

NATIONAL SECURITY AGENCIES PROTECTION OF OFFICERS' IDENTITY

BILL, 2016

ARRANGEMENT OF SECTIONS

Sections

PART 1 - PROTECTION OF OFFICERS' IDENTITY AND FACILITIES

- 1. Protection of Identity of Intelligence Officers
- 2. Protection of Facilities against Unauthorized Access
- 3. Disclosure of Damaging Information
- 4. Further Protection of Security Materials
- 5. Information Resulting from Authorized Disclosure or Entrusted in Confidence
- 6. Duty of Care Regarding Classified Information
- 7. Further Offences
- 8. Attempt, Aiding and Abetment of Offence
- 9. Protection of Information Relating to Security and Intelligence
- 10. Exemption of Operational Files by Director-General
- 11. Search and Review for Information

PART 2 - LIAISON WITH THE NATIONAL ASSEMBLY

- 12. Procedure for Reporting to National Assembly
- 13. Procedure to Protect from Disclosure
- 14. Form and Content of Reports to National Assembly

PART 3 - DEFENCES, POWERS AND IMMUNITIES

- 15. Defences
- 16. Powers and Immunities of Officers
- 17. Power to Investigate
- 18. Search Warrant
- 19. Power to Arrest without Warrant
- 20. Protection of Officers against Legal Process
- 21. Power to Bear Arms

22. Power to undertake Joint Operations with other Security and Intelligence Agencies

PART 4 - JURISDICTION AND LEGAL PROCEEDINGS

23. Court to Hear Cases in Camera
24. Prosecution of Offences
25. Extra-territorial Jurisdiction

PART 5 - MISCELLANEOUS PROVISIONS

26. Misuse of Agency's Name, Acronym or Seal
27. Agency's Oaths of Secrecy and Allegiance

PART 6 - INTERPRETATION

28. Interpretations
29. Short Title

SCHEDULE

# A BILL

## FOR

AN ACT TO PROVIDE FOR THE PROTECTION OF THE IDENTITY OF NATIONAL SECURITY AGENCIES OFFICERS, AGENTS, SOURCES, INFORMANTS AND OPERATIONAL METHODS FROM UNLAWFUL DISCLOSURE; AND TO PROTECT ITS ESTABLISHMENTS, FACILITIES AND EQUIPMENT AGAINST UNAUTHORIZED ACCESS; AS WELL AS PROVIDE FOR THE PROMOTION AND ENHANCEMENT OF NIGERIA'S EXTERNAL SECURITY AND FOR RELATED MATTERS

*Sponsored by Hon. Oluwole Oke*

[ ] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1 PART ONE - PROTECTION OF OFFICERS' IDENTITY AND OTHER  
2 MATERIALS

3 1.-(1) The Identity of an Agency Officer or Agent shall not without  
4 due authorization from the Agency be disclosed to any other person.

Protection of  
Identities of  
Agency Officers

5 (2) A person who willfully discloses the identity of an Agency  
6 Officer or Agent to a person to whom he is not authorized on behalf of the  
7 government to disclose, is guilty of an offence and shall be liable on  
8 conviction to imprisonment for a term of five years or a fine not below the  
9 sum of five hundred thousand Naira or both.

10 (2) Where the unauthorized disclosure of the identity of an Agency  
11 Officer or Agent is likely to or results in grievous bodily harm or death of the  
12 Officer or Agent or in any manner impedes the intelligence collection of the  
13 Agency, the punishment shall be imprisonment for a term of ten years  
14 without option of fine.

15 2.-(1) A person is guilty of an offence if, without lawful authority,  
16 he:

Protection of  
Agency facilities,  
installations and  
equipment

1 (a) enters or is in the vicinity of or inspects an establishment or facility  
2 of the Agency;

3 (b) photographs, sketches or in any other manner makes a record of  
4 the description of, or of anything situated in a facility or establishment of the  
5 Agency;

6 (c) obtains, reproduces or retains any photograph, sketch, plan, model  
7 or document relating to, or to anything situated in a facility of the Agency; or

8 (d) obstructs, misleads or otherwise interferes with a person engaged  
9 in guarding a facility of the Agency.

10 (2) A person charged with an offence under subsection (1) (a), (b) and  
11 (c) of this Section shall be deemed to have acted without lawful authority if he  
12 carries out any of the acts without the written permission of the Director-  
13 General of the Agency.

14 (3) A person who commits an offence under this Section is liable on  
15 summary conviction to imprisonment for a term of three (3) years.

Damaging  
Disclosure

16 3.-(1) A person who is or has been a Public Officer or Government  
17 Contractor if, without lawful authority, makes a damaging disclosure of  
18 information, document or other article in his possession originating from, or  
19 given to the Agency:

20 (a) relating to security or intelligence;

21 (b) relating to classified international relations;

22 (c) received in confidence from an Agent or a State other than the  
23 Federal Republic of Nigeria or its agencies; or

24 (d) received in confidence from an international organization or a  
25 member thereof; is guilty of an offence and shall be liable on conviction to  
26 imprisonment for a term of five years or a fine not below the sum of five  
27 hundred thousand Naira or both.

28 (2) For the purpose of Section 4, a disclosure is damaging if it is likely  
29 to cause harm to the interest of the Agency or Government of the Federal  
30 Republic of Nigeria or impedes the work of the Agency or causes injury or

1 harm to any of its Officers or Agents.

2 4. Any person who obtains, reproduces or retains any information,  
3 document or article relating to security or intelligence originating from, or  
4 given to the Agency, which he is not authorized on behalf of the Government  
5 to obtain, reproduce or retain, as the case may be, is guilty of an offence and  
6 liable upon conviction to imprisonment for a term of five years or a fine not  
7 below the sum of five hundred thousand Naira.

Further protection  
of security  
materials

8 5. Where any information, document or other article protected  
9 against disclosure by the foregoing provisions of this Bill has come into a  
10 person's possession as a result of having been:

Information  
resulting from  
authorized  
disclosure or  
entrusted in  
confidence

11 (a) disclosed (whether to him or another) by a Public Officer,  
12 Government Contractor or any other source without lawful authority;

13 (b) entrusted to him by a Public Officer, Government Contractor,  
14 or any other source on terms requiring it to be held in confidence or in  
15 circumstances in which the disclosing party could reasonably expect that it  
16 would be so held; or

17 (c) disclosed (whether to him or another) without lawful authority  
18 by a person to whom it was entrusted as mentioned in paragraphs (a) and (b)  
19 above; such a person is guilty of an offence if he discloses it without lawful  
20 authority knowing or having reasonable cause to believe that it is protected  
21 against disclosure and is liable upon conviction to a term of imprisonment  
22 not exceeding three years.

23 6. A person is guilty of an offence and punishable with a term of  
24 imprisonment not exceeding three years if:

Duty of care  
regarding classified  
information

25 (a) he fails to take such care to prevent disclosure of a classified  
26 material, document or article as a person in his position may reasonably be  
27 expected to take;

28 (b) being a Public Officer, he retains a classified material,  
29 document or article contrary to his official duty; or

30 (c) being a Government Contractor, he fails to comply with an

1 official directive for the return or disposal of a classified material, document or  
2 article.

Further Offences

3 7.-(1) A person is guilty of an offence and punishable with a term of  
4 imprisonment not exceeding five years if, without lawful authority, he  
5 discloses any official information" document, material or other articles which  
6 can be used for the purpose of obtaining access to any information, document,  
7 article, facility or installation protected against disclosure by the foregoing  
8 provisions of this Bill:

9 Provided that the circumstances in which the official information, document,  
10 material or other article is disclosed are such that it would be reasonable to  
11 expect that it might be used for the purpose of obtaining unauthorized access to  
12 protected information, document, article, facility or installation.

Attempt to  
commit offence  
and abetment

13 8. A person is guilty of an offence and punishable with a term of  
14 imprisonment not exceeding five years if he:

15 (a) attempts to commit any offence under this Bill;

16 (b) does any act preparatory to or in furtherance to the commission of  
17 any offence under this Bill; or

18 (c) abets, conceals or engages in criminal conspiracy to commit any  
19 offence under this Bill.

Protection of  
operational files

20 9. Operational files of the Agency may, in the interest of national  
21 security, be exempted by the Director-General from the provisions of any  
22 legislation which requires publication, disclosure, search or review of such  
23 documents or anything connected therewith. Such exemption shall be  
24 contained in a written memorandum and communicated to the persons  
25 concerned.

Operational files  
to be exempted

26 10. The operational files to be exempted include:

27 (i) Files of the Agency which contain information on the conduct of  
28 foreign intelligence or counter-intelligence operations or intelligence liaison  
29 arrangements or information exchanges with foreign governments or their  
30 Intelligence or Security Services; information on past or ongoing intelligence

1 operations or activities, sources, informants, methods, agents, installations,  
2 locations of persons or objects of intelligence interest to the Federal  
3 Government;

4 (ii) Files of the Agency which contain information on the means by  
5 which intelligence and counter-intelligence are collected through scientific  
6 and technical methods; or contain information on the location of  
7 communications or technical equipment used in intelligence gathering; and

8 (iii) Files of the Agency which contains information on the  
9 National Intelligence Agency's Instruments, directives on operations or  
10 intelligence activities by the President or the National Security Adviser,  
11 decisions or minutes of meetings of the Joint Intelligence Board and the  
12 Intelligence Community Meeting, directives of the Director-General,  
13 decisions of Senior Management of the Agency, internal circulars,  
14 information on policy, records of past and serving members of staff of the  
15 Agency, Agency finances, budget, expenditures and Administrative Rules,  
16 Regulations and Manuals.

17 11.-(1) Notwithstanding Sections 10 and 11 above, exempted  
18 operational files shall continue to be subject to search, disclosure and review  
19 for information concerning:

Search and review  
for information

20 (i) Declassified information;

21 (ii) Any intelligence activity, the existence of which is not  
22 exempted from disclosure under this Bill; and

23 (iii) Specific declassified subject matter of an inquiry/investigation  
24 by the Intelligence and Security Committees of the National Assembly, the  
25 Office of the National Security Adviser or the Courts.

26 (2) The Director-General may, from time to time and having regard  
27 to the security and intelligence interest of Nigeria, issue directives in writing  
28 for the declassification of any information or document in the possession of  
29 the Agency.

## 1 PART TWO - LIAISON WITH THE NATIONAL ASSEMBLY

2 Procedure for  
reporting to  
National Assembly

3 12. The President of the Federal Republic of Nigeria or his designated  
4 officials and the National Assembly Committees on Security and Intelligence  
5 may establish such procedures as may be necessary to carry out the provisions  
6 of this Part.

7 Procedure to  
protect from  
disclosure

8 13. The Senate and the House of Representatives shall each establish,  
9 by Rule or Resolution, procedures to protect from unauthorized disclosure, all  
10 classified information relating to intelligence that is furnished to the National  
11 Assembly Committees on Security and Intelligence. Such procedures shall be  
12 established in consultation with the President's designated officials.

13 Form and contents  
of reports

14 14. Any report relating to an intelligence activity that is submitted to  
15 the National Assembly Committees on Security and Intelligence by the Agency  
16 for purposes of this Part shall be in writing and contain the following:

17 (a) A concise statement of any facts pertinent to such report;

18 (b) An explanation of the significance of the intelligence activity  
19 covered by such report;

20 (c) Use of gaps, asterisks, alphabets, pseudo words, dots or blacken  
21 words, to conceal sensitive names, figures, locations, issues, matters, sources  
22 and methods, which may, in compelling circumstances, be orally disclosed.

## 23 PART THREE - DEFENCES, POWERS AND IMMUNITIES

24 Defences

25 15.-(1) It is a defence for a person charged with an offence under this  
26 Bill to prove that:

27 (a) at the time of the alleged offence, he had no reasonable cause to  
28 believe that the act in question was one to which this Bill applies;

29 (b) when he knew or could reasonably have been expected to believe  
30 that the matter was classified matter, he forthwith placed his knowledge of the  
case at the disposal of the Director-General of the Agency; and

(c) at the time of the alleged offence, he believed that he was acting in  
accordance with his official duty and had no reasonable cause to believe  
otherwise.



1 (2) It is a defence for a person charged with an offence under  
2 Sections 4, 5, 6 and 8 of this Bill to prove that the disclosure of the  
3 information, article or document was in the public interest insofar as he had  
4 reasonable cause to believe that it indicated the existence of crime, fraud,  
5 abuse of authority, neglect in the performance of official duty or other  
6 misconduct. Provided that before making the said disclosure, he has taken  
7 reasonable steps to draw such misconduct to the attention of the Director-  
8 General of the Agency without effect.

9 16. Officers of the Agency shall have all the powers and  
10 immunities of a Police Officer under the Police Act and any other laws  
11 conferring power and immunity on law enforcement agents and shall  
12 exercise these powers both within and outside Nigeria, especially in  
13 Nigeria's Diplomatic Missions abroad in furtherance of Nigeria's national  
14 security.

Power and  
immunities of  
officers

15 17.-(1) A Senior Officer of the Agency shall have powers to  
16 investigate an offence under this Bill and may direct:

Power to  
investigate

17 (a) any person to appear before him for the purpose of investigation  
18 in relation to any matter which may, in his opinion, assist in the investigation  
19 of the offence;

20 (b) any person to produce any book, documents, articles or  
21 materials which, in his opinion, may assist in the investigation of an offence;  
22 and

23 (c) by written notice, any person to furnish a statement in writing  
24 made under oath containing all such information required by the notice  
25 which in the officer's opinion would be of assistance in the investigation of  
26 an offence.

27 (2) No investigation shall be initiated under this Bill without the  
28 written authorization of the Director-General of the Agency.

29 18. Where an Agency officer not below the rank of Assistant Chief  
30 Intelligence Officer has reasonable cause to believe that an offence under

Search Warrant

1 this Bill has been committed and that a material relating to the offence is likely  
2 to be found on a particular premises, he may issue a warrant to any Superior  
3 Officer of the Agency authorizing him and such other officers as may  
4 accompany him, to enter and search those premises and to seize and remove  
5 any material found there on which the Senior Officer considers as evidence of  
6 an offence under this Bill.

Power to arrest  
without warrant

7           **19.**-(1) Without prejudice to any other power of arrest, an Agency  
8 officer may arrest without warrant any person whom he finds committing an  
9 offence under this Bill or whom he reasonably suspects of having committed  
10 such an offence.

11           (2) An Agency officer may use such force as may be reasonably  
12 necessary for the purpose of executing an arrest under this Bill.

Immunity from  
Legal Process

13           **20.** No legal proceedings, civil or criminal, shall be instituted against  
14 an officer of the Agency or any person assisting such officer for an act which  
15 was done pursuant to the discharge of his duty under this Bill or any other law.

Power to bear  
firearms

16           **21.** Officers of the Agency shall be issued with such firearms and  
17 ammunition, and such other weapons of offence or defence for use within  
18 Nigeria and in Nigerian Diplomatic Missions abroad as may be authorized by  
19 the President, acting with the advice of the Director-General.

20           PART FOUR - JURISDICTION AND LEGAL PROCEEDINGS

Court to examine  
documents in  
camera

21           **22.**-(1) In the interest of national security, defence and foreign  
22 relations, where a classified information, material or matter is in issue, any  
23 document, article or material filed or produced by the Agency, shall be  
24 examined ex-parte and in camera by the court.

25           (2) The court shall, to the fullest extent possible and practicable,  
26 determine issues of fact based on sworn written submissions of the parties.

27           (3) The court may not order the Agency to review the content of any  
28 exempted operational file or files unless the complainant disputes the Agency's  
29 showing with a sworn written submission based on personal knowledge or  
30 otherwise admissible evidence.

1           23.-(1) Without prejudice to the general powers of the Attorney-  
2           General of the Federation to institute and undertake criminal proceedings on  
3           behalf of the Federal Government of Nigeria, the Agency shall have powers  
4           to prosecute criminal cases against any person in respect of offences under  
5           this Bill.

Prosecution of  
Offences

6           (2) A prosecution for an offence under this Bill shall be concluded  
7           and judgment delivered within ninety (90) working days of its  
8           commencement except that the jurisdiction of the court to continue to hear  
9           and determine the case shall not be affected where good grounds exist for a  
10          delay.

11          24. Where an offence under this Bill has been committed outside  
12          Nigeria by a citizen of Nigeria, proceedings in respect of the offence may be  
13          brought in any court in Nigeria which would have had jurisdiction in the  
14          matter if the offence had been committed in Nigeria.

Extra-territorial  
jurisdiction

15                           PART FIVE - MISCELLANEOUS PROVISIONS

16          25. A person who, without the written permission of the Director-  
17          General of the Agency, knowingly uses the Agency's identity card or the  
18          name of any Agency or the acronym Agency or its seal or any imitation of  
19          such words, acronym, or seal in connection with any merchandise,  
20          solicitation, commercial activity or communication, designed to  
21          impersonate or in any manner reasonably calculated to convey the  
22          impression that such use is approved, endorsed, or authorized by the  
23          Agency, is guilty of an offence and is liable on conviction for a term of  
24          imprisonment not exceeding three years.

Misuse of Agency  
Name, Acronym  
or Seal

25          26.-(1) On the appointment or promotion of any person as an  
26          officer of the Agency, he shall forthwith take and subscribe to the Agency  
27          Oath and the Oath of Allegiance as contained in the Schedule to this Bill.

Agency Oath and  
Oath of Allegiance

28          (2) A serving or retired Agency officer who, having subscribed to  
29          the Agency Oath and the Oath of Allegiance, breaches or violates any  
30          provisions of the Oaths, is guilty of an offence and is liable on conviction to

1 imprisonment for a term of five years.

2 PART SIX - INTERPRETATION SECTION

Interpretation

3 27. In this Bill:

4 (1) "Agency" means the National Intelligence Agency, State Security  
5 Service and Defence Intelligence Agency established under the National  
6 Securities Agencies Act, as the case may be;

7 (2) "Agency Facility or Establishment" means any area, building,  
8 structure, installation, equipment or office in Nigeria or elsewhere used by the  
9 Agency for or in connection with intelligence activities;

10 (3) "Agent" means any individual who furnishes information to the  
11 Agency through any means or works for the Agency as an informant or source,  
12 in the course of an intelligence relationship and whose identity and relationship  
13 with the Agency is classified information;

14 (4) "Authorized", when used with respect to access to classified  
15 information, means having authority, right or permission pursuant to the  
16 provisions of a statute or directive of the Federal Government or the Director-  
17 General of the relevant Agency;

18 (5) "Classified Information or Material" means any information,  
19 document, article or material which, under any system of security  
20 classification in use by any branch of the government, is not to be disclosed to  
21 the public in the interest of national security.

22 (6) "Counter-intelligence" means information gathered and activities  
23 conducted, to protect against espionage, sabotage and other hostile intelligence  
24 activities;

25 (7) "Covert Action" means a clandestine operation designed to  
26 influence foreign governments, events, organizations or persons to support and  
27 promote Nigeria's foreign policy and national security;

28 (8) "Director-General" means the Director-General of the relevant  
29 Agency;

30 (9) "Disclose" or "Disclosure" means to communicate, provide,

1 impart, transmit, transfer, convey, publish, or otherwise make available;

2 (10) "Foreign intelligence" means information relating to the  
3 capabilities, intentions or activities of foreign governments or elements  
4 thereof, foreign organizations, foreign persons or international terrorist  
5 activities;

6 (11) "Government Contractor" means any person who is not a  
7 Public Officer but who provides or is employed to provide any service to  
8 government and includes retired Agency officers who are engaged as  
9 consultants to the Agency;

10 (12) "Informant" means any individual who furnishes information  
11 to the Agency in the course of a confidential relationship;

12 (13) "International Organization" includes any organization with  
13 foreign affiliation or sponsorship whether or not it is one of which only  
14 states are members;

15 (14) "Intelligence" is the product or knowledge resulting from  
16 collecting, processing, integrating, analyzing, evaluating and interpreting  
17 available information concerning the capabilities, intentions, policies or  
18 activities of foreign countries/governments or elements thereof, foreign  
19 organizations or persons, international criminal organizations or subjects,  
20 hostile or potentially hostile forces or elements and other persons of interest  
21 to the Federal Government of Nigeria, as well as areas of actual or potential  
22 operations;

23 (15) "Intelligence Activities" are any or all of the activities  
24 undertaken by intelligence organizations;

25 (16) "Agency Officer" means:

26 (a) a serving or retired officer, employee or member of the Agency  
27 assigned to duty either within or outside the country, whose identity as such  
28 an officer, employee or member is classified information; and

29 (b) an individual whose past or present intelligence relationship to  
30 the Agency is classified information and includes a present or former agent,

1 informant or source of operational assistance to the Agency.

2 (17) "Nigeria", when used in a geographic sense, means all areas  
3 under the territorial sovereignty of Nigeria or entities or premises (covered by  
4 the Vienna Conventions on Diplomatic and Consular Relations) used by the  
5 Federal Government in a Foreign State irrespective of ownership;

6 (18) "Public Officer" means a person who exercised or formerly  
7 exercised, for the purposes of government, the functions of any office or  
8 employment under the state, including a Minister of the Federation, a  
9 Commissioner of a State Government and officers and staff of the Ministry of  
10 Foreign Affairs;

11 (19) "Significant Intelligence Activities" means any activity other  
12 than covert actions or operations;

13 (20) "Senior Officer" means an Agency Officer from the rank of an  
14 Intelligence Officer (10).

Short Title

15 28. This Bill may be cited as the National Security Agencies  
16 Protection of Officers' Identity Bill, 2016.

#### EXPLANATORY MEMORANDUM

This Bill seeks to protect the identity of officers of the National Security Agencies, its agents, informants, sources and other classified information from unauthorized disclosure, as well as to protect intelligence facilities, installations and equipment against unauthorized access; and prescribes penalties for violation of its provisions.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

SCHEDULE

Oath of Secrecy

I,..... swear that I shall not directly or indirectly reveal any matter that shall come to my knowledge in the course of my official duties and committed to my secrecy by this Oath except as may be required for the discharge of my official duties or as may be specially permitted by the Director-General of the Agency; and I shall not engage or be involved in any activity in conflict with the interest of the Agency. I realize that failure to keep this Oath is an offence and shall render me liable to prosecution under the National Security Agencies Protection of Officers' Identities and Establishments Bill 2016. I also realize that the Obligation of secrecy imposed upon me by this Oath will continue even after I have left Government service. So help me God.

Oath of Allegiance

I,.....swear that I will be faithful and bear true allegiance to the Federal Republic of Nigeria and I will obey all lawful commands of the Federal Government, the relevant National Security Agencies and any officer set over me while in the service of the Agency; I will also use my best endeavours for the preservation of peace and the apprehension of offenders and will, in all respects and to the best of my skill and knowledge, discharge all duties of the said office diligently and efficiently. So help me God.

