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OFFICE OF THE PRESIDENT

No. 1116.

4 September 1998

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

No. 37 of 1998: National Strategic Intelligence Amendment Act, 1998.

KANTOOR VAN DIE PRESIDENT

No. 1116.

4 September 1998

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 37 van 1998: Wysigingswet op Nasionale Strategiese Intelligensie, 1998.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the National Strategic Intelligence Act, 1994, so as to amend certain definitions; to define a certain expression; to substitute obsolete references; to provide for the transmitting of departmental intelligence to Nicoc and the institution by the South African Secret Service of counter-intelligence measures outside the Republic; to include the member of Cabinet responsible for intelligence services as a member of Nicoc and to redefine the functions of Nicoc and of the Co-ordinator for Intelligence in view of that new member; to define the functions of that member of Cabinet in relation to the National Intelligence Structures; and to provide for matters connected therewith.

(English text signed by the President.)
(Assented to 27 August 1998.)

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

Amendment of section 1 of Act 39 of 1994

1. Section 1 of the National Strategic Intelligence Act, 1994 (in this Act referred to as the principal Act), is hereby amended—

- (a) by the substitution for the definition of "Agency" of the following definition:

" 'Agency' means the National Intelligence Agency established by section 3(1) of the Intelligence Services Act, 1994 (Act No. 38 of 1994);"
- (b) by the substitution for the definition of "Cabinet" of the following definition:

" 'Cabinet' means the Cabinet of the Republic of South Africa referred to in section [88] 91(1) of the Constitution;";
- (c) by the substitution for the definition of "Constitution" of the following definition:

" 'Constitution' means the Constitution of the Republic of South Africa, [1993 (Act No. 200 of 1993)] 1996 (Act No. 108 of 1996);";
- (d) by the deletion of the definition of "Co-ordinator for Intelligence";
- (e) by the insertion after the definition of "foreign military intelligence" of the following definition:

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Wet op Nasionale Strategiese Intelligensie, 1994, ten einde sekere omskrywings te wysig; 'n sekere uitdrukking te omskryf; sekere uitgediende verwysings te vervang; voorsiening te maak vir die deurstuur van departementele intelligensie aan Nikok en die instelling deur die Suid-Afrikaanse Geheime diens van teenintelligensiematreëls buite die Republiek; om die lid van die Kabinet wat vir intelligensiedienste verantwoordelik is as 'n lid van Nikok in te sluit en die werksaamhede van Nikok en van die Intelligensiekoördineerder opnuut te omskryf in die lig van daardie nuwe lid; die werksaamhede van daardie lid van die Kabinet met betrekking tot die Nasionale Intelligensiestrukture te omskryf; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 27 Augustus 1998.)

DAAR WORD BEPAAL deur die Parlement van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 39 van 1994

1. Artikel 1 van die Wet op Nasionale Strategiese Intelligensie, 1994 (in hierdie Wet die Hoofwet genoem), word hierby gewysig—
- (a) deur die omskrywing van “Agentskap” deur die volgende omskrywing te vervang:
 “ ‘Agentskap’ die Nasionale Intelligensie-agentskap ingestel by artikel 3(1) van die Wet op Intelligensiedienste, 1994 (Wet No. 38 van 1994);”;
- 10 (b) deur die omskrywing van “Grondwet” deur die volgende omskrywing te vervang:
 “ ‘Grondwet’ die Grondwet van die Republiek van Suid-Afrika, [1993 (Wet No. 200 van 1993)] 1996 (Wet No. 108 van 1996);”;
- (c) deur die omskrywing van “Intelligensiekoördineerder” te skrap;
- 15 (d) deur die omskrywing van “Kabinet” deur die volgende omskrywing te vervang:
 “ ‘Kabinet’ die Kabinet van die Republiek van Suid-Afrika soos bedoel in artikel [88] 91(1) van die Grondwet;”;
- (e) deur na die omskrywing van “Kabinet” die volgende omskrywing in te voeg:

- “ ‘Minister’ means the President or the member of Cabinet designated by the President to assume the responsibility for intelligence services as contemplated in section 209(2) of the Constitution;”;
- (f) by the substitution for paragraphs (b) and (c) of the definition of “National Intelligence Structures” of the following paragraphs: 5
- “ (b) the **[Intelligence Division]** intelligence division of the National Defence Force, established under the Defence Act, 1957 (Act No. 44 of 1957);
- (c) the **[National Investigation Service]** intelligence division of the South African Police Service;” and 10
- (g) by the substitution for the definition of “South African Police Service” of the following definition:
- “ ‘South African Police Service’ means the South African Police Service established by section 5(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995);” 15

Amendment of section 2 of Act 39 of 1994

2. Section 2 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (c) of subsection (1) of the following paragraph:
- “ (c) to gather departmental intelligence at the request of any interested department of State, and, without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the Agency and which constitutes departmental intelligence, to the department concerned and to Nicoc.”; 20
- (b) by the substitution for subparagraph (ii) of paragraph (a) of subsection (2) of the following subparagraph: 25
- “ (ii) supply intelligence relating to **[national strategic intelligence]** any such threat to Nicoc;”;
- (c) by the substitution for paragraphs (b) and (c) of subsection (2) of the following paragraphs: 30
- “ (b) to institute—
- (i) counter-intelligence measures within the Service; and
- (ii) in consultation with the Agency, counter-intelligence measures outside the Republic; and
- (c) to gather departmental intelligence at the request of any interested department of State, and, without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the Service and which constitutes departmental intelligence, to the department concerned and to Nicoc.”; 35
- (d) by the substitution for paragraph (a) of subsection (3) of the following paragraph: 40
- “ (a) to gather, correlate, evaluate and use crime intelligence in support of the **[functions]** objects of the South African Police Service as contemplated in section **[215] 205(3)** of the Constitution; and”; and
- (e) by the substitution in paragraph (b) of subsection (4) for the words “referred to in section 227(1)(e)” of the words “as contemplated in section 201(2)(a)”. 45

Amendment of section 3 of Act 39 of 1994

3. Section 3 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph: 50
- “ (a) other than the National Defence Force when employed for service **[referred to in section 227(1)(a), (b) or (e)] as contemplated in section 201(2)** of the Constitution or when discharging the counter-intelligence responsibilities entrusted to its **[Intelligence Division]** intelligence division; and”; 55
- (b) by the substitution in paragraph (i) of subsection (1) for the words “Intelligence Division” of the words “intelligence division”; and
- (c) by the substitution for subsection (2) of the following subsection:

“ ‘Minister’ die President of die lid van die Kabinet wat deur die President aangewys word om, soos beoog in artikel 209(2) van die Grondwet, die verantwoordelikheid vir intellegensiedienste te aanvaar;”;

- 5 (f) deur paragrafe (b) en (c) van die omskrywing van “Nasionale Intelligensiestrukture” deur die volgende paragrafe te vervang:
- “ (b) die **[Inligtingsafdeling]** intelligensie-afdeling van die Nasionale Weermag ingestel kragtens die Verdedigingswet, 1957 (Wet No. 44 van 1957);
- 10 (c) die **[Nasionale Ondersoekdiens]** intelligensie-afdeling van die Suid-Afrikaanse Polisiediens;”; en
- (g) deur die omskrywing van “Suid-Afrikaanse Polisiediens” deur die volgende omskrywing te vervang:
- 15 “ ‘Suid-Afrikaanse Polisiediens’ die Suid-Afrikaanse Polisiediens ingestel by artikel 5(1) van die Wet op die Suid-Afrikaanse Polisiediens, 1995 (Wet No. 68 van 1995);”.

Wysiging van artikel 2 van Wet 39 van 1994

2. Artikel 2 van die Hoofwet word hierby gewysig—

- (a) deur paragraaf (c) van subartikel (1) deur die volgende paragraaf te vervang:
- 20 “(c) om departementele intelligensie in te samel op versoek van enige belanghebbende Staatsdepartement, en om sonder versuim sodanige intelligensie en enige ander intelligensie tot die beskikking van die Agentskap en wat departementele intelligensie uitmaak, te evalueer en aan die betrokke departement en aan Nikok deur te stuur.”;
- 25 (b) deur subparagraaf (ii) van paragraaf (a) van subartikel (2) deur die volgende subparagraaf te vervang:
- “ (ii) intelligensie betreffende **[nasionale strategiese intelligensie]** so ’n bedreiging aan Nikok te verstrek;”;
- 30 (c) deur paragrafe (b) en (c) van subartikel (2) deur die volgende paragrafe te vervang:
- (b) om—
- (i) teenintelligensiemaatreëls in die Diens; en
- 35 (ii) in oorleg met die Agentskap, teenintelligensiemaatreëls buite die Republiek,
- in te stel; en
- (c) om departementele intelligensie in te samel op versoek van enige belanghebbende Staatsdepartement, en om sonder versuim sodanige intelligensie en enige ander intelligensie tot die beskikking
- 40 van die Diens en wat departementele intelligensie uitmaak, te evalueer en aan die betrokke departement en aan Nikok deur te stuur.”;
- (d) deur paragraaf (a) van subartikel (3) deur die volgende paragraaf te vervang:
- 45 “(a) om misdaadinligting in te samel, te korreleer, te evalueer en te gebruik ter ondersteuning van die **[werksaamhede]** doelstellings van die Suid-Afrikaanse Polisiediens beoog in artikel **[215] 205(3)** van die Grondwet; en”; en
- (e) deur in paragraaf (b) van subartikel (4) die woorde “bedoel in artikel 227(1)(e)” deur die woorde “soos beoog in artikel 201(2)(a)” te vervang.

50 Wysiging van artikel 3 van Wet 39 van 1994

3. Artikel 3 van die Hoofwet word hierby gewysig—

- (a) deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:
- 55 “(a) behalwe die Nasionale Weermag wanneer dit vir diens **[bedoel in artikel 227(1)(a), (b) of (e)]** soos beoog in artikel 201(2) van die Grondwet in diens gestel is of wanneer dit die teenintelligensieverantwoordelikhede nakom wat aan sy **[Inligtingsafdeling]** intelligensie-afdeling opgedra is; en”;
- (b) deur in paragraaf (i) van subartikel (1) die woord “Inligtingsafdeling” deur die woord “intelligensie-afdeling” te vervang; en
- 60 (c) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Notwithstanding subsection (1), the National Defence Force through its [**Intelligence Division**] intelligence division may—

- (a) whenever the President on the advice of the Minister of Defence is of the opinion that conditions are such that the said Force has to prepare itself for possible employment for service [**referred to in section 227(1)(e)]** as contemplated in section 201(2)(a) of the Constitution; and
 - (b) upon having been authorised by [**the Co-ordinator for Intelligence**] **Nicoc** acting with the concurrence of [**Nicoc and**] the Cabinet,
- gather domestic military intelligence in a covert manner within the geographical area and the time-scales specified in such authorisation.”.

Substitution of section 4 of Act 39 of 1994

4. The following section is hereby substituted for section 4 of the principal Act:

“Establishment of National Intelligence Co-ordinating Committee

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

- (a) the Minister;
 - (b) the Co-ordinator for Intelligence appointed under section 5(1), who shall be the chairperson;
 - (c) the Director-General of the Agency;
 - (d) the Director-General of the Service;
 - (e) the chief of the intelligence division of the National Defence Force; and
 - (f) the head of the service of the South African Police Service under which its intelligence division falls,
- or the alternates of the persons mentioned in paragraphs (b) to (f), and such members of departments of State who are co-opted by Nicoc on a permanent or an *ad hoc* basis.
- (2) The functions of Nicoc shall be—
- (a) to co-ordinate the intelligence supplied by the members of the National Intelligence Structures to Nicoc and interpret such intelligence for use by the State and the Cabinet for the purposes of—
 - (i) the detection and identification of any threat or potential threat to the national security of the Republic;
 - (ii) the protection and promotion of the national interests of the Republic;
 - (b) for the purposes of the functions contemplated in paragraph (a)—
 - (i) to co-ordinate and prioritise intelligence activities within the National Intelligence Structures;
 - (ii) to prepare and interpret intelligence estimates;
 - (c) to produce and disseminate intelligence which may have an influence on any state policy with regard to matters referred to in paragraph (a) for consideration by the Cabinet;
 - (d) after consultation with the departments of the State entrusted with the maintenance of the security of the Republic, to co-ordinate the flow of national strategic intelligence between such departments;
 - (e) at the request of any Department of State, to co-ordinate the gathering of intelligence and without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the National Intelligence Structures and which constitutes departmental intelligence, to the department concerned; and
 - (f) to make recommendations to the Cabinet on intelligence priorities.

(3) The Agency shall provide logistical, technical and administrative support to Nicoc.”.

“(2) Ondanks subartikel (1), kan die Nasionale Weermag deur middel van sy **[Inligtingsafdeling]** intelligensie-afdeling—

(a) telkens as die President op advies van die Minister van Verdediging van oordeel is dat omstandighede sodanig is dat genoemde Mag homself moet voorberei vir moontlike indiensstelling **[bedoel in artikel 227(1)(e)]** soos beoog in artikel 201(2)(a) van die Grondwet; en

(b) nadat **[hy]** die Mag daartoe gemagtig is deur **[die Intelligensiekoördineerder]** **Nikok** handelende met die instemming van **[Nikok en]** die Kabinet,

binnelandse militêre intelligensie op ’n bedekte wyse mag insamel binne die geografiese gebied en die tydskaal in so ’n magtiging uiteengesit.”.

Vervanging van artikel 4 van Wet 39 van 1994

4. Artikel 4 van die Hoofwet word hierby deur die volgende artikel vervang:

“Instelling van Nasionale Intelligensiekoördineringskomitee

4. (1) Daar word hierby ’n Nasionale Intelligensiekoördineringskomitee ingestel, wat bestaan uit—

- (a) die Minister;
- (b) die Intelligensiekoördineerder aangestel kragtens artikel 5(1), wat die voorsitter is;
- (c) die Direkteur-generaal van die Agentskap;
- (d) die Direkteur-generaal van die Diens;
- (e) die hoof van die intelligensie-afdeling van die Nasionale Weermag;

en

(f) die hoof van die diens van die Suid-Afrikaanse Polisiediens waaronder sy intelligensie-afdeling val, of die plaasvervangers van die persone vermeld in paragrafe (b) tot (f), en die lede van Staatsdepartemente wat deur Nikok op ’n heeltydse of ’n *ad hoc*-grondslag gekoöpteer word.

(2) Die werksaamhede van Nikok is—

- (a) om die intelligensie wat deur die lede van die Nasionale Intelligensiestrukture aan Nikok verstrekkend is, te koördineer en sodanige intelligensie te vertolk vir gebruik deur die Staat en die Kabinet vir die doeleindes van—
 - (i) die opsporing en identifisering van enige bedreiging of potensiële bedreiging vir die nasionale veiligheid van die Republiek;
 - (ii) die beskerming en bevordering van die nasionale belange van die Republiek;
- (b) vir die doeleindes van die werksaamhede beoog in paragraaf (a), om—
 - (i) intelligensiebedrywighede binne die Nasionale Intelligensiestrukture te koördineer en voorkeure te bepaal;
 - (ii) intelligensiewaarderings op te stel en te vertolk;
- (c) om intelligensie wat ’n invloed kan hê op enige staatsbeleid met betrekking tot aangeleenthede bedoel in paragraaf (a) vir oorweging deur die Kabinet te voorsien en te versprei;
- (d) om na oorleg met die Staatsdepartemente belas met die instandhouding van die veiligheid van die Republiek die vloei van nasionale strategiese intelligensie tussen sodanige departemente te koördineer;
- (e) om op versoek van ’n Staatsdepartement die insameling van intelligensie te koördineer en sonder versuim sodanige intelligensie en enige ander intelligensie wat tot die beskikking is van die Nasionale Intelligensiestrukture en wat departementele intelligensie uitmaak, te evalueer en aan die betrokke departement deur te stuur; en
- (f) om aanbevelings aangaande intelligensievoorkeure aan die Kabinet te doen.

(3) Die Agentskap moet logistiese, tegniese en administratiewe ondersteuning aan Nikok verskaf.”.

Substitution of section 5 of Act 39 of 1994

5. The following section is hereby substituted for section 5 of the principal Act:

“Co-ordinator for Intelligence

5. (1) The President shall appoint a person as Co-ordinator for Intelligence, who shall, subject to the directions and supervision of the Minister— 5

(a) manage and administer the functions of Nicoc referred to in section 4(2); and

(b) establish such structures and committees as are necessary for the efficient functioning of Nicoc. 10

(2) The National Intelligence Structures shall, at the request of the Co-ordinator for Intelligence, render such assistance as is necessary for the performance of his or her functions contemplated in subsection (1).”

Insertion of section 5A in Act 39 of 1994

6. The following section is hereby inserted after section 5 of the principal Act: 15

“Functions of Minister

5A. (1) The Minister shall, subject to subsection (2), do everything necessary for the efficient functioning, control and supervision of the co-ordination of intelligence supplied by the National Intelligence Structures. 20

(2) The Minister shall perform a function contemplated in subsection (1) which affects a function of the National Defence Force or the South African Police Service in consultation with the Minister responsible for that Force or Service, as the case may be.

(3) The Minister shall be responsible to Cabinet for the co-ordination of intelligence supplied by the National Intelligence Structures.” 25

Substitution of section 6 of Act 39 of 1994

7. The following section is hereby substituted for section 6 of the principal Act:

“Regulations

6. (1) The Minister may, subject to subsection (2), make such regulations as are necessary for the effective administration of this Act. 30

(2) Any such regulation which may affect a function of the National Defence Force or the South African Police Service shall be made in consultation with the Minister responsible for that Force or Service, as the case may be.” 35

Short title and commencement

8. This Act is the National Strategic Intelligence Amendment Act, 1998, and takes effect on a date determined by the President by proclamation in the *Gazette*.

Vervanging van artikel 5 van Wet 39 van 1994

5. Artikel 5 van die Hoofwet word hierby deur die volgende artikel vervang:

“Intelligensiekoördineerder

5. (1) Die President stel 'n persoon as Intelligensiekoördineerder aan, wat onderhewig aan die lasgewings en toesig van die Minister—
- 5 (a) die werksaamhede van Nikok bedoel in artikel 4(2) bestuur en administreer; en
- (b) die strukture en komitees instel wat vir die doeltreffende funksionering van Nikok nodig is.
- 10 (2) Die Nasionale Intelligensiestrukture moet op versoek van die Intelligensiekoördineerder die hulp verleen wat vir die verrigting van sy of haar werksaamhede beoog in subartikel (1) nodig is.”.

Invoeging van artikel 5A in Wet 39 van 1994

6. Die volgende artikel word hierby na artikel 5 van die Hoofwet ingevoeg:

15 **“Werksaamhede van Minister**

- 5A. (1) Die Minister moet, behoudens subartikel (2), alles doen wat vir die doeltreffende funksionering van en beheer en toesig oor die koördinering van intelligensie verstrek deur die Nasionale Intelligensiestrukture nodig is.
- 20 (2) Die Minister moet 'n werksaamheid beoog in subartikel (1) wat 'n werksaamheid van die Nasionale Weermag of die Suid-Afrikaanse Polisiediens beïnvloed in oorleg met die Minister verantwoordelik vir daardie Mag of Diens, na gelang van die geval, verrig.
- 25 (3) Die Minister is verantwoordelik aan die Kabinet vir die koördinering van intelligensie verstrek deur die Nasionale Intelligensiestrukture.”.

Vervanging van artikel 6 van Wet 39 van 1994

7. Artikel 6 van die Hoofwet word hierby deur die volgende artikel vervang:

“Regulasies

- 30 6. (1) Die Minister kan, behoudens subartikel (2), die regulasies uitvaardig wat vir die doeltreffende uitvoering van hierdie Wet nodig is.
- (2) Enige sodanige regulasie wat 'n werksaamheid van die Nasionale Weermag of die Suid-Afrikaanse Polisiediens kan beïnvloed, moet in oorleg met die Minister verantwoordelik vir daardie Mag of Diens, na gelang van die geval, uitgevaardig word.”.

35 **Kort titel en inwerkingtreding**

8. Hierdie Wet is die Wysigingswet op Nasionale Strategiese Intelligensie, 1998, en tree in werking op 'n datum wat die President by proklamasie in die *Staatskoerant* bepaal.

