

NATIONAL SECURITY AGENCIES PERSONNEL IDENTITY PROTECTION

BILL, 2021

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A BILL

FOR

AN ACT TO PROVIDE FOR THE PROTECTION OF THE IDENTITY OF NATIONAL SECURITY AGENCIES PERSONNEL, AGENTS, SOURCES, INFORMANTS AND OPERATIONAL METHODS FROM UNLAWFUL DISCLOSURE; AND TO PROTECT THEIR 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 PERSONNEL IDENTITY AND
2 OTHER MATERIALS

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

Protection of
Identities of
Security Agency
Personnel

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

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

Protection of
Security Agency
facilities,
installations and
equipment

1 2. -(1) A person is guilty of an offence if, without lawful authority, he-
2 (a) enters or is in the vicinity of or inspects an establishment or facility
3 of the Security Agency; or
4 (b) photographs, sketches or in any other manner makes a record of
5 the description of, or of anything situated in a facility or establishment of the
6 Security Agency; or
7 (c) obtains, reproduces or retains any photograph, sketch, plan, model
8 or document relating to, or to anything situated in a facility of the Security
9 Agency; or
10 (d) obstructs, misleads or otherwise interferes with a person engaged
11 in guarding a facility of the Security Agency.

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

16 (3) "Security Agency Facility or Establishment" means any area,
17 building, structure, installation, equipment or office in Nigeria or elsewhere
18 used by the Security Agency for or in connection with its activities.

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

Damaging
Disclosure

21 3.-(1) A person who is or has been a Public Officer or Government
22 Contractor if, without lawful authority, makes a damaging disclosure of
23 information, document or other article in his possession originating from, or
24 given to the Security Agency;

25 (a) relating to security or intelligence;

26 (b) relating to classified international relations;

27 (c) received in confidence from a Security Agent or a State other than
28 the Federal Republic of Nigeria or its agencies; or

29 (d) received in confidence from an international organization or a
30 member thereof;

1 is guilty of an offence and shall be liable on conviction to imprisonment for a
2 term of five years or a fine not below the sum of five hundred thousand Naira
3 or both.

4 (2) For the purpose of Section 4, a disclosure is damaging if it is
5 likely to cause harm to the interest of the Security Agency or Government of
6 the Federal Republic of Nigeria or impedes the work of the Security Agency
7 or causes injury or harm to any of its Personnel or Agents.

8 4. Any person who obtains, reproduces or retains any information,
9 document or article relating to security or intelligence originating from, or
10 given to the Security Agency, which he is not authorized on behalf of the
11 Government to obtain, reproduce or retain, as the case may be, is guilty of an
12 offence and liable upon conviction to imprisonment for a term of five years
13 or a fine not below the sum of Five Hundred Thousand Naira.

Further protection
of Security materials

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

Information
resulting from
authorized
disclosure or
entrusted in
confidence

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

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

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

29 6. A person is guilty of an offence and punishable with a term of
30 imprisonment not exceeding three years if-

Duty of care
regarding classified
information

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

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

6 (c) being a Government Contractor, he fails to comply with an official
7 directive for the return or disposal of a classified material, document or article.

Further Offences

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

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

Attempt to commit
offence and
abetment

19 8. A person is guilty of an offence and punishable with a term of
20 imprisonment not exceeding five years if he-

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

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

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

Protection of
Operational files

26 9. Operational files of the Agency may, in the interest of national
27 security, be exempted by the Security Agency's Overall Administrator from the
28 provisions of any legislation which requires publication, disclosure, search or
29 review of such documents or anything connected therewith. Such exemption

1 shall be contained in a written memorandum and communicated to the
2 persons concerned.

3 10. The operational files to be exempted include-

Operational Files
to be exempted

4 (i) Files of the Security Agency which contain information on any
5 conduct of foreign intelligence or counter-intelligence operations or
6 intelligence liaison arrangements or information exchanges with
7 Intelligence units, Security Agencies, foreign governments or their
8 Intelligence or Security Services; information on past or ongoing
9 intelligence operations or activities, sources, informants, methods, agents,
10 installations, locations of persons or objects of intelligence interest to the
11 Federal Government;

12 (ii) Files of the Security Agency which contain information on the
13 means by which intelligence and counter-intelligence are collected through
14 scientific and technical methods; or contain information on the location of
15 communications or technical equipment used in intelligence gathering for
16 national security purposes or the fight against corrupt practices; and,

17 (iii) Files of the Security Agency which contains information on
18 the Security Agency's Instruments, directives on operations or intelligence
19 activities by the President or the National Security Adviser, decisions or
20 minutes of meetings of the Joint Intelligence Board and the Intelligence
21 Community Meeting, directives of the Overall Administrator, decisions of
22 Senior Management of the Security Agency, internal circulars, information
23 on policy, records of past and serving members of staff of the Security
24 Agency, Security Agency finances, budget, expenditures and
25 Administrative Rules, Regulations and Manuals.

26 11.-(1) Notwithstanding Sections 10 and 11 above, exempted
27 operational files shall continue to be subject to search, disclosure and review
28 for information concerning:

Search and review
for information

29 (i) Declassified information;

30 (ii) Any intelligence activity, the existence of which is not

1 exempted from disclosure under this Bill; and,
2 (iii) Specific declassified subject matter of an inquiry/investigation
3 by the Intelligence and Security Committees of the National Assembly, the
4 Office of the National Security Adviser or the Nigerian Courts.

5 (2) The Overall Administrator of the Security Agency may, from time
6 to time and having regard to the security and intelligence interest of Nigeria,
7 issue directives in writing for the declassification of any information or
8 document in the possession of the Security Agency.

9 PART TWO - LIAISON WITH THE NATIONAL ASSEMBLY

Procedure for
reporting to
National Assembly

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

Procedure to
protect from
disclosure

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

Form and Contents
of Reports

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

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

24 (b) An explanation of the significance of the intelligence activity
25 covered by such report;

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

29 PART THREE - DEFENCES, POWERS AND IMMUNITIES

Defences

30 15.-(1) It is a defence for a person charged with an offence under this

1 Bill to prove that-

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

4 (b) when he knew or could reasonably have been expected to
5 believe that the matter was classified matter, he forthwith placed his
6 knowledge of the case at the disposal of the Overall Administrator of the
7 Security Agency; and,

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

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

19 16. Personnel of the Security Agency shall have all the powers and
20 immunities of a Police Officer under the Police Act and any other laws
21 conferring power and immunity on law enforcement agents and shall
22 exercise these powers both within and outside Nigeria, especially in
23 Nigeria's Diplomatic Missions abroad in furtherance of Nigeria's national
24 security (where applicable).

Power and immunities of Personnel

25 17.-(1) A Senior Officer of the Security Agency shall have powers
26 to investigate an offence under this Bill and may direct-

Power to Investigate

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

30 (b) any person to produce any book, documents, articles or

1 materials which, in his opinion, may assist in the investigation of an offence;
2 and,

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

6 (2) No investigation shall be initiated under this Bill without the
7 written authorization of the Overall Administrator.

Search Warrant

8 18. Where a Security Agency Personnel has reasonable cause to
9 believe that an offence under this Bill has been committed and that a material
10 relating to the offence is likely to be found on a particular premises, he may
11 request to a superior personnel, that a warrant be issued authorizing him and
12 such other Personnel as may accompany him, to enter and search those
13 premises and to seize and remove any material found there on which the
14 Personnel considers as evidence of an offence under this Bill.

Power to arrest
without Warrant

15 19.-(1) Without prejudice to any other power of arrest, a Security
16 Personnel may arrest without warrant any person whom he finds committing
17 an offence under this Bill or whom he reasonably suspects of having committed
18 such an offence.

19 (2) A Security Personnel may use such force as may be reasonably
20 necessary for the purpose of executing an arrest under this Bill.

Immunity from
Legal Process

21 20. No legal proceedings, civil or criminal, shall be instituted against
22 a Personnel of the Security Agency or any person assisting such Personnel for
23 an act which was done pursuant to the discharge of his duty under this Bill or
24 any other law.

Power to bear
Firearms

25 21. Personnel of the Security Agency shall be issued with such
26 firearms and ammunition, and such other weapons of offence or defence for
27 use within Nigeria and in Nigerian Diplomatic Missions abroad (where
28 applicable) as may be authorized by the President, acting with the advice of the
29 Overall Administrator.

PART FOUR - JURISDICTION AND LEGAL PROCEEDINGS

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

Court to examine documents in camera

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

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

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

Prosecution of Offences

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

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

Extra-territorial Jurisdiction

PART FIVE - MISCELLANEOUS PROVISIONS

25. A person who, without the written permission of the Overall Administrator of the Security Agency, knowingly uses the Security Agency's identity card or the acronym or its seal or any imitation of such words, acronym, or seal in connection with any merchandise, solicitation,

Misuse of Security Agency's Name, Acronym or Seal

1 commercial activity or communication, designed to impersonate or in any
2 manner reasonably calculated to convey the impression that such use is
3 approved, endorsed, or authorized by the Security Agency, is guilty of an
4 offence and is liable on conviction for a term of imprisonment not exceeding
5 three years.

Security Agency
Oath and Oath
of Allegiance

6 **26.-(1)** On the appointment or promotion of any person as personnel
7 of the Security Agency, he shall forthwith take and subscribe to the Security
8 Agency's Oath and the Oath of Allegiance as contained in the Schedule to this
9 Bill.

10 (2) A serving or retired Security Personnel who, having subscribed to
11 the Security Agency's Oath and the Oath of Allegiance, breaches or violates
12 any provisions of the Oaths, is guilty of an offence and is liable on conviction to
13 imprisonment for a term of five years.

Repeal

14 **27.** Where any provision of the Official Secrets Act conflicts with the
15 provisions of this Bill, the provisions of the Official Secrets Act that conflicts
16 with the provisions of this Bill shall be null and void and of no effect to the
17 extent of the inconsistency.

18 PART SIX - INTERPRETATION SECTION

Interpretation

19 **28.** In this Bill-

20 (1) "Agent" means any individual who furnishes information to the
21 Agency through any means or works for the Agency as an informant or source,
22 in the course of an intelligence relationship and whose identity and relationship
23 with the Agency is classified information;

24 (2) "Authorized", when used with respect to access to classified
25 information, means having authority, right or permission pursuant to the
26 provisions of a statute or directive of the Federal Government or the Overall
27 Administrator;

28 (3) "Classified Information or Material" means any information,
29 document, article or material which, under any system of security
30 classification in use by any branch of the government, is not to be disclosed to

1 the public in the interest of national security;

2 (4) "Counter-intelligence" means information gathered and
3 activities conducted, to protect against espionage, sabotage and other hostile
4 intelligence activities;

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

8 (6) "Disclose" or "Disclosure" means to communicate, provide,
9 impart, transmit, transfer, convey, publish, or otherwise make available;

10 (7) "Foreign intelligence" means information relating to the
11 capabilities, intentions or activities of foreign governments or elements
12 thereof, foreign organizations, foreign persons or international terrorist
13 activities;

14 (8) "Government Contractor" means any person who is not a
15 Public Officer but who provides or is employed to provide any service to
16 government and includes retired Security Agency Personnel who are
17 engaged as consultants to the Security Agency;

18 (9) "Informant" means any individual who furnishes information
19 to the Security Agency in the course of a confidential relationship;

20 (10) "International Organization" includes any organization with
21 foreign affiliation or sponsorship whether or not it is one of which only
22 states are members;

23 (11) "Intelligence" is the product or knowledge resulting from
24 collecting, processing, integrating, analyzing, evaluating and interpreting
25 available information concerning the capabilities, intentions, policies or
26 activities of foreign countries/governments or elements thereof, foreign
27 organizations or persons, international criminal organizations or subjects,
28 hostile or potentially hostile forces or elements and other persons of interest
29 to the Federal Government of Nigeria, as well as areas of actual or potential
30 operations;

1 (12) "Intelligence Activities" are any or all of the activities
2 undertaken by intelligence organizations;

3 (13) "Overall Administrator" means the Director-General of the
4 National Intelligence Agency, Chairman of The Economic and Financial
5 Crimes Commission, Chairman of The Independent Corrupt Practices
6 Commission, Inspector General of Police of the Nigerian Police Force,
7 Director-General of the State Security Service, Chief of Defence Intelligence
8 of the Defence Intelligence Agency, and the Commandant General of the
9 Nigeria Security and Civil Defence Corps;

10 (14) "Security Agency" means the National Intelligence Agency,
11 Defence Intelligence Agency, State Security Service, Nigeria Security and
12 Civil Defence Corps, The Independent Corrupt Practices Commission,
13 Economic and Financial Crimes Commission and the Nigeria Police Force;

14 (15) "Security Agency Personnel" means-

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

18 (b) an individual whose past or present intelligence relationship to the
19 Security Agency is classified information and includes a present or former
20 agent, informant or source of operational assistance to the Agency.

21 (16) "Nigeria", when used in a geographic sense, means all areas
22 under the territorial sovereignty of Nigeria or entities or premises (covered by
23 the Vienna Conventions on Diplomatic and Consular Relations) used by the
24 Federal Government in a Foreign State irrespective of ownership;

25 (17) "Public Officer" means a person who exercised or formerly
26 exercised, for the purposes of government, the functions of any office or
27 employment under the state, including a Minister of the Federation, a
28 Commissioner of a State Government and officers and staff of the Ministry of
29 Foreign Affairs;

30 (18) "Significant Intelligence Activities" means any activity other

1 than covert actions or operations.

2 29. This Bill may be cited as the National Security Agencies Short title
3 Personnel Identity Protection Bill, 2021.

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 Overall Administrator of the Agency/Force/Service/Commission/Corps; and I shall not engage or be involved in any activity in conflict with the interest of the Agency/Force/Service/Commission/Corps. I realize that failure to keep this Oath is an offence and shall render me liable to prosecution under the National Security Agencies Personnel Identity Protection and Other Related Matters Bill 2020. 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 National Intelligence Agency/Nigeria Police Force/ Defence Intelligence Agency/ State Security Service/ Economic and Financial Crimes Commission/ The Independent Corrupt Practices Commission/ Nigeria Security and Civil Defence Corps and any officer set over me while in the service of the Agency/Force/Service/Commission/Corps; 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.

EXPLANATORY MEMORANDUM

This Bill seeks to protect the identity of Personnel of the National Security Agencies, their 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.