



GOVERNMENT GAZETTE
OF THE
REPUBLIC OF NAMIBIA

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WINDHOEK - 5 June 1998

No. 1876

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Proclamation

by the

PRESIDENT OF THE REPUBLIC OF NAMIBIA

No. 12

1998

**COMMENCEMENT OF THE NAMIBIA CENTRAL
INTELLIGENCE SERVICE ACT, 1997**

Under the powers vested in me by section 38 of the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997), I hereby determine that the provisions of that Act shall come into operation on 5 June 1998.

Given under my Hand and the Seal of the Republic of Namibia at Windhoek this 26th day of May, One Thousand Nine Hundred and Ninety-eight.

SAM NUJOMA

President

BY ORDER OF THE PRESIDENT-IN-CABINET

Government Notice

OFFICE OF THE PRESIDENT

No. 118

1998

NAMIBIA CENTRAL INTELLIGENCE SERVICE REGULATIONS

Under the powers vested in me by section 33(1) of the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997), I hereby make the regulations set out in the Schedule.

SAM NUJOMA**President****BY ORDER OF THE PRESIDENT-IN-CABINET**

SCHEDULE

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned to it, and unless the context otherwise indicates -

“fixed establishment” means the posts which have been created for the normal and regular permanent requirements of the Service or any organisational component thereof;

“the Act” means the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997), and includes the regulations, directives and staff rules made thereunder.

Conditions as to filling of posts

2. (1) Subject to the provisions of section 8(1) of the Act, every appointment, promotion and transfer to or in the Service shall be effected on such contract of employment as may be approved by the Director-General after consultation with the Personnel Committee.

(2) In the filling of any post in the Service or the employment of any person additional to the fixed establishment, only the qualifications, experience, level of training, relative merit, efficiency and suitability of the persons or staff members being considered for appointment, promotion or transfer shall be taken into account.

(3) In the application of section 8(2) and (3) of the Act, the Director shall not issue a certificate of security competence to a person who -

(a) has been or is a member of a foreign intelligence service;

(b) has been or is involved in any activity that constitutes a threat to the

security of Namibia;

- (c) has been or is involved with individuals or groups who have been or are involved in any serious offence contemplated in section 5(1)(a)(iii) of the Act;
 - (d) the Director, after evaluating the collected information contemplated in section 8(2) of the Act, is reasonably of the opinion that the person -
 - (i) may be susceptible to pressure or improper influence; or
 - (ii) has demonstrated behaviour or is subject to circumstances which may otherwise indicate unreliability or a lack of security competence;
 - (e) has been convicted of an offence involving dishonesty; or
 - (f) is not a Namibian citizen.
- (4) A person applying for appointment in the Service shall be required -
- (a) to complete such security questionnaire as may be determined by the Director and to confirm under oath or by solemn affirmation in such questionnaire that the information furnished by him or her is correct;
 - (b) to provide, if required, documentary proof of any information furnished in such questionnaire;
 - (c) to permit -
 - (i) tracing against national collection of criminal or security records;
 - (ii) tracing with relevant records to confirm institutionally available information furnished in the questionnaire;
 - (iii) a creditworthiness check with relevant institutional records; and
 - (iv) interviews with no less than three references who are familiar with the applicant's character in his or her social and academic or educational environment;
 - (d) to submit himself or herself to a medical examination, if he or she is required to do so;
 - (e) to sit for an examination or to undergo such educational or aptitude tests as may be determined by the Director; and
 - (f) to have passed at least Grade 12 or an equivalent or higher grade.

Retirement of staff members on account of age

3. (1) Subject to the provisions of subregulations (2) and (3), any staff member shall retire from the Service on attaining the age of 60 years and shall be so retired on reaching the said age.

(2) If it is in the interest of the Service to retain any staff member in the post held by him or her beyond the age at which he or she shall in terms of subregulation (1) be retired, he or she may with his or her consent and with the approval of the Director-General, granted after consultation with the Personnel Committee, be so retained from time to time for any further period expiring not later than the last day of the month in which he or she attains the age of 67 years.

(3) Any staff member -

(a) may, notwithstanding any other reason for retirement contained in the Act, with the approval of the Director-General, granted after consultation with the Personnel Committee, be retired from the Service on attaining the age of 55 years;

(b) may with the approval of the Director-General, granted at the request of the staff member and after consultation with the Personnel Committee, retire from the Service on attaining the age of 55 years: Provided that such approval shall not be granted by the Director-General unless he or she is satisfied that -

(i) sufficient reason exists for such retirement; and

(ii) such retirement will not be to the disadvantage of the Service.

Discharge of staff members on account of continued ill health

4. (1) Any staff member may be discharged from the Service by the Director-General if, after enquiry by a board of enquiry in accordance with the provisions of regulation 13 as to his or her state of health, the Director-General is of the opinion that he or she is by reason of continued ill health unfit to remain in the Service.

(2) Any staff member who has been discharged from the Service in terms of subregulation (1) may in accordance with the provisions of regulation 14 appeal to the President.

Discharge or reduction in rank or grade of staff members on account of inefficiency

5. (1) Any staff member may be discharged from the Service or reduced in rank or grade by the Director-General if, after enquiry by a board of enquiry in accordance with the provisions of regulation 13 as to his or her fitness to remain in the Service or to retain his or her rank or grade, the Director-General is of the opinion that such staff member is incapable of performing his or her duties efficiently.

(2) Any staff member who has been discharged from the Service or reduced in rank or grade in terms of subregulation (1), may in accordance with the provisions of regulation 14 appeal to the President.

Discharge or transfer of staff members on account of efficient functioning of Service

6. (1) If the efficient functioning of the Service so requires, the Director-General may, having regard to the public interest -

- (a) discharge, subject to the provisions of subregulation (2), any staff member from the Service on such conditions as he or she may determine; or
- (b) transfer any staff member from the post held by him or her to any other post in the Service; or
- (c) transfer or appoint any staff member to any other post in any office, ministry or agency if the Commission has so recommended,

whether or not such post is of a lower grade than that of the post held by him or her: Provided that -

- (i) upon such a transfer or appointment in terms of paragraph (b) or (c), as the case may be, a staff member's salary or scale of salary shall not be reduced without his or her consent, except in accordance with the provisions of regulations 11 and 19;
- (ii) a transfer or appointment in terms of paragraph (c) to any other post in any office, ministry or agency shall take place on such conditions as may be determined by the Director-General on the recommendation of the Commission; and
- (iii) a staff member shall not without his or her consent be transferred or appointed to any post outside the Service if such transfer or appointment will, save for his or her salary, result in a change in his or her conditions of service.

(2) A staff member may be discharged from the Service in terms of subregulation (1)(a) only -

- (a) by reason of the abolition of the post held by him or her or of any reduction in or reorganisation or readjustment of the Service; or
- (b) if, for reasons other than his or her own unfitness or incapacity, his or her discharge will promote efficiency or economy in the Service, or will otherwise be in the interest of the Service.

(3) Any staff member who has been discharged from the Service in terms of subregulation (1)(a) may in accordance with the provisions of regulation 14 appeal to the President.

Discharge of staff members on account of long absence without leave

7. (1) Any staff member who absents himself or herself from his or her official duties without the permission of the Director for a continuous period exceeding 30 days, shall be deemed to have been discharged from the Service on account of misconduct with effect from the date immediately following upon the last day on which he or she was present at his or her place of duty.

(2) If any staff member deemed to have been discharged in terms of subregulation (1) again reports for duty, the Director may, notwithstanding anything to the contrary contained in any law but subject to the approval of the Director-General, reinstate him or her in the post previously held by him or her or appoint him or her to any other post or appointment in the Service on such conditions as may be determined by the Director, and in that event the period of his or her absence from his or her official duties shall be deemed to have been absence on vacation leave without pay or leave on such other conditions as may be determined by the Director.

Secondment of staff members

8. (1) Any staff member may, notwithstanding the provisions of regulation 17(1), with his or her consent and on such conditions as may be approved by the Director-General, be seconded by the Director for the performance of a particular service or for any particular period to the service of any office, ministry or agency, or any other government or authority, or any board, institution or body.

(2) A staff member shall while so seconded, remain subject to the provisions of the Act and any other law which applies to him or her.

Misconduct

9. Any staff member shall be guilty of misconduct and may be dealt with in accordance with the provisions of regulation 11, if he or she -

- (a) commits any offence; or
- (b) contravenes or fails to comply with any provision of the Act (including the regulations, directives and staff rules made thereunder) which does not constitute an offence.

Investigation of charge of misconduct

10. (1) If -

- (a) any person other than a staff member lodges a complaint of misconduct against any staff member; or
- (b) a staff member suspects that any other staff member is guilty of misconduct; or
- (c) a staff member suspects that any other staff member has or is conducting himself or herself in a manner that is unbecoming to a person holding a security clearance or is prejudicial to the interest of the Service,

the staff member to whom such complaint has been made or who has formed such suspicion shall -

- (i) record such complaint or suspicion on such document as the Director may determine; and
 - (ii) forthwith submit a written report relating to such misconduct or conduct to his or her supervisor for submission to the Director in accordance with such procedures as the Director may determine.
- (2) Upon receipt of a written report submitted to him or her in terms of paragraph (ii) of subregulation (1), the Director -
- (a) shall, without delay, appoint a staff member (hereinafter in this regulation and regulation 11 referred to as an investigating officer) of a rank or grade higher than that of the staff member to whom such complaint or suspicion relates to investigate the matter and obtain evidence in order to determine whether there are grounds for a charge of misconduct against the staff member concerned: Provided that, in the application of subregulation (3), the investigating officer may be of any rank or grade;
 - (b) may appoint any other staff member, irrespective of his or her rank or grade, to assist the investigating officer.
- (3) If the investigation relates to circumstances contemplated in subregulation (1)(c), the investigating officer shall not be attached to the same office or station as the staff member to whom the complaint or suspicion relates.
- (4) Notwithstanding the provisions of subregulation (2), the Director need not appoint an investigating officer to investigate the complaint or suspicion in question if -
- (a) the complaint or suspicion -
 - (i) has been withdrawn in writing;
 - (ii) does not relate to any of the circumstances contemplated in paragraphs (a), (b) and (c) of subregulation (1); or
 - (iii) was reported anonymously; or
 - (b) the person lodging the complaint is not prepared to do so in writing.
- (5) After the conclusion of the investigation, the investigating officer shall submit his or her written report together with all relevant statements and documents to the Director in accordance with such procedures as the Director may determine.
- (6) After consideration of the report, statements and documents referred to in subregulation (5), the Director shall determine whether in his or her opinion the staff member concerned should be charged or not, and if so, what in his or her opinion the contents of the charge in question should be.

(7) In his regulation "complaint" includes any report or allegation of misconduct or security breach.

Hearing of charge of misconduct and proceedings after hearing

11. (1) The Director may in writing under his or her hand charge a staff member with misconduct, if he or she is of the opinion that sufficient grounds for a charge of misconduct against the staff member have been found during an investigation carried out in terms of regulation 10.

(2) Notwithstanding the provisions of subregulation (1) and notwithstanding the fact that an investigation was not carried out in terms of regulation 10, the Director may in writing under his or her hand charge a staff member with misconduct, if the Director has reason to believe that the staff member is guilty of misconduct.

(3) A charge contemplated in subregulation (1) or (2) -

(a) shall be served on the staff member charged;

(b) shall contain or shall be accompanied by -

(i) a statement of particulars of the alleged misconduct, including copies of any documentary evidence; and

(ii) a direction calling upon the staff member charged to send or deliver within a reasonable period specified in the direction to the Director, a written admission or denial of the charge and, if he or she so desires, a written explanation regarding the misconduct with which he or she is charged; and

(c) shall inform the staff member charged of his or her rights in terms of subregulation (13).

(4) (a) If the staff member admits that he or she is guilty of the charge, he or she -

(i) may, together with such admission, make written representations to the Director in mitigation of punishment; and

(ii) shall be deemed to have been found guilty of misconduct as charged on the date of admitting the charge.

(b) The provisions of subregulations (15)(b), (16), (17), (18), (19), (20) and (21) shall apply *mutatis mutandis* to a staff member deemed to have been found guilty of misconduct in terms of paragraph (a)(ii).

(5) If the staff member charged in terms of subregulation (1) or (2) -

(a) denies the charge; or

(b) fails to comply with a direction contemplated in subregulation (3)(b)(ii),

the Director shall, without delay, appoint a board of enquiry to hear the charge.

(6) A board of enquiry shall consist of one or more staff members of a rank or grade equal to or higher than that of the staff member charged: Provided that where a staff member of the highest rank or grade is to be charged, such board shall consist of -

- (a) the Director; and
- (b) one or more persons designated by the Director-General.

(7) The presiding officer of the board of enquiry (hereinafter in this regulation referred to as the presiding officer) shall determine the time and place of the hearing and shall give the staff member charged reasonable notice in writing of such time and place.

(8) (a) An investigating officer appointed in terms of regulation 10(2)(a) or, if an investigating officer has not been so appointed, any other investigating officer appointed by the Director having due regard to the requirements of that regulation, may for the purposes of a hearing in terms of subregulation (5) request the presiding officer to subpoena any person who in the reasonable opinion of the investigating officer may be able to give material information concerning the subject matter of the hearing, or who the investigating officer reasonably suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject matter of the hearing, to appear before the board of enquiry appointed in terms of that subregulation at the time and place specified in the subpoena, to be examined or to produce such book, document or object.

(b) A subpoena to a person to appear before the board of enquiry or to produce a book, document or object, shall be signed by the presiding officer and be served on such person by delivering or tendering it to him or her or by sending it by registered post to him or her.

(c) The investigating officer may retain a book, document or object so produced for the duration of the hearing.

(9) During a hearing -

(a) an investigating officer may lead evidence and advance arguments in support of the charge and cross-examine witnesses; and

(b) any person present at the hearing who was subpoenaed in terms of subregulation (8) may be called upon and -

(i) the presiding officer may administer an oath to or accept an affirmation from him or her; and

(ii) the investigating officer may examine him or her and order him or her to produce any book, document or object in his or her

possession or custody or under his or her control which the investigating officer reasonably suspects or believes to have a bearing on the subject matter of the hearing.

(10) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law, shall apply *mutatis mutandis* in relation to the examination of, or the production of any book, document or object to the board of enquiry by, any person called in terms of this regulation as a witness.

(11) The acquittal or the conviction of any staff member by a court of law on a charge of any offence shall not be a bar to proceedings against him or her in terms of this regulation on a charge of misconduct, notwithstanding the fact that the facts set forth in the charge of misconduct would, if proved, constitute the offence set forth in the charge on which he or she was so acquitted or convicted or any other offence on which he or she might have been convicted on his or her trial on the said first-mentioned charge.

(12) Where a staff member is charged with misconduct which constitutes an offence in respect of which he or she has been convicted by a court of law, a certified copy of the record of the trial in question shall, on its mere production by any person, be admissible in evidence before the board of enquiry hearing the charge, and a certified copy of the charge and conviction in question shall, on its mere production by any person to such board, be *prima facie* proof of the commission of such offence by the staff member concerned.

(13) At a hearing a staff member charged has the right -

- (a) to be personally present, to be assisted or represented by another person, to give evidence and, either personally or through a representative -
 - (i) to be heard;
 - (ii) to call witnesses;
 - (iii) to cross-examine any person called as a witness in support of the charge; and
 - (iv) to have access to documents produced in evidence;
- (b) to have an interpreter assigned to him or her by the Director, if the hearing is conducted in a language that the staff member charged does not understand;
- (c) notwithstanding a denial or failure by him or her referred to in subregulation (5), to admit at any time that he or she is guilty of the charge, whereupon he or she shall be deemed to be guilty of misconduct as charged;
- (d) if the misconduct with which he or she is charged amounts to an offence of which he or she was convicted by a court of law, to show cause why in his or her opinion he or she was wrongfully convicted.

- (14) After the conclusion of the hearing, the presiding officer shall -
- (a) make a finding on the charge and inform the staff member charged of his or her finding; and
 - (b) in the case of a finding of guilty -
 - (i) afford the staff member charged an opportunity to make representations in mitigation of punishment; and
 - (ii) after having afforded the staff member charged such opportunity, make a recommendation regarding action in terms of subregulation (16), mentioning any aggravating and mitigating circumstances he or she may find; and
 - (c) notify the Director in writing of his or her finding and recommendation contemplated in paragraphs (a) and (b)(ii), respectively.
- (15) Upon receipt of the finding of the presiding officer, the Director -
- (a) shall submit the finding and recommendation contemplated in paragraphs (a) and (b)(ii), respectively, of subregulation (14) to the Director-General;
 - (b) may make a recommendation to the Director-General regarding action in terms of subregulation (16).
- (16) (a) If the staff member charged is found guilty of the misconduct as charged by the presiding officer, or if he or she admits that he or she is guilty of the charge, the Director-General shall, with due observance of such finding and the recommendation of the presiding officer and (if any) of the Director in terms of subregulations 14(b)(ii) and 15(b), respectively -
- (i) caution or reprimand the staff member charged;
 - (ii) impose upon him or her a fine not exceeding N\$2 000, which may be recovered by way of deductions from his or her salary or allowances;
 - (iii) transfer him or her to another post in the Service;
 - (iv) reduce his or her salary or rank or grade, or both his or her salary and rank or grade, to the extent recommended; or
 - (v) discharge him or her from the Service from a date to be determined by the Director-General.
- (b) Except where the Director-General acts in terms of paragraph (a)(v), he or she may take decisions in terms of more than one of the subparagraphs of paragraph (a).

(17) The Director shall notify the staff member charged as soon as possible of the decision of the Director-General in terms of subregulation (16) and of the staff member's right of appeal in terms of subregulation (18).

(18) A staff member charged with misconduct in terms of this regulation shall have the right to appeal, subject to the provisions of subregulation (20), to the President against a finding of guilty of the presiding officer or the decision of the Director-General, or both, within 21 days after the Director notified him or her of the decision of the Director-General in accordance with the provisions of subregulation (17).

(19) If a staff member notes an appeal in terms of subregulation (18), the decision of the Director-General in terms of subregulation (16) shall not be put into effect before the President has issued a direction under subregulation (21).

(20) An appeal in terms of subregulation (18) shall be submitted to the President in the form of a written statement and -

- (a) shall contain the grounds of appeal;
- (b) may be accompanied by written representations made by the staff member in support of the appeal.

(21) After considering an appeal the President may direct that -

- (a) the appeal be allowed in whole or in part;
- (b) the appeal be dismissed in whole or in part; or
- (c) any other steps mentioned in subregulation (16)(a) be taken.

(22) Any person who -

- (a) having been duly subpoenaed in terms of subregulation (8), without sufficient cause fails to attend at the time and place specified in the subpoena or to remain in attendance until excused by the presiding officer from further attendance; or
- (b) having been called upon in terms of subregulation (9)(b), refuses to be sworn or to affirm as a witness, or without sufficient cause fails to answer fully and satisfactorily to the best of his or her knowledge all questions lawfully put to him or her or to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce; or
- (c) prevents another person from obeying a subpoena issued under subregulation (8) or from giving evidence or producing a book, document or object which he or she is in terms of this regulation required to give or produce,

shall, subject to the provisions of subregulation (10), be guilty of an offence and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(23) Any person who, after having been sworn or after having affirmed as a witness in terms of this regulation, gives a false answer to any question lawfully put to him or her or who makes a false statement on any matter, knowing that answer or statement to be false, shall be guilty of an offence and on conviction be liable to the penalties which may lawfully be imposed for the offence of perjury.

Savings with respect to misconduct

12. Nothing in these regulations contained shall be construed as indemnifying any staff member against prosecution in or conviction by any court of law in respect of any offence.

Boards of enquiry

13. (1) Any staff member shall -

- (a) with respect to an enquiry held in terms of regulation 4 or 5, as the case may be; and
- (b) with respect to any other enquiry held in terms of the Act (excluding a hearing in terms of regulation 11) and as a consequence of which a decision or finding that may be prejudicial to his or her rights may be made,

be notified by the Director-General in writing thereof, and thereupon he or she shall have the right -

- (i) to a written statement setting out the grounds on which he or she is alleged to be unfit for his or her duties or incapable of performing them efficiently;
- (ii) to be personally present at the enquiry, to be assisted or represented by another person, to give evidence and, either personally or through a representative -
 - (aa) to be heard;
 - (bb) to call witnesses (including expert witnesses);
 - (cc) to cross-examine any person called as a witness in support of the said allegation; and
 - (dd) to have access to documents produced in evidence; and
- (iii) to have an interpreter assigned to him or her by the Director-General, if the enquiry is conducted in a language that the staff member does not understand.

(2) A board of enquiry contemplated in subregulation (1) shall be appointed by the Director-General, and the provisions of regulation 11(6) shall apply *mutatis mutandis* in respect of the composition of such board: Provided that, if the enquiry concerns the state of health of a staff member, the composition of such board shall

include one or more registered medical practitioners.

- (3) After the conclusion of the enquiry, the board of enquiry shall -
 - (a) make a finding on the alleged unfitness or inefficiency of the staff member concerned; and
 - (b) notify the Director-General accordingly.

(4) The provisions of subregulations (8), (9) and (10) of regulation 11 shall apply *mutatis mutandis* in respect of the proceedings of a board of enquiry contemplated in subregulation (1), and for that purpose any reference in subregulations (8) and (9) of that regulation to an investigating officer shall be construed as a reference to a board of enquiry.

- (5) Any person who -
 - (a) having been duly subpoenaed in terms of this regulation, without sufficient cause fails to attend at the time and place specified in the subpoena or to remain in attendance until excused by the presiding officer from further attendance; or
 - (b) having been called upon in terms of this regulation, refuses to be sworn or to affirm as a witness, or without sufficient cause fails to answer fully and satisfactorily to the best of his or her knowledge all questions lawfully put to him or her or to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce; or
 - (c) prevents another person from obeying a subpoena issued under this regulation or from giving evidence or producing a book, document or object which he or she is in terms of this regulation required to give or produce,

shall, subject to the provisions of regulation 11(10), be guilty of an offence and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(6) Any person who, after having been sworn or after having affirmed as a witness in terms of this regulation, gives a false answer to any question lawfully put to him or her or who makes a false statement on any matter, knowing that answer or statement to be false, shall be guilty of an offence and on conviction be liable to the penalties which may lawfully be imposed for the offence of perjury.

Appeal against discharge or reduction in rank or grade of staff members

14. (1) Any staff member who has been discharged from the Service or reduced in rank or grade on account of -

- (a) his or her continued ill health in terms of regulation 4(1);
- (b) his or her inefficiency in terms of regulation 5(1); or

- (c) the efficient functioning of the Service in terms of regulation 6(1)(a),

may, subject to the provisions of subregulation (3), appeal to the President against his or her discharge or reduction in rank or grade, as the case may be, within 21 days -

- (i) after the Director-General notified him or her of his or her discharge or reduction in rank or grade; or
- (ii) if such notice does not contain the Director-General's reasons for the discharge or reduction in rank or grade, after the Director-General furnished him or her with a written statement of the reasons for his or her discharge or reduction in rank or grade.

(2) If a staff member notes an appeal in terms of subregulation (1), the decision of the Director-General made in terms of regulation 4(1), 5(1) or 6(1)(a), as the case may be, shall not be put into effect before the President has confirmed the decision of the Director-General under subregulation (5).

(3) The appeal shall be submitted to the President in the form of a written statement and -

- (a) shall contain the grounds of appeal;
- (b) may be accompanied by written representations made by the staff member in support of the appeal.

(4) Upon receipt of the appeal, the President shall transmit a copy thereof to the Director-General, who shall forthwith furnish the President with a written statement of the reasons for the discharge or reduction in rank or grade of the staff member.

(5) After considering an appeal, the President may set aside or confirm the staff member's discharge or reduction in rank or grade, as the case may be.

Suspension of staff members

15. (1) Any staff member may, subject to the provisions of subregulation (4), be suspended from his or her office pending his or her trial or after his or her conviction of any offence, whether in terms of the Act or otherwise, or pending any hearing or enquiry at which a charge of misconduct against him or her or his or her fitness to remain in the Service or to retain his or her rank or grade is being investigated, and shall be so suspended during any period during which he or she is under arrest or detention or is serving a term of imprisonment, but shall not by reason of such suspension cease to be a staff member.

(2) During the suspension of a staff member his or her powers, functions and authority as such a staff member shall be in abeyance, but he or she shall continue to be subject to the same duties and discipline as if he or she had not been suspended.

(3) The suspension of a staff member may, subject to the provisions of subregulation (4), be terminated at any time.

(4) The suspension or termination of the suspension of a staff member, as the case may be, shall take place on the instructions of the Director-General or, if the Director-General has not delegated the powers conferred upon him or her by this subregulation, as a provisional measure pending the decision of the Director-General, on the instructions of the Director.

Salary, allowances, privileges and benefits of suspended staff members

16. (1) Any staff member who has been suspended from office shall not in respect of the period of his or her suspension be entitled to any salary, wages, allowances, privileges or benefits to which he or she would otherwise have been entitled as such a staff member: Provided that the Director-General may in his or her discretion direct that in respect of the period of suspension of a staff member, not being a period during which he or she is or was serving a term of imprisonment in pursuance of a sentence which has not been set aside on appeal or review, there be paid to him or her the whole or a portion of his or her salary or wages and allowances or be granted to him or her such privileges and benefits as the Director-General may determine.

(2) If it is decided not to discharge a staff member who has been suspended from office, such staff member shall in respect of the period of his or her suspension, not being a period during which he or she was serving a term of imprisonment in pursuance of a sentence which has not been set aside on appeal or review, be paid his or her full salary or wages and allowances and be granted all the privileges and benefits to which he or she would, but for his or her suspension, have been entitled as a staff member of the Service: Provided that, if such a staff member is reduced in rank or grade, he or she shall in respect of such period be paid the salary or wages and allowances applicable to the rank or grade to which he or she is reduced, but if in respect of such period he or she was in terms of subregulation (1) paid any salary, wages or allowances in excess of the salary or wages and allowances applicable to the rank or grade to which he or she is reduced, he or she shall not be obliged to refund the excess.

Other work by staff members

17. (1) Unless otherwise provided in the Act -

- (a) every staff member shall place the whole of his or her time at the disposal of the State;
- (b) no staff member shall perform or engage himself or herself to perform any remunerative work outside his or her employment in the Service; and
- (c) no staff member may claim as of right any additional remuneration in respect of any official duty or work which is performed or is required by a competent authority to be performed by him or her during normal working hours in addition to his or her official duties or work.

(2) Notwithstanding the provisions of subregulation (1), the Director-General may grant prior written permission to any staff member to perform or engage himself

or herself to perform remunerative work outside his or her employment in the Service: Provided that such permission shall not be granted by the Director-General unless -

- (a) the staff member discloses the full nature of such work; and
- (b) the Director-General is satisfied that there will be no conflict of interests between such work and the official duties or work of the staff member and that the performance of such work by the staff member will not otherwise be detrimental to the interest of the Service.

Unauthorised remuneration and other benefits

18. (1) If any remuneration, allowance or other reward whatsoever is received by a staff member in connection with the performance of his or her work in the Service otherwise than in accordance with the provisions of the Act or in contravention of the provisions of regulation 17(1)(b), such staff member shall pay to the Service an amount equal to the amount of such remuneration, allowance or reward or, where such remuneration, allowance or reward does not consist of money, the value thereof, as determined by the Director, and if he or she does not do so, the Director may recover it from him or her by way of legal proceedings or in such other manner as the Director may deem fit: Provided that -

- (a) there shall, within 14 days after such a determination by the Director, be a right of appeal to the Director-General against that determination; and
- (b) the Director-General may approve the retaining by any staff member of the whole or a portion of that remuneration, allowance or reward.

(2) If in the opinion of the Director a staff member has received any remuneration, allowance or other reward as contemplated in subregulation (1) and such remuneration, allowance or reward is still in his or her possession or under his or her control or in the possession or under the control of some other person on his or her behalf or, if it is money, has been deposited in any bank or building society, the Post Office Savings Bank or any other financial institution in his or her name or in the name of some other person on his or her behalf, the Director may, if an appeal has not been noted in terms of the proviso to subregulation (1) or if an appeal so noted has been dismissed by the Director-General, in writing require such staff member or such other person or such bank or building society, the Post Office Savings Bank or such other financial institution not to dispose of such remuneration, allowance or reward, or, if it is money, to retain a corresponding sum of money, as the case may be, pending the outcome of any legal proceedings for the recovery of such remuneration, allowance or reward or the value thereof.

(3) Any salary, allowance, award, fee, bonus or honorarium of whatever nature which may be payable in respect of the services of a staff member seconded in terms of regulation 8(1) to any office, ministry or agency, or any other government or authority, or any board, institution or body, shall be paid to the Service: Provided that in special circumstances the Director-General may approve the payment to such staff member of an amount equal to such salary, allowance, award, fee, bonus or honorarium, or a portion thereof.

(4) Any person who fails to comply with a requirement in terms of subregulation (2), shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Wrongly granted remuneration and other benefits

19. (1) If an incorrect salary or scale of salary or any other benefit on appointment, promotion or transfer, or an incorrect advancement of salary within the scale of salary applicable to his or her grading, or an incorrect salary or scale of salary at the time of a general or specific revision thereof, was awarded or granted to a staff member, or was awarded or granted at the correct salary or scale of salary but at a time when or in circumstances under which it should not have been awarded or granted to him or her, the Director shall, notwithstanding the provisions of regulation 21 and notwithstanding the fact that the staff member concerned was unaware that an error had been made in the case where the correction amounts to a reduction of his or her salary or scale of salary or other benefits, correct his or her salary or scale of salary or withdraw any other benefit with effect from the date on which the incorrect salary or scale of salary or salary advancement or other benefit commenced.

(2) If a staff member has in respect of his or her salary, including any portion of any allowance or other remuneration, or any other benefit calculated on his or her basic salary or scale of salary or awarded to him or her by reason of his or her basic salary -

(a) been underpaid or not received any such other benefit due to him or her -

(i) an amount equal to the amount of the underpayment shall be paid to him or her;

(ii) such other benefit shall be awarded to him or her as from a current date; or

(b) been overpaid or received any such other benefit not due to him or her -

(i) an amount equal to the amount of the overpayment shall be recovered from him or her by deducting it from his or her salary in such instalments as the Director may, after consultation with him or her and with the approval of the Treasury, determine if he or she is in the Service, or, if he or she is not so in service, by deducting it from any moneys owing to him or her by the State or by way of legal proceedings or partly in the former manner and partly in the latter manner;

(ii) such other benefit shall be discontinued or withdrawn as from a current date, but the staff member concerned has the right to be compensated by the State for any patrimonial loss which he or she has suffered or will suffer as a result of that discontinuation or withdrawal.

(3) With the prior written approval of the Treasury, the amount of an overpayment to be recovered in terms of subregulation (2)(b) may be remitted in whole or in part.

Salary or allowance may not be assigned or attached

20. A staff member shall not, without the prior written approval of the Director, assign any salary or allowance payable to him or her in terms of the Act, or any portion thereof, and such salary or allowance, or any portion thereof, shall not be liable to be seized or attached otherwise than by way of legal proceedings.

Reduction of salary prohibited

21. The salary or scale of salary of a staff member shall not be reduced without his or her consent, except in accordance with the provisions of regulations 11 and 19.

Missing staff members

22. (1) If a staff member is missing and the Director is satisfied that his or her absence arose from the performance of his or her functions in terms of the Act, such staff member shall for all purposes be deemed to be still employed by the Service from the first day after the day on which such absence commenced until the day on which he or she again reports for duty or in the opinion of the Director should have so reported for duty, or a competent court issued an order whereby the death of such staff member is presumed.

(2) Any salary or wages and allowances accruing to a staff member during his or her absence contemplated in subregulation (1) shall, subject to the provisions of subregulation (4), be paid to his or her spouse or, if he or she has no spouse, to his or her other legal dependents or, if he or she has no other legal dependents, to his or her legal heirs or to any person who satisfies the Director that he or she is authorised, either explicitly or otherwise, to administer such salary or wages and allowances on behalf of his or her spouse or such other dependents or such heirs.

(3) Payment of any salary or wages and allowances in terms of subregulation (2) shall for all purposes be deemed to be payment thereof to the staff member concerned, and an amount so paid shall not be recoverable by the State from any person.

(4) Notwithstanding the provisions of subregulation (2), the Director may in his or her discretion direct that only a portion of the salary or wages and allowances of a staff member be paid in terms of that subregulation or that no portion thereof be so paid.

Establishment of decorations and medals

23. (1) The President may, on the recommendation of the Director-General, establish and introduce decorations and medals, as well as bars, clasps and ribbons in respect of such decorations and medals, which may be awarded by him or her, subject to such conditions as he or she may determine, to any person who is or

was a staff member of the Service, in respect of his or her services as such a staff member or to any other person who has rendered exceptional services to the Service.

(2) The conditions contemplated in subregulation (1) may provide for the design, award (including a posthumous award), use, bequest, care, loss, forfeiture and restoration of any decoration, medal, bar, clasp or ribbon established and introduced under that subregulation.

Offences in respect of decorations and medals

24. Any person who -

- (a) not being the person to whom a decoration or medal established and introduced under regulation 23(1) has been awarded or bequeathed -
 - (i) wears such decoration or medal, or its bar, clasp or ribbon; or
 - (ii) without the prior written permission of the Director-General, makes use of such decoration or medal, or of its bar, clasp or ribbon; or
- (b) wears or makes use of anything so closely resembling any decoration, medal, bar, clasp or ribbon so established and introduced as to be calculated to deceive,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Political rights of staff members

25. (1) Subject to the provisions of the Act, a staff member may be a member of a political party: Provided that such staff member may not -

- (a) preside at or speak at a public political meeting;
- (b) draw up or publish any writing to promote the interests of any political party;
- (c) be an office-bearer of whatever designation of a political party;
- (d) at any time while he or she is required to discharge his or her official duties in the Service, perform any act in the exercise of any political right.

(2) The provisions of subregulation (1), in so far as they provide for a limitation on the fundamental rights contemplated in Article 17(1) of the Namibian Constitution to participate in peaceful political activities, are enacted upon the authority conferred by the said Article.

Manner in which notice may be given or process served

26. Where it is for the purposes of the Act required that -
- (a) a person be advised or informed of any decision or finding, he or she shall be advised or informed thereof in writing in accordance with the provisions of paragraph (b);
 - (b) a notice, statement or other document be given or furnished or sent to or served on any person or that a decision, finding or any other matter be conveyed to any person in writing, the notice, statement, document or writing may be sent to the person by registered post addressed to his or her last known address or be delivered to him or her personally or be left at his or her last known place of residence.

Acquisition of supplies, vehicles, other equipment and services

27. The Director may, notwithstanding anything to the contrary contained in any law but subject to the provisions of the Act, acquire or hire any supplies, vehicles, other equipment and services necessary for the efficient functioning of the Service, and, if such supplies, vehicles, other equipment and services are no longer required for such purposes, sell such supplies, vehicles, other equipment and services or dispose thereof in any other manner.

Short title

28. These regulations shall be called the Namibia Central Intelligence Service Regulations, 1998.