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NATIONAL SECURITY SERVICE ACT 11 OF 1998

An Act to regulate the continuation, organisation and control of the National Security Service and to provide for incidental matters.

Enacted by the Parliament of Lesotho

PART I PRELIMINARY

Short title

1. This Act may be cited as the National Security Act 1997.

Interpretation

2. In this act-

“Director General” means the Director General of the Service appointed under Section 6;

“member” means a member of the Service;

“Minister” means the Prime Minister or a Minister designated by him;

“misconduct” means –

- (a) the commission of an offence; or
- (b) a contravention of or a failure to comply with a provision of this Act;

“Prescribed” means prescribed by regulations;

“regulation” means a regulation made under this Act;

“Service” means the National Security Service;

“this Act” includes regulations.

PART II

CONTINUATION, COMPOSITION AND ORGANISATION OF SERVICE

Continuation of the Service

3. There shall continue to be the National Security Service.

Composition of the Service

4. The Service shall consist of .
 - (a) the Director General and persons who on the coming into operation of this Act are members of the Service and ancillary staff employed in the Service;
 - (b) such members as may be appointed by the Minister acting in accordance with the advice of the Director General; and
 - (c) such ancillary staff as may be appointed by the Director General acting on the recommendations of the Staff Board.

Functions of the Service

5(1) The function of the Service shall be the protection of the national security.

- (2) Without prejudice to the generality of subsection (1) the Service shall
- (a) protect the state against threats of espionage, terrorism or sabotage which may infringe on national security;
 - (b) protect the state from activities of agents of foreign powers and from actions of persons intended to overthrow or undermine democracy by political, industrial or violent means;

Appointment of Director General

6. The Prime Minister shall appoint the Director General of the Service whose office shall be an office in the Public Service.

Functions of Director General

7(1) The Director General shall, subject to the directions of the Prime Minister and a provision of this Act, exercise command, superintendence and control of the Service

(2) The Director General may, subject to the directions of the Prime Minister and a provision of this Act, make such rules and issue such directions as he may deem expedient for the efficient command, superintendence and control of the Service.

(3) The Director General shall, as far as is reasonably practicable, take steps to ensure that-

- (a) national security intelligence, intelligence collection methods, sources information and identity of members are protected from unauthorised disclosure
- (b) no action is carried out that could give rise to any reasonable suspicion that Service is concerned in furthering, protecting or undermining the interests of section of the population or any political party or organisation; and
- (c) the functions of the Service are limited to what is necessary for the purposes of discharge of its functions.

Structure of the Service

8. (1) The organisational structure of the Service shall be as specified in Schedule I.

(2). The Minister may in consultation with the Director General, amend the Schedule by

notice in the Gazette.

The Staff Board

- 9(1) There is established a board to be known as the Staff Board whose functions shall be to advise and make recommendations to the Director General on appointments, confirmation, promotions and demotions of members.
- (2) The Staff Board shall consist of -
 - (a) Deputy Director General Administration and Operations;
 - (b) Director Administration and Operations; and
 - (c) three Regional Security Officers.

Appointment, promotion, demotion, transfer and discharge of members

10. (1) The Minister may, acting in accordance with the advice of the Director General, appoint any person as a member or promote, demote, transfer or discharge a member in accordance with this Act.
- (2) In his advise to the Minister concerning appointments, confirmations, promotions and demotions of members, the Director General shall consider the recommendations made by the Staff Board.
- (3)A document, in a prescribed form purporting to have been signed by the Director General and certifying that a person has been appointed as a member shall be *prima fade* proof that such a person has been so appointed.
- (4)A member of the Service shall be issued with an identity document of such a design as may be prescribed by the Minister.

Security screening and discharge of members

11. (1) No person shall be appointed as a member unless-
 - (a) the Director General gathers information about the person in the prescribed manner in a security screening investigation by the Service; and
 - (b) after evaluating the gathered information, he is reasonably of the opinion that the person, is not a security risk and no such possibility exists, or may not act in any way prejudicial to security interests of the state.

- (2) If the Director General is reasonably of the opinion that the person, is not a security risk and there is no possibility that the person is a security risk, or may act in any way prejudicial to security interests of the state he shall issue a certificate that the person has successfully undergone a security clearance but he shall withdraw the certificate if after issuing it he obtains information which causes him to be of the opinion that the person is a security risk or the possibility exists.
- (3) If the Director General obtains information that there is a possibility that a person who is a member is a security risk or that he may act in a way prejudicial to security interests of the state he shall discharge the member from the Service if after an enquiry, in the prescribed manner, as to whether the possibility exists the Director General is of the opinion that the possibility does exist.
- (4) A member who has been discharged from the Service under Subsection (3) may, in writing and within 14 days from the date of his discharge, appeal to the Minister who may set aside or confirm the discharge.

12(1) A member or ancillary staff who absents himself from his official duties without the permission of the Director General or a valid excuse for more than fourteen days, shall be deemed to have been discharged and dismissed from the Service with effect from the date immediately following his last day at work.

- (2) If a member or ancillary staff absents himself from his official duties without the permission of the Director General and accepts employment elsewhere he shall be deemed to have been so discharged even if he has been absent for less than fourteen days.
- (3) If a member or ancillary staff deemed to have been discharged under subsection (1) or (2) reports for duty the Director General may, notwithstanding this Act or other law but subject to the approval of the Minister, reinstate him in his former post or appoint him to any other post in the Service on such conditions as the Director General may deem fit and the period of his absence shall be deemed to have been absence on vacation leave without pay or leave or on such other conditions as the Director General may determine.

Discharge of members for ill health

- 13(1) A member may be discharged from the Service by the Director General if, after an enquiry, in the prescribed manner, as to his state of health, the Director General is of the opinion that he is by reason of ill-health unfit to remain in the Service.
- (2) A member discharged in terms of subsection (1) may in the prescribed manner appeal to the Minister who may set aside or confirm the discharge.

Discharge or demotion of members for inefficiency

14(1) A member may be discharged from the Service by the Director General if after an enquiry, in the prescribed manner, as to his fitness to remain in employment or retain his grade the Director General is of the opinion that the member is incapable of performing his duties efficiently.

(2) A member who has been discharged or demoted under subsection (1) may, in the prescribed manner, appeal to the Minister who may set aside or confirm the discharge or demotion.

Appointment of ancilliary staff

15. The Director General may appoint any person as ancilliary staff of the Service.

Discharge of ancilliary staff for inefficiency or ill-health

16. The Director General may discharge ancilliary staff of the Service if after an enquiry in the prescribed manner, as to his fitness to remain in employment or state of health, the Director General is of the opinion that the person is incapable of performing his duties efficiently.

Retirement of members and ancilliary staff

17(1) A member or ancilliary staff shall retire from the Service on attaining the age of 55 years.

(2) Notwithstanding Subsection (1) -

- (a) the Minister may, on the recommendation of the Director General, with consent of a member or ancilliary staff who has attained the age of 55 years, extend the date of retirement beyond the age of 55 years; and
- (b) a member or ancilliary staff shall have a right to retire at any time on or after attaining the age of 45 on giving 6 months notice, in writing, to the Minister of his intention to do so and he shall be retired accordingly.

Pensions of members and ancilliary staff

18. The Pensions Proclamation 1964 shall apply to the grant of pensions, gratuities and other allowances to members and ancilliary staff of the Service.

Delegation of powers

19. The Minister may, on such conditions as he may deem fit, delegate, to the Director General, any power conferred on him by this Act except the power conferred on him by section 41 and that power shall be deemed to have been exercised by the Minister.

PART III- DISCIPLINE

Non-indemnity for misconduct

20. Nothing in this Act shall be construed as indemnifying a member against prosecution in or conviction by any court of law in respect of an offence.

Procedure in case of alleged misconduct of members

21(1) The Director General may, in the prescribed manner, charge a member with misconduct and request him to submit, within such period and in such manner as he may prescribe, a written admission or denial of the charge and a written explanation he or she may wish to offer in connection with the alleged misconduct.

(2) After the expiration of the prescribed period the Director General may appoint a board of enquiry to investigate the charge in issue.

(3) A board of enquiry may subpoena any person as a witness and administer an oath to the person or accept an affirmation from him.

(4) At the enquiry the law relating to evidence and witnesses as applicable in criminal proceedings in the magistrate court shall as far as practicable apply.

(5) Where a member is charged with a misconduct which constitutes an offence of which he has been convicted by a court of law a certified copy of the trial shall on its production by any person be, admissible before the board of enquiry and the certified copy of the charge and judgement of the conviction shall be prima facie proof of the commission of the misconduct by the member.

(6) After considering the evidence before it and affording the member or any other member representing him a hearing, the board of enquiry may find the member guilty or not guilty of the misconduct and inform him of its findings but if that member admits in the written submission or hearing that he is guilty of the misconduct he may be found guilty without any other evidence being adduced.

(7) A member found guilty of misconduct may, within such period and in such a manner as may be prescribed, appeal against the finding of the board of enquiry to the Minister. He may also make representations, in writing, regarding the imposition of punishment.

(8) The board of enquiry shall and the Director General may make recommendations to

the Minister regarding the case.

(9) The Minister may, after considering the record of the proceedings of the board of enquiry, the recommendations of the board and the Director General if any, and the grounds of appeal of and representations made by the member, set aside or confirm the decision of the board of enquiry and -

- (a) direct that no further action be taken on the matter;
- (b) direct that he be cautioned and reprimanded;
- (c) direct that he be demoted or salary be reduced to such an extent as may be recommended;
- (d) direct that the member be called upon to resign from the Service with effect from a specific date; or
- (e) discharge the member from the Service with effect from a specific date.

Suspension of members and ancilliary staff

22(1) The Director General may suspend a member or ancilliary staff from office without or half salary and benefits pending .

- (a) his trial or;
- (b) an enquiry -

- (i) at which the possibility as to whether the member is a security risk or may act in a way prejudicial to the security interests of the state is being investigated; or
- (ii) at which a charge of misconduct against him is being investigated;

and may be so suspended during a period of which he is under arrest, detention or until the completion of the investigation against him and shall not cease to be a member by reason of the suspension.

- (2) During the suspension the powers, functions and authority of the member shall be in abeyance but he shall continue to be subject to the same duties and discipline as if he had not been suspended.
- (3) The Director General may terminate the suspension at any time.
- (4) The suspension or termination of the suspension shall be subject to confirmation by the Minister.

CHAPTER IV- CONDUCT

Members to be at disposal of state

23(1) Unless otherwise provided in this Act .

- (a) a member shall place the whole of his time at the disposal of the state;
- (b) no member shall perform or engage in remuneration work outside his employment; and
- (c) no member may claim, as a right, additional remuneration in respect of any official duty or work of which he is required by a competent authority to perform.

(2) (a) If a member receives any remuneration, allowance or any reward in connection with the performance of his work contrary to subsection (1) or any other provision of this Act, the member shall pay, to the Service, an amount equal to the remuneration, allowance or reward and if the reward is in kind he shall pay an amount of its value as may be determined by the Director General.

(b) If the member fails to pay the amount the Director General may recover it from him by deducting it from his salary or in such a manner as he may think fit but -

- (i) that member may appeal to the Minister against the determination of the Director General; and
- (ii) the Minister may approve the retention by that member of the whole or portion of the remuneration, allowance or reward.
- (c) if in the opinion of the Director General a member has received the remuneration, allowance or reward and it is still in his possession or under his control or in the possession or control of another person on his behalf or the reward is money and has been deposited in a bank, building society or any other financial institution in his name or in the name of another person on his behalf, the Director General may, in writing, require the member, the other person, bank, building society or any other financial institution not to dispose of it, or if it is money to retain a corresponding sum of it pending the outcome of the legal proceedings for the recovery of the allowance, reward or its value.

Reward for extraordinary diligence or devotion

24. The Director General may, with the approval of the Minister, award, to any person who is a member or was a member, for extraordinary diligence or devotion in the performance of his duties as a member, such monetary or other reward as the Director General considers appropriate in the circumstances.

Participation in politics

25(1) A member shall not

- (i) be an active member of a political party;
- (ii) speak in public of any political party;
- (iii) take an active part in the support of a candidate in an election; or
- (iv) do anything by word or deed which is calculated to further political interests of a political party.

- (2) Nothing in subsection (1) shall be construed as preventing a member from exercising his right to vote.

CHAPTER V

WARRANTS, ARRESTS, INTERCEPTION, MONITORING AND SEARCH

Warrants

26(1) Notwithstanding any other law, no entry on, or interference with, property shall be unlawful if it is authorised by a warrant issued by the Minister under this section.

(2) The Minister may, on an application made by a member of or above the rank of Higher Intelligence Officer, issue a warrant under this section authorising the taking of such action in respect of any property specified in the warrant as the Minister thinks is necessary to be taken in order to obtain information which -

(a) is likely to be of substantial value in assisting the Service to discharge any of its functions; and

(b) cannot reasonably be obtained by any other means.

(3) A warrant shall not be issued under this section unless -

- (a) it is signed by the Minister; or
- (b) in an urgent case where the Minister has expressly authorised its issue and a statement of that fact is endorsed on it, it is signed by the Director General or an officer authorised by the Director General.

(4) A warrant shall not be issued under this section unless-

- (a) if it was signed, by the Minister, at the end of six months from the day it was issued; or
- (b) in any other case, at the end of the second working day following the day it was issued.

(5) If at any time before the day on which a warrant would cease to have effect the Minister considers it necessary for the warrant to continue to have effect for the purpose for which it was issued, he may renew it, in writing, for a further period of six months.

(6) The Minister shall cancel a warrant if he is satisfied that the action authorised by it is no longer necessary.

Interception, monitoring and search

27(1) No member shall, in the exercise of his duties-

- (a) intentionally and without the written approval of the Director General, intercept a communication which has been, is being or is intended to be transmitted by telephone or in any other manner over a telecommunications line; or
- (b) intentionally monitor a conversation by means of monitoring device so as to gather confidential information concerning any person, body or organisation.

(2) Notwithstanding subsection (1) or any other law to the contrary if the Minister is convinced on the grounds mentioned in a written application to him from the Service, that-

- (a) an offence that has been, is being or will probably be committed is a threat to the national security; or
- (b) the information has or could probably have a bearing on the functions of the Service and can be obtained on any premises,

and that the offence cannot be properly investigated or the information cannot reasonably be obtained in any other manner and the investigation or information is, for the purposes of this Act necessary he may issue the Service with a direction -

- (c) that a particular postal article or a particular communication which has been, is being or is intended to be transmitted by telephone or is in any other manner over telecommunications line be intercepted;
- (d) that all postal articles to or from a person, body or organisation or all communication which have been, are being or are intended to be transmitted by telephone or in any manner over a telecommunications line, to or from the person, body or organisation be intercepted;
- (e) that conversations by or with a person, body or organisation, whether telecommunications line is being used in conducting these conversation or not be monitored in any manner by means of monitoring device; or
- (f) to enter and search premises with the purpose of obtaining the information and to examine, copy, photograph, transcribe an article or document on the premises or to remove the article or document for as long as is reasonably necessary in the circumstances.

(3) A direction shall not be issued under this section unless-

- (a) it is in writing and signed by the Minister; or
- (b) in an urgent case where the Minister has expressly authorised its issue and a statement of that fact is endorsed on it, it is signed by the Director General or an officer authorised by the Director General.

(4) A direction shall, unless renewed under subsection (5), cease to have effect-

- (a) if it was signed by the Minister at the end of six months from the day it was issued; or
- (b) in any other case, at the end of the second working day following the day it was issued.

(5) If at any time before the day on which a direction should cease to have effect the Minister considers it necessary for the direction to continue to have effect for the purpose

for which it was issued, he may renew it in writing for a period of six months.

Arrests

- 28(1) The police shall, arrest or cause to be arrested a person whom the Service reasonably suspects of acting in a manner prejudicial to the national security.
- (2) A person arrested under subsection (1) shall be kept in the Police custody and dealt with in accordance with the provisions of the Criminal Procedure and Evidence Act 1981.

PART VI- FINANCIAL PROVISIONS

Establishment of the National Security Service Special Fund

29. There is established in the Consolidated Fund a special fund to be known as the National Security Service Special Fund in this Act referred to as “the Fund” to which shall be credited the amounts appropriated by Parliament for special operations of the Service and all sums received by way of donation or otherwise for the purposes of or on behalf of the Service.

Administration of the Fund

30. The Fund shall be administered by the Director General in consultation with the Minister and shall be audited by the Auditor General, at the end of each financial year.

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Accounts and records of the Fund

31. The Director General shall keep proper books of accounts and prepare records in respect of the activities of the Fund.

Annual report of the Fund

32. The Director General shall within 60 days after the end of a financial year prepare and submit to the Minister a report concerning the activities of the Fund during the financial year.

Other expenses including salaries of the Service

33. All expenses of the Services, other than those charged and paid out of the Fund, including salaries, allowances and terminal benefits payable to or in respect of the

members and ancillary staff shall be paid out of the Consolidated Fund.

Accounts and records of the Service

34. Subject to section 30 the Service shall cause to be kept, proper books of accounts and records in respect of income and expenditure, assets and liabilities and any other transaction of the Service charged and paid out of the Consolidated Fund and shall be audited by the Auditor General.

PART VII- GENERAL

Access to premises of the Service

35. The Minister may, by notice in the Gazette or in any other manner which he thinks sufficient in the circumstances, prohibit or restrict access to any premises under the control of the Service.
36. The Service, Lesotho Defence Force and Lesotho Police Force shall at all times, maintain an effective liaison with the objective of festering, preserving and strengthening national security.

Secrecy

- 37(1) A member or any other person employed in the Service shall preserve secrecy and aid in preserving secrecy in respect of a matter or information which may come to his knowledge in the exercise of his powers or performance of his duties and functions under this Act and shall not disclose or communicate the matter or information to any unauthorised person or permit a person to have access to any documents in his possession or custody, except in so far as the communication is required to be made in compliance with this Act or any other law.
- (2) A member or any other person who contravenes sub-section (1) or who knows of information which to his knowledge is disclosed in contravention to sub-section (1) and publishes it or communicates it to another otherwise than for the purpose of a prosecution under this Act or in the course of his official duty and without the written authority of the Director General commits an offence and is liable to conviction to a fine not exceeding M30,000-00 or imprisonment to a period not exceeding 15 years.

Oath of office

38. A member or any other person employed in the Service shall, before entering upon the duties of his office take and subscribe the oath of allegiance which shall be in the form prescribed by the Minister.

Offences and Penalties

3 9(1) A person who, not being a member-

- (a) by words, conduct or demeanor pretends that he is a member;
- (b) persuades a member to omit to carry out his duty or to do any act in conflict with his duty;
- (c) is an accomplice to the commission of any act of which any lawful order given to a member or any regulations may be evaded,

commits an offence and is liable on conviction to a fine not exceeding M20,000-00 or to imprisonment for a period not exceeding 10 years.

(2) A person-

- (a) subpoenaed in terms of section 2 1(3) to appear as a witness at an enquiry who fails to attend at the time and place mentioned in the subpoena or having attended refuses to answer all questions lawfully put to him or makes any false statement on oath knowing it to be false;
- (b) who unlawfully and intentionally violates a provision of a regulation made pursuant to section 41;
- (c) who fails to comply with a requirement made in terms of section 21(1);
- (d) who without the approval of the Minister, in carrying out an activity, assumes, uses or in any manner publishes any name, description, title or symbol indicating or conveying or purporting to indicate or convey or is calculated or likely to lead other persons to believe or infer that the activity is carried on under or by virtue of a provision of this Act, or under the patronage of the Service or is in any manner associated with the Service; or
- (e) who enters, or is on or in any premises in contravention of any prohibition or restriction under section 35,

commits an offence and is liable on conviction to a fine not exceeding M20,000-00 or imprisonment for a period not exceeding 5 years.

Extra-territorial application of Act and jurisdiction

40. An act constituting an offence or misconduct under this Act and which is committed outside Lesotho by a citizen of Lesotho or any person domiciled in Lesotho shall be deemed to have been committed in Lesotho.

Regulations

41(1) The Minister may make regulations for carrying into effect the provisions of this Act and generally for the good governance and organisation of the Service.

(2) Without prejudice to the generality of sub-section (1) the Minister may make regulations as to-

- (a) the employment, training, promotion, posting, transfer, leave of absence, resignation, discharge, dismissal, suspension or demotion of members and personnel management of the members in general;
- (b) the standards of physical and mental fitness and the medical examination and treatment, dental and hospital treatment of members;
- (c) numerical establishment of the Service, conditions of service, wages, allowances, grades and designations in the service;
- (d) the instruction, discipline and control of members;
- (e) deductions to be made from salaries, wages or allowances of members;
- (f) the assembly of boards of enquiry appointed under this Act, procedure at proceedings of such boards and attendance of witnesses at the proceedings;
- (g) the charging of members for misconduct;
- (h) appeals in terms of this Act;
- (i) returns, registers, records, forms and any other documents and correspondence relating to the Service;
- (j) recovery from a member of any deficiency, loss, damage or expense he has unlawfully caused to the state;

- (k) the control of funds collected or received by members for their own benefit;
- (l) general management and maintenance of the Service;
- (m) retirement or resignation from the Service;
- (n) conditions for and procedures regarding permission or access to any premises under the control of the Service;
- (o) a code of conduct to be adhered to by members;
- (p) establishment of procedures regarding the presentation, consideration and adjudication of grievances of members.

Repeal

42. The National Security Service Order No. 25 of 1992 is repealed.

SCHEDULE 1

(Section 8(1))

Organisation Structure of the Service

Director General

Deputy Director General

Director

Deputy Director

Assistant Director

Principal Intelligence Officer

Senior Intelligence Officer

Higher Intelligence Officer

Intelligence Officer 1

Intelligence Officer 2

Intelligence Officer 3

Intelligence Officer 4

Assistant Intelligence Officer