is his duty to obey,commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding thirty-six months without remission or to both the fine and imprisonment.
- (3) Any person who, not being an officer or employee of the Service and without the permission of the Director-General presents himself or conducts himself as being or as acting under powers of such an officer or employee, commits an offence and upon conviction is liable to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding six months or to both the fine and imprisonment.

Schedule (Section 13)

Oath of office

I, _____ do here take oath/affirm that I will faithfully and impartially to the best of my abilities perform the duties required of me as _____ (*name of Office*) of the Tanzania Intelligence and Security Service. So help me God.

Oath of security

I, _____, do here take oath/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 Tanzania Intelligence and Security Service or by reason of any office or employment held by me pursuant to the TISS Act⁶.

⁶

Cap. 406