Looking beneath the cloak
An analysis of intelligence governance in South Africa

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Introduction

To paraphrase Hans Born (2005) in the introduction to *Who's Watching the Spies?* the study of intelligence oversight calls for connecting the seemingly divergent worlds of democracy and secrecy. Evaluating and understanding a system of governance for the intelligence community involves a multidisciplinary approach that entails interpreting national legislation, understanding organisational and bureaucratic behaviour, applying lessons from strategic and security studies and utilising the principles of participatory democratic oversight. In general, the intelligence governance debate is concerned with the democratic control of the intelligence services and implies a need to balance commitments to democracy with those to security. A debate of this nature, however, situates democracy and security as competing forces instead of interrelated elements.

The study of intelligence governance needs to be based on a recognition that strengthening the democracy, transparency and accountability of intelligence services should not come at a cost to the efficiency and effectiveness of the secret services. The efficacy of the intelligence services in a democracy would, in fact, have to be measured in terms of the behaviour of the intelligence community; this behaviour should be consistent with accepted democratic practices and the rule of law. The underlying premise is that the intelligence services will become more efficient when they operate under a mandate in line with the democratically defined security needs of the state and that excesses will be avoided through better coordination and accountability.

The challenge of intelligence governance is therefore ultimately concerned with harnessing the tools of covert and coercive power for the purposes of the state and society as a whole. However, if intelligence services are uncontrolled, poorly managed and not held to account, there could be a risk of the misuse of state security structures for personal or group interest and the activities of the intelligence services could actually threaten the security of citizens. Ultimately, the prevalence of secrecy and lack of accountability increases the risk of impropriety and, in the long term, threatens democracy.

Intelligence governance

Good governance has become an important benchmark for emerging and democratising states, especially in view of the expanded security paradigm and the increasing acknowledgement of the relationship between security and development. As part of increased security sector reform activities, improving the mechanisms of governance is seen as essential to controlling the exercise of state power. Ensuring sufficient mechanisms of control over the use of force should, in democratic theory, guard against the misuse of the state security arsenal for personal or group interest at the expense of individual security. As the potentially most dangerous weapons in the state security arsenal, the intelligence services should be bound by the same principles of good governance as the other tools of statecraft, and constant vigilance is required to ensure that the covert use of power does not infringe on national values, human rights and personal freedoms.

Governance of the intelligence sector refers to the processes of decision making and those by which decisions are implemented within the intelligence apparatus of a state. Thus governance includes aspects of policy formulation and generation of policy priorities and alternatives; the levels of authorisation required, especially for covert operations; the use of intrusive methods of investigation; and the mandates and functioning of the structures that implement the decisions, for instance the intelligence agencies. As Smith and Stacey (1997:79) indicate, the governance debate is usually referred to in terms of the 'efficacy

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of formal structures to ensure a degree of cooperation sufficient to bring about order in human affairs'.

In a democracy, oversight mechanisms such as the judiciary and the legislature are essential elements of the governance framework as they monitor and regulate the decision-making environment and confirm that the decision-making and implementation processes function in accordance with the constitutional, legal and normative framework of the state. Furthermore, oversight mechanisms review performance and expenditure to ensure that public funds are allocated to and spent on stated goals in agreement with national values.

When evaluating the efficacy of the formal structures, one generally accepts good governance to have the following key characteristics: It is participatory, accountable, transparent, responsive, effective and efficient, and equitable and inclusive, and it follows the rule of law. The good governance agenda presents unique challenges to the management and control of intelligence services, especially given the covert nature of intelligence operations and the inherent need for secrecy.

The definition of governance provided by Smith and Stacey (1997) indicates that good governance necessarily focuses on issues of efficacy, which would include the transparency and accountability of the formal structures of government. These 'refer to an operational diffusion point that will transform expressed needs and political objectives into concrete actions' ('Governance Debate' 1997). Furthermore, the definition highlights the requirement for cooperation among the formal structures. The final key element of governance is its ability to bring order to human affairs: The structures of government have as primary function the creation of conditions of stability and a degree of predictability in human affairs.

Although this discussion focuses on the intelligence apparatus of the state, it is cognisant of an expanded notion of security in which the ultimate preoccupation of the state security apparatus is not personal or group interest but rather the achievement of order in human affairs. As such, the state-centric approach is couched in human security rhetoric in which the intelligence services are viewed as non-partisan tools of the state, serving the security interests of the citizens and not personal, group or party agenda; hence the need for consultation and participation and the building of a national consensus on the role of intelligence in the greater national security debate. To achieve consultation and participation, however, a level of transparency is required and the

public needs to have access to information to make an informed contribution to the decision- and policy-making processes.

Therefore, the issue of governance is closely tied to the internal order and political culture of a state. The governance structures are a product of the political evolution of the state and bear the fruits of or scars inflicted by previous regimes. Within this context the discussion analyses the South African intelligence governance structures and highlights important features of the system of governance and the manner in which democratic control of the intelligence services is currently exercised. Initially, however, it needs to briefly describe the intelligence apparatus and governance structures in the predemocratic period: first, to create an appreciation of the degree of reform that has in fact taken place and, second, to provide the necessary historical perspective of the culture and perceptions of the intelligence community in South Africa.

Intelligence and the apartheid state

The political environment of a country largely determines the activities of the intelligence community, or of any state department. This key variable determines not only the nature and structure of the intelligence community but also its priorities and operations. The internal and external political and strategic security environment tends to dictate the level of involvement of intelligence agencies in the domestic and foreign arenas, and the nature of the threats largely determine the nature of the intelligence agency involved, be it civilian, military or police.

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When the survival of a ruling party is under threat and the maintenance of political power is the prevailing preoccupation of state security structures, however, the suppression of domestic political dissent frequently becomes an intelligence priority. In authoritarian, undemocratic, dictatorial or autocratic regimes, intelligence often becomes an essential tool of oppression and control. The general trend seems to be that the more insecure a regime or ruling party, the greater is the domestic role of intelligence services. The apartheid state was not unique in this regard.

At an academic conference in August 1992, Joe Nhlanhla (1992), at the time director of the African National Congress (ANC) Department of Intelligence and Security and the first Minister of Intelligence Services of democratic South Africa, identified the following deeply embedded features of the apartheid intelligence services:

- A militaristic and racist culture where interests served have been those of the ruling Nationalist government and not those of the people as a whole
- A culture of secrecy and lack of transparency and a total absence of accountability to the public
- An undermining of basic human rights and freedoms, including the freedom of speech, thought and action, and the right to privacy
- Repressive and criminal methods including the use of detention and torture, assassination and kidnapping in pursuit of the interests of state security
- An inward-focused approach where the greatest threat to national security was seen to come from fellow South Africans
- The wanton infiltration of organisations and disinformation against anti-government organisations
- The deliberate misleading of the pubic through the use of front organisations to achieve ignoble intelligence objectives
- The abuse of taxpayers money and many excesses

The state intelligence services of the early 1990s comprised three main units: the civilian agency, the National Intelligence Service (NIS), the Security Branch of the South African Police (CIS) and the Division of Military Intelligence (DMI). These services characteristically invaded the privacy of individuals; conducted various forms of surveillance without judicial authorisation; were unaccountable to Parliament; and were involved in political violence, suppression and the manipulation of the domestic political environment. A further important aspect of the apartheid state intelligence services was the level of competition between the agencies for positions of relative influence and the perception that each was encroaching on the others' brief (Africa 1992a). Furthermore, the NIS, CIS and DMI were not the only structures engaged in intelligence activities with the Department of Foreign Affairs: Escom, the prison services and the Human Sciences Research Council, among others, providing intelligence to the National Intelligence Interpretation Branch of the State Security Council (Africa 1992a).

Owing largely to the highly militarised security environment at the time, the boundaries and functions of the civilian, military and police intelligence and security services became blurred. Consequently, problems in regard to coordination and cooperation arose, and these were complicated by a lack of clearly defined mandates for the intelligence agencies and the creation of alternative intelligence and security structures such as the Civil Cooperation Bureau (CCB) and Vlakplaas[1]. Furthermore, especially during the Botha administration, the militarised security intelligence services became insulated from judicial and legislative scrutiny and acquired a high degree of autonomy from policy makers (Dombroski 2006).

When former President De Klerk took office in 1989, he undertook a transformation of the intelligence services, which included the establishment of ministerial-level oversight and control of the intelligence sector. This considerable departure from the Botha regime meant that intelligence was no longer under the direct control of the State President and the National Security Council. Furthermore, President De Klerk relied heavily on the NIS, especially in initiating negotiations with the ANC, and the power of the DMI, predominant under Botha, was severely curtailed. Consequently, the civilian intelligence agency began to take responsibility for the majority of domestic political intelligence activities.

The period between 1989 and 1993 in many ways laid the foundation for the massive intelligence reforms that were to take place in the post-1994 era. However, the reforms under the De Klerk government did little to overcome the legacy of state oppression and the heightened role of the state security and intelligence apparatus in maintaining minority rule. Furthermore, the 1990s were characterised by tumultuous domestic upheavals and increasing levels of political violence in South Africa. Little doubt remains that the apartheid era security services were involved in the violence that broke out across the country. The apartheid state intelligence structures have been implicated in the hostel and township violence on the Vaal Triangle and the activities of the Inkatha hit squads that operated in KwaZulu Natal.

The historical antagonism and mistrust between the intelligence community and the population continues to have an impact on public perceptions of intelligence in South Africa. The intelligence services were largely unaccountable and were involved in human rights abuses. Furthermore, the legacy of the state intelligence apparatus is deeply imbued with a high level of secrecy, plausible deniability and a lack of cooperation among agencies.

African National Congress intelligence apparatus

By 1994, the ANC intelligence apparatus included directorates for strategic intelligence analysis; counterintelligence; and military intelligence as part of the activities of *Umkhonto we Sizwe* (MK), the military arm of the liberation movement. Much information on the functioning of the ANC intelligence branches can be gleaned from the ANC submission to the Truth and Reconciliation Commission, *Operations Report: The Department of Intelligence and Security of the African National Congress* (1997).

The ANC first established a military intelligence capacity within MK in the 1960s with the primary function of infiltrating trained MK cadres back

into apartheid South Africa and selecting targets for armed attacks. Initially, no counterintelligence mandate was given. However, the armed struggle continued to face setbacks, which indicated that the apartheid state was well informed of MK's plans and had infiltrated the ranks of the exiled liberation movement. The mandate of the Department of Intelligence and Security (DIS) included protecting human and material resources; establishing training camps in Africa; arranging training courses and assuming certain correctional services functions in the training camps; protecting important persons; and screening vetting exiles.

The DIS is reported to have begun to build it strategic intelligence capability from the late 1970s and was able to forewarn the leadership of enemy movements. In the 1980s, the DIS successfully weeding out infiltrators linked to South African and Western intelligence networks in training camps in neighbouring states. A key task was the screening and investigating of comrades and cadres. However, given the broad mandate assigned to the DIS and lack of resources and insufficient training, the reputation of the DIS during the struggle is marred by reports of abuses, especially by its prison services function.

By 1985, the ANC National Executive Committee (NEC) recognised the need to reorganise and improve the functioning of the DIS, with special focus on halting abuses in training camps and the maltreatment of prisoners. The reorganisation was deemed necessary as problems were encountered with unclear and undefined reporting lines, issues of command and control, and cooperation and coordination among the DIS and other MK structures.

An interesting development in the evolution of the ANC intelligence capacity was the creation of a new permanent directorate of the DIS in 1987, which consisted of Joe Nhlanhla, director; Jacob Zuma, deputy director; Sizakele Sigxashe, head of Central Intelligence Evaluation Sector; Simon Makana, administrator; and Tony Mongalo and Daniel Oliphant (heading the Counterintelligence division). This development signalled a new era in the organisation of the ANC intelligence structures along clearly defined functional areas: Intelligence, Counterintelligence and Processing and Security. Furthermore, intelligence became a highly centralised executive-controlled activity with most members of the directorate holding seats on the NEC. In addition, the reorganisation resulted in the separation of intelligence from justice and the tasks of the DIS were confined to investigations.

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Transforming the South African intelligence apparatus

One of the most challenging tasks facing the ANC and the Government of National Unity (GNU) in 1994 was the integration and transformation of state security services. Discussions between the NIS and the ANC's DIS in 1993 set the stage for the integration and intelligence sector reform that officially began in 1994. The principles and guidelines adopted by the new dispensation were largely based on those developed during the ANC Annual Policy Conference of 1992. These principles were further entrenched in the intelligence community through the White Paper on Intelligence and the legislation that was developed.

In terms of the restructuring and design of the new intelligence community, the Sub-Council on Intelligence of the Transitional Executive Council and the GNU legislators studied various international models and compared different organisational structures. One of the predominant concerns was the creation of an intelligence community that could be held to account, as stipulated in the Constitution, by a parliamentary committee and an inspector general (IG), without impeding operational efficiency. As with the Australian, Canadian and British models, executive control ultimately rests with the President and through the Cabinet Committee for Security and Intelligence Affairs with the Ministry for Intelligence Services; the latter was established in 1996 as the centre of intelligence policy making. Also at executive level is the National Security Council (NSC), established in June 2000 and consisting of the President, the deputy president and the Ministers of Safety and Security, Defence, Intelligence, Foreign Affairs, Home Affairs, Treasury and Justice, together with other ministers, if deemed necessary. The NSC is an executive-level coordinating mechanism charged with the development and implementation of national security policy. In addition, interdepartmental coordinating mechanisms have been implemented at director–general (DG) level.

The outcomes of the transformation process include the delineation of intelligence functions by geographic scope, for instance, the creation of the National Intelligence Agency (NIA) for domestic intelligence activities and the South African Secret Service (SASS) for foreign intelligence activities. One needs to note that during the transformation, strategic intelligence capacity was devolved to civilian intelligence structures, which have no powers of arrest or detention. Operational and tactical intelligence remain functions of the state security agencies.

Two further intelligence agencies were therefore defined: Defence Intelligence (DI) within the South African National Defence Force (SANDF) and the Directorate for Crime Intelligence (CI) within the South African Police Service (SAPS). The activities of all the intelligence agencies are coordinated through the National Intelligence Coordinating Committee (NICOC). The Joint Standing Committee on Intelligence (JSCI) conducts parliamentary oversight of the intelligence community.

The focus of this discussion is the system of governance of the intelligence services, and further detail about the structure and functioning of the intelligence community emerges during the course of the document. The post-1994 transformation of the South African intelligence community was comprehensive and fundamental and executive, legislative, judicial and civilian oversight systems and procedures were established. The structure, functions, mandates and system of governance and control were formalised through the National Strategic Intelligence Act 39 of 1994, the National Intelligence Services Oversight Act 40 of 1994 and the Intelligence Services Act 65 of 2002.

Intelligence governance in South Africa

One needs to note that intelligence reform entails more than the organisational restructuring of the intelligence services. The sustainability of intelligence reform and the creation of well-managed, accountable and professional intelligence services that operate in support of national interest (as opposed to personal or party interest) lie in changing the culture of intelligence practitioners and power relations in the larger political environment. As Wilson (2005) notes, the organisational changes have been implemented but the culture and power politics transformations are taking much longer to materialise:

> We might only see the benefits of these reforms once a new breed of officers and overseers has grown up in the system and adopted its values, and it might take generational change for the formal structures not to be overwhelmed by the hidden wiring left over from the liberation movement.

The Meiring, Masetlha and Browse Mole scandals indicate that the intelligence community is still fighting to change the culture and power politics of the services.

In trying to evaluate the state of governance of the intelligence sector in South Africa, one needs to look beyond the organisational change and the scandals that are sensationally presented by the media. This is an attempt to produce a holistic and realistic assessment that is cognisant of the realities faced by the public service and security sectors of South Africa, the challenges of transforming a liberation movement into a political party and the legacies of the state security structures. The discussion on governance highlighted several important features of good governance that can be used as benchmarks for the analysis of intelligence governance in South Africa. Therefore, the following key elements have been selected for further analysis:

- Participation in policy making
- Legal mandate of the intelligence structures
- Coordination of activities
- Mechanisms of control
- Balance between secrecy and transparency

Intelligence policy making in South Africa

The most fundamental experience in intelligence policy making in democratic South Africa was gained with the drafting of the White Paper on Intelligence in 1995. The goal of the White Paper has been identified as 'the creation of an effective, integrated and responsive intelligence machinery that can serve the Constitution and the government of the day, through the provision of relevant, credible and reliable information' (White Paper on Intelligence 1995: paragraph 1). Furthermore, in terms of the culture of intelligence, the White Paper on Intelligence acknowledges that transforming the intelligence dispensation in South Africa entails more than organisational restructuring but 'should start with clarifying the philosophy, redefining the mission, focus and priorities of intelligence in order to establish a new culture of intelligence' (White Paper on Intelligence 1995: paragraph 3.1).

The purposes of intelligence in democratic South Africa as outlined in the White Paper on Intelligence (1995: paragraph 3.2.3) are the following:

- To provide policy-makers timeous, critical and sometimes unique information to warn them of potential risks and dangers
- To identify opportunities in the international environment, through assessing real or potential competitors' intentions and capabilities. This competition may involve the political, military, technological, scientific and economic spheres, particularly the field of trade
- To assist good governance, through providing honest, critical intelligence that highlights the weaknesses and errors of government

The mission of the South African intelligence community, according to the White Paper on Intelligence (1995: paragraph 3.2.4), is to provide evaluated information with the following in mind:

- The safeguarding of the Constitution
- Upholding the Bill of Rights

- The promotion of the interrelated elements of security, stability, co-operation and development, both within South Africa and in relation to Southern Africa
- The achievement of national prosperity whilst making an active contribution to global peace and other globally defined priorities for the well-being of humankind
- The promotion of South Africa's ability to face foreign threats and to enhance its competitiveness in a dynamic world

Given that the White Paper on Intelligence is meant to be an overall guiding document, one generally does not expect a high degree of detail. However, as indicated in the above extracts, the White Paper on Intelligence is vague and largely fails to capture the essence of intelligence activities, which is to provide decision makers with credible, relevant information on which to base policy decisions. Furthermore, there is an incongruity between an intelligence community, which serves the government of the day, and an intelligence service, which acts as a watchdog highlighting the weaknesses and errors of the government. Also absent in the White Paper on Intelligence is an acknowledgement of the essential role that the intelligence services play in terms of security vetting and the setting of minimum security standards for state personnel, information and infrastructure.

The White Paper on Intelligence has received criticism as being an empty set of principles that contribute little to the transformation of the intelligence services (Nathan 2007:98). In a comparative analysis of the White Paper on Intelligence and the White Paper on Defence, Nathan (2007:98–99) highlights the following weakness in the process of development and pinpoints deficiencies in the content of the White Paper on Intelligence:

- The White Paper on Intelligence does not progress much beyond principles, values and norms and does not provide sufficient guidance on objectives and strategies and is thus too abstract for implementation.
- The Intelligence White Paper was prepared by a single drafter with little departmental debate and consequently, there is no sense of ownership of the policy document and principles by the intelligence community.
- There was a lack of political leadership. At the time there was no ministerial portfolio for intelligence and it fell within the Ministry of Justice. The Deputy Minister for Intelligence was preoccupied with the integration of the various intelligence services and failed to develop an agenda for transformation beyond integration.
- The White Paper on Intelligence was published without any parliamentary engagement nor any public debate or consultation.

- At the time civil society was largely silent on intelligence, tacitly viewing it as lying outside the realm of public debate.

Embracing a holistic view of security, the White Paper on Intelligence enunciates current liberal security rhetoric but fails to translate the conceptual understanding of the expanded security paradigm into the roles and functions of the intelligence community in pursuit of a human security agenda. Southall (1992) notes the following: In a deeply divided country such as South Africa, is it very difficult to determine national interest and common good and the danger is that in attempting to counter subversion, the intelligence agencies may become perverted by a narrowly partisan definition of national interest.

Furthermore, while evincing a commitment to participation and a determination to arrive at consensus, the White Paper on Intelligence process was distinctly lacking in consultation with Parliament and civil society. As Africa (1992) notes, when questioned publicly about intelligence matters, the South African government's standard response has been that it is not in the public interest to discuss such matters. This attitude has prevailed in the South African intelligence environment into the twenty-first century.

A final point on the White Paper on Intelligence needs to be made on the issue of transformation. The sensitive nature of intelligence possibly meant that although massive organisational reforms took place, especially in the structure and mandate of the agencies and the large-scale human resource restructuring and demobilisation of approximately 10 000 intelligence operatives, very few efforts originally focused on changing the political and cultural orientation of the intelligence community.

The priorities of the political leadership at the time focused largely on continuity and integration and on attempts to avoid the potentially catastrophic destabilisation of the transitional state with widespread revelations of the activities of the apartheid and liberation intelligence structures. Furthermore, one should consider that the apartheid intelligence infrastructure inherited by the democratic state would have been a vast, technologically advanced network, which the new democratic government would surely have seen as a valuable asset. Many in the ANC recognised that the apartheid intelligence structures possessed valuable information, assets and sources, especially pertaining to the domestic political situation, and the domestic intelligence structures were largely kept in tact through a mutual agreement between the NIS and the ANC. The primary purpose of this arrangement was to ensure a constant flow of intelligence and a balance between continuity and change (O'Brien 2005:207).

Whereas organisational restructuring is a relatively short-term activity, the culture change has been a long-term one. With the White Paper on Intelligence, a Code of Conduct was developed for intelligence workers. Creating a document of this nature is not common practice in the global intelligence community, and the event marked a concerted effort to instil a changed culture in the practitioners. Over the years, the Code of Conduct has become institutionalised primarily through training programmes. The post-apartheid intelligence services, although dogged by accusations of impropriety, have not faced allegations of human rights abuses. However, allegations have been made about intimidation and about a lack of professionalism, the poor quality of intelligence products and the misuse of position to seek personal or interest group gain. A renewed effort to improve the professionalism of the intelligence community was launched in 2006 and a pilot Civic Education Programme was implemented in 2007 through the South African National Intelligence Academy.

Given the sensitivities surrounding intelligence and the heightened sensitivity in the immediate post-apartheid period because of the role of the state intelligence structures in the maintenance of the regime, the degree of transformation that was brought about is commendable. That the intelligence community has not rested on the laurels of organisational transformation is equally commendable. Through increased public consultation in Parliament and mechanisms such as the Ministerial Review Commission on Intelligence, civil society is now increasingly able to play a significant part in the intelligence debate and contribute to fundamental questions about the role of the intelligence services in democratic South Africa. The role of intelligence in this country should be continuously contested, and regular evaluation is required to ensure that the intelligence services are able to respond to the strategic political realities of the time.

Legal mandate of the South African Intelligence Services

Under the South African Constitution (Act 108 of 1996), the President may 'establish what intelligence services are required'. Whereas a great deal of detail was accorded to the mandates and functioning of the defence and policing sectors, the Constitution is notable silent on aspects relating to the mandate, structure and functioning of the civilian intelligence dispensation. According to O'Brien (2005:204), the lack of clear definition of South Africa's intelligence services in the Constitution is indicative of the problems that the constitutional assembly encountered in debating the role of the intelligence services and their placement in

the Constitution. The role, mandate and related issues of the intelligence services should have been clearly defined in the Constitution, 'especially given not only their specialised capabilities but also the fact that ongoing events relating to the post-transition intelligence services have clearly indicated that problems exist in their use by the executive' (O'Brien 2005:205).

In any state, intelligence agencies are put in place for the purpose of gathering foreign-, domestic- and military-related information as part of their functions in support of national security. Their activities include conducting covert intelligence operations and keeping files on individuals or organisations. Domestically, however, intelligence services run the risk of infringing on civil liberties and citizen rights whenever such powers are put to use without sufficient reason or adequate controls. Therefore, intelligence services generally have fairly circumscribed domestic roles and powers.

In the context of foreign intelligence, the notion of political intelligence is reasonable as it is in the national interest to have information about the political stability and political affairs of neighbours and states of power or interest. Domestically, however, it becomes difficult to separate political intelligence from partisanship and meddling in domestic political processes. Political intelligence is an ill-defined concept, which is probably central to arguments about the activities a domestic intelligence agency may undertake in pursuit of political stability. Broadly, political intelligence may be described as intelligence concerning the foreign and domestic policies of governments and the activities of domestic political movements and actors.

> Domestically, intelligence services risk infringing on civil liberties if certain powers are put to use without sufficient reason or adequate controls

In the NIA's 2002/2003 annual report, the gathering of political intelligence is recognised as one of the key domains of domestic intelligence work. Political intelligence is defined by the NIA (2003:13) as the monitoring of developments in the political sphere from the perspective of maintaining South Africa's domestic stability and security. Furthermore,

> … typical issues that might attract intelligence attention include political intolerance, inter and intra party conflict of a violent or disruptive nature or, opposition to democratisation. Any instability resulting from transformation in government structures and parastatals, or from social transformation in general, would also attract NIA's attention. (NIA 2003:13)

The 2003/2004 annual report defines political intelligence as a focus on political dynamics to ensure political stability in order that government goals and objectives can be realised both at economic and at

cultural level (NIA 2004:21) without specifying what threats to political stability might entail. Allowing domestic political intelligence to remain prevalent in the national intelligence apparatus makes misuse of intelligence agencies by government or political interest groups and interference in the political life of citizens by intelligence agencies difficult to prevent. As the debate on political intelligence mostly relates to domestic intelligence, one needs to review the legislation that has empowered the NIA to conduct political intelligence operations. The National Strategic Intelligence Act 39 of 1994 (NSIA) defines the functions of the National Intelligence structures such as NICOC, NIA, SASS, DI and CI.

Section 2(1) of the NSIA outlines the functions of the NIA as follows:

- To gather, correlate, evaluate and analyse *domestic intelligence* in order to identify any threat or potential threat to the security of the Republic or its people and to supply intelligence regarding any such threat to NICOC
- To fulfil the national counter-intelligence responsibilities and for this purpose to conduct and co-ordinate counter-intelligence and to gather, correlate, evaluate, analyse and interpret information regarding counter-intelligence in order to:
  - Identify any threat or potential threat to the security of the Republic or its people
  - Inform the President of any such threat
  - Supply where necessary intelligence relating to any such threat to the SAPS for the purposes of investigating any offence or alleged offence
  - Supply intelligence relating to national strategic intelligence to NICOC

Furthermore, the NSIA defines domestic intelligence as 'Intelligence on any internal activity, factor or development which is detrimental to the national stability of the Republic, as well as, threats or potential threats to the constitutional order of the Republic and the safety and well-being of its people'. There is a notable inconsistency in the NSIA in terms of the interchangeability of the terms *security* and *stability*. In the body of the act, intelligence functions are defined in terms of threats to the security of the Republic. In the definitional section, however, domestic intelligence is defined in terms of national stability. This seemingly semantic difference is relevant because *stability* is a far more reflexive and subjective term than *security*. Furthermore, threats to stability are far broader than those to security.

A contentious issue in regard to the mandate of the NIA is that of counterintelligence activities. The NSIA (Section 1) defines counterintelligence as

> … measures and activities conducted, instituted or taken to impede and to neutralise the

effectiveness of foreign or hostile intelligence operations, to protect intelligence and any classified information, to conduct security screening investigations and to counter subversion, treason, sabotage and terrorism aimed at or against personnel, strategic installation or resources of the Republic.

In Section 2(1) of the NSIA, the NIA is charged with the duty to gather, correlate, evaluate, analyse and interpret information about counterintelligence to identify threats or potential threats, inform the executive authority and supply the information to the SAPS and NICOC. In terms of the definition of counterintelligence, however, the NIA is empowered to take measures and actions to counter subversion, treason, sabotage and terrorism. Nonetheless, analysing, evaluating and interpreting information about such threats are far different from being empowered to take action to counter them. The following question needs answering: Without the power of arrest, what activities and measures can the NIA (lawfully) institute to counter such threats?

Interestingly, although the SASS has a counterintelligence mandate outside the Republic, it conducts this function in consultation with the NIA. The NIA is the final authority on counterintelligence matters inside and outside South Africa (Dlomo 2005). Given that allegations have been made against the NIA about a lack of capacity and professionalism and a pursuit of personal interest, statements such as Dlomo's give rise to concern. The NIA has been primarily responsible for the setting of the Minimum Information Security Standards (MISS). Although difficulties with the implementation of MISS had originally been experienced in all government departments, the Minister for Intelligence Services announced that the appointment of security managers trained and supported by the NIA had brought about a rise in the implementation of MISS from 53 per cent in 2004 to 80 per cent in 2007 (Kasrils 2007). The challenge, however, apart from implementing minimum standards, is keeping up with technological developments and being able to effectively counter the latest electronic intrusion technologies.

Coordination of activities

The coordination of intelligence activities presents a challenge to most states. South Africa experienced this challenge in the pre-1994 dispensations of the ANC and apartheid state. In response to duplication, unhealthy competition, poor coordination and the absence of a collective approach to the conduct and production of strategic intelligence (Dlomo 2005), NICOC was established as part of the organisational restructuring of the intelligence sector.

According to the White Paper on Intelligence (1995: paragraph 6.2) and the NSIA (Section 4), NICOC

was established as an interdepartmental coordinating mechanism to 'co-ordinate the activities of the intelligence community' and to 'act as the key link between the intelligence community and policy-makers. NICOC consists of the national coordinator for Intelligence, the directors-general of the NIA and SASS and the heads of crime and defence intelligence units within the SAPS and the South African National Defence Forces (SANDF) respectively. Furthermore, members of other departments can be coopted to NICOC as necessary on a permanent or an ad hoc basis. The directors-general of the Presidency and Foreign Affairs currently participate in NICOC. The coordinator for Intelligence chairs NICOC.

The functions of NICOC, according to the NSIA (1994: Section 4.2), are

- To co-ordinate the intelligence supplied by the various agencies and interpret such intelligence for use by the State and Cabinet in order to be able to detect or identify threats and protect and promote national interests
- To produce and disseminate intelligence that may have an influence on any state policy
- To co-ordinate the flow of national strategic intelligence between departments
- To co-ordinate the gathering of intelligence at the request of any department and to evaluate and transmit such intelligence to the department concerned
- To make recommendations to Cabinet on intelligence priorities

As illustrated by the functions of NICOC, the committee has been given a broad scope of activities. Although the committee has been charged with coordinating intelligence, the law is distinctly vague about what the duty entails and which powers are ascribed to NICOC to fulfil this task. Furthermore, although the term *coordinate* is not defined in the NSIA, *evaluate* is defined as 'the process of determining and assessing whether or not information is possibly correct, probably correct or factually correct' (NSIA 1994: Section 1). Evaluation is generally a task assigned to intelligence operatives and analysts within the agencies concerned. According to the wording of the NSIA, NICOC is charged with the duty of double-checking and cross-checking the accuracy of intelligence supplied by the agencies before transmitting it to the relevant authority. This has important implications for the human and financial resource capacity of NICOC.

As part of the priority programmes implemented throughout the intelligence community since 2004, NICOC embarked on a drive to build analytical capacity. In 2007, Minister Kasrils announced that NICOC had built such capacity through fostering relationships with civil society experts, establishing an association bringing together analysts from across the services to share best practice, and head-hunting additional specialists (Kasrils 2007). Interaction takes place between civil society and NICOC, and civil society experts have been involved in conflict and situational briefings; in addition, representatives from the intelligence community are regular participants in public seminars on various security themes. The results of building the capacity of NICOC through measures such as these have been complemented by the creation of interdepartmental project teams organised around intelligence priorities such as Sudan, Burundi and the Democratic Republic of the Congo. These project teams incorporate representatives from a range of departments, including Foreign Affairs, Defence, Crime and the Treasury (Kasrils 2007). The impact of these efforts to enhance the capacity of NICOC is evident in the growth in range and number of intelligence products from NICOC, which increased from only 38 in 2005 to 271 in 2006 (Kasrils 2007).

Interestingly, although scandals have shaken the South African intelligence community since 1994, none have negatively impinged upon NICOC. However, the requirement for intelligence products to go through NICOC to the President, Cabinet and other clients has clearly not been enforced. As with the Meiring incident during the Mandela administration and the recent Masetlha e-mail hoax, intelligence agencies with politically sensitive intelligence have on occasion approached the President directly instead of utilising the coordinating mechanism, undermining the ability of a key structure to ensure effective governance and prevent politicised intelligence products (Dlomo 2005).

Members of Cabinet and parliamentarians have raised concern that the intelligence agencies still seem uncoordinated; furthermore, there appears to be a fair amount of duplication in the work of the agencies (Dlomo 2005). Unfortunately, coordination will always be a challenge and duplication cannot be overcome as long as the civilian intelligence community is split into two bodies, the NIA and the SASS, and has two directors-general (Dlomo 2005). The Pikoli Commission raised this issue in 1996. The events of 11 September 2001 and the impact of intelligence failures in the United States of America have caused the international community to reconsider the efficacy of the dual civilian intelligence services model used by many states, including Britain and Australia. Furthermore, given the multifaceted, trans-national and trans-boundary nature of security threats in the modern era, one is increasingly unable to separate domestic and foreign intelligence arenas of activity. NICOC's trend towards interdepartmental project teams reflects this reality, and the creation of a single national intelligence agency should be considered.

Without a doubt, the coordination of intelligence is one of the most challenging tasks of the intelligence

community. The creation of the Finance Intelligence Centre (FIC) within the National Treasury and the Directorate of Special Operations (also known as the Scorpions) under the Ministry of Justice present further challenges for the intelligence sector as neither body is compelled by legislation to coordinate activities with the national intelligence apparatus. FIC's task of combating money laundering, for example, should be conducted in conjunction or cooperation with the NIA and crime intelligence. Unfortunately, the tendency to create alternative mechanisms for specific priority areas is often the result of the intelligence community's failure to significantly address issues and creates tension and, possibly, unnecessary competition and rivalry. As a means to overcome duplication and competition, any state agencies involved in the collection and evaluation of security-related information (*security* broadly defined as in national policy) should be incorporated into the NICOC structures by regulation and/or legislation.

Mechanisms of control

The most basic mechanism of control of the state security apparatus and utilisation of state power in a democracy is the rule of law. As illustrated in the discussion on the mandate of the NIA, legislation sets the boundaries for the scope of activities that may be pursued by the intelligence services. The rule of law is an indispensable and fundamental element of democracy, and intelligence agencies derive their powers and legitimacy through effective legislative provisions. Intelligence agencies are subjected to legislative frameworks that provide the mandate and coordination and control and oversight and accountability guidelines for the intelligence community. The legislation that governs the intelligence services needs to be sensitive to the competing dynamics of secrecy and accountability while engendering robust and effective intelligence processes that are able to contribute effectively and positively to policy formulation and decision making. The legal framework grounds the work of intelligence agencies within a system of legal controls and outlines the principles that govern this sensitive area of security activity. However, apart from the legal mandate, compliance by the intelligence services with the Constitution and the rule of law is only partly connected to the laws in existence. Any chain of the intelligence services could misuse its mandate, and the strength of the legislative sanctions lies in the oversight and holding to account of the intelligence bodies by the various levels of authority.

The three basic concerns in the design of oversight procedures are the need to establish mechanisms to prevent political abuse while providing for effective governance; upholding the rule of law; and ensuring the proportionate use of exceptional powers in order to protect civil rights (Leigh 2005:5). These concerns may be addressed through a combination of mechanisms and levels of control, be they executive, legislative, judicial or civilian. The primary objective of the intelligence oversight system is to ensure public accountability for the decisions and actions of the intelligence agencies (Leigh 2005:7). The key questions when considering oversight are the following: To whom should the agencies be accountable? What for? When? The key in considering oversight of intelligence is not that the public should be aware of all intelligence operatives and operations but that along the line, during the intelligence processes and other public service processes such as procurement and recruitment, the actors should be held to account for the public good.

Executive control of the intelligence services

The terms *control* and *oversight* are often used interchangeably. A distinction can, however, be made between the control exercised at executive and administrative level and the oversight exercised in Parliament. Parliamentary oversight is, in fact, an ex post facto process as it is concerned with reviewing the activities of the intelligence bodies. Therefore, control of the intelligence services, in terms of actual management and supervision, occurs largely at the executive and administrative levels.

Executive-level control tends to concentrate on efficacy issues such as the effectiveness of the service in fulfilling its tasks and functions, its accuracy in identifying threats, its ability to provide sound analyses and the adequacy of its capabilities (Caparini 2002b). The main challenge in confronting executive control of intelligence is the principle of 'plausible denial', which is useful for policy makers to deny knowledge and/or authorisation of sensitive or covert activities. Plausible denial is based on the ability of the executive to pronounce with some plausibility that activities were carried out by their subordinates without their knowledge or approval. This practice works against the principle of accountability and insulates decision makers from the consequences of controversial intelligence operations. Furthermore, it reinforces the view that the scope and realm of intelligence and counterintelligence activities have no limits, undermining any semblance of intelligence agencies' serving national interest and being responsive to the needs of the people, and seemingly sanctions the heads of the organisations to conduct sensitive and controversial operations without due regard.

> The most basic mechanism of control of the state security apparatus is the rule of law

In terms of the executive control of intelligence services, the minister should be empowered by national legislation to take responsibility for formulating policy; to receive reports from the agencies; and to approve matters of political sensitivity or undertakings that affect fundamental rights (Born & Leigh 2005:58). The minister can reliably be called to account by Parliament for the actions of the intelligence agencies only when he or she has real powers of control and adequate information about actions taken in his or her name. As Born and Leigh (2005:57) explain,

> Legislation should contain clear arrangements for political direction and, in the case of internal agencies, political independence, to ensure that matters of policy are determined by politicians accountable to the public. It is preferable that various mechanisms be explicit in legislation and be backed up by appropriate legal duties … [A] legal framework in which the respective powers and responsibilities are clear may of itself help to deter abuses and encourage a responsive and frank working relationship.

Intelligence services should be accountable to the responsible minister and, in turn, the minister should exercise control from the government, determining the budget and providing guidelines for the functioning and priorities of the services. In the South African context, according to Chapter 11 (209.2) of the Constitution, the President must appoint a member of the Cabinet to assume political responsibility for the control and direction of the intelligence services. Furthermore, the National Strategic Intelligence Act 29 of 1994 (Section 5 A.1) empowers the Minister of Intelligence Services to 'do everything necessary for the efficient functioning, control and supervision of the coordination of intelligence supplied by the National Intelligence Structures'. Additionally, Section 6 of the aforementioned legislation empowers the minister to make regulations, in consultation with the JSCI, on matters such as intelligence coordination, production and dissemination of intelligence and coordination of counterintelligence.

The legislation does not, however, clearly define the role of the minister in terms of the conduct of politically sensitive intelligence operations or with regard to the authorisation of intrusive surveillance of South African citizens. According to Section 5(A) of the National Strategic Intelligence Act 29 of 1994, the minister may, after consultation with the JSCI, make regulations regarding

- Protection of information and intelligence
- Carrying out of security screening investigations

A lack of specificity relating to the exercise of executive powers in domestic intelligence operations of a politically sensitive nature is evident

- Co-ordination of intelligence as an activity
- Production and dissemination of intelligence
- Co-ordination of counter-intelligence by NIA
- Co-ordination of crime intelligence
- Execution of any other matter necessary for the effective administration of this Act

Although the legislation provides the minister with sufficient powers, a critical lack of specificity relating to the exercise of executive powers in terms of domestic intelligence of a politically sensitive nature is evident.

The listed items relating to matters on which the minister may make regulations is a product of the context in which the legislation was developed and serves as an acknowledgement of the sensitivities involved in legislating control of intelligence in a transitional state. The National Strategic Intelligence Act 29 of 1994 is broad enough to empower executive control sufficiently but is not specific enough to avoid plausible denial.

In terms of the executive control of intelligence services, one area demands closer attention, and it has been highlighted by the recent dismissal of Billy Masetlha from the position as DG of the NIA. Section 209(2) of the Constitution establishes that the President as head of the national executive must appoint someone as head of each intelligence service. The Intelligence Services Act 65 of 2002 regulates the establishment, administration and control of the NIA and SASS and reaffirms the constitutional requirement that the President must appoint a DG who is head and accounting officer for each of the civilian intelligence services (Section 3.3.a and b).

The following table compares selected international practice in terms of the regulation of the appointment or dismissal of directors-general, the legal standard and best practice as outlined in the Born and Leigh (2005:34–36) document and the South African example.

As part of the public service in South Africa, the employ of directors-general for the intelligence agencies is bound by the conditions set out in the Public Service Act 103 of 1994 (PSA). Accordingly, the PSA (3B.1.a) echoes the Constitution in that the President is the executive authority tasked with the appointment of the heads of the intelligence agencies. Appointments are to be made with due regard to equality and other democratic values and principles enshrined in the Constitution (PSA 11.1).

The power to terminate employment also rests with the President (PSA 11.3) but, unlike the rest of the public

Table 1: Regulation of the appointment or dismissal of directors-general

Legal standards and best practice	Australia	South Africa
• Legislation should establish the process for appointment • The appointment should be open to scrutiny outside the executive, preferably by Parliament • The opposition in Parliament should be involved in the appointment • The criteria for appointment and dismissal should be clearly specified by the law	The Prime Minister consults with the leader of the opposition in the House of Representatives before recommending the appointment of a DG (Australian Strategic Intelligence Oversight Act of 1979, Section 7.2) The appointment may be terminated for reasons of physical or mental incapacity, misbehaviour, failure to comply with legislation, extended absenteeism or bankruptcy (Australian Strategic Intelligence Oversight Act of 1979, Sections 13.1 and 13. 2)	The President must appoint a DG for each of the Intelligence Services (Intelligence Services Act of 2002 Section 3A) All persons who qualify for the post shall be considered and evaluated based on training, skills, competence, knowledge and need to redress past imbalances (Public Service Act 103 of 1994, 11.2) The contract between the executing authority (in this case, the President) and the DG should detail the grounds and procedures for dismissal (PSA 4C) The power to discharge rests with the executing authority (in this case, the President) (PSA 17)

Source: Author

service, intelligence agencies are not governed by the conditions of termination as outlined in the PSA, such as ill-health, incapacity, misconduct, misrepresentation or security risk. The failure to clearly establish the conditions for termination of service of heads of intelligence agencies is a highly contentious issue and resulted in former DG of the NIA Billy Masetlha's challenging the constitutionality of his dismissal by President Mbeki in 2006 through judicial processes in 2007.

A further mechanism to avoid any misrepresentations in the appointment or dismissal of directors-general for either of the intelligence services is to utilise parliamentary scrutiny, as in the Australian example above. Currently, no legal requirement in terms of either the Constitution or the PSA entails the involvement of Parliament in the appointment of the directors-general of the intelligence services. Consulting with Parliament or the opposition in such an exercise is relevant: Through consensus-building initiatives, national ownership of the appointment is encouraged; it takes on a national character and removes the perception of partisanship or party favour from the appointment.

Legislative oversight of the intelligence services: the joint standing committee on intelligence

The establishment of a multiparty parliamentary committee to execute legislative oversight of the intelligence domain is a definitive feature of the post-apartheid South African intelligence dispensation. The JSCI, established by the Intelligence Services Oversight Act 40 of 1994, is empowered by the act to fulfil, inter alia, the following functions (Intelligence Services Oversight Act 40 of 1994: Section 3):

• To obtain an audit report on the financial statements of the intelligence services from the Auditor-General
• To obtain a report from the Evaluations Committee on the secret projects reviewed and evaluated by the Evaluations Committee
• To obtain a report regarding the functions performed by the judge designated to authorise intrusive methods of investigation
• To consider, initiate and make recommendations on all legislation pertaining to the intelligence services
• To review and make recommendations regarding interdepartmental cooperation and the rationalisation and demarcation of functions relating to intelligence and counterintelligence
• To order investigations into complaints from the public
• To hold hearings and subpoena witnesses on matters relating to intelligence and national security, including administration and financial expenditure

Making intelligence accountable to Parliament is a high point in the democratic evolution of South Africa. In practice, however, its effective implementation necessarily depends on the vigour and vigilance of the parliamentarians concerned (Southall 1992). Furthermore, the attitude of the minister toward the parliamentary mandate, together with his or her response to the need to be accountable, impacts heavily on the effectiveness of legislative oversight.

As is evident in the above legislative mandate, the JSCI holds a highly influential position for the conduct of oversight of the intelligence services. Publicly available information about the functioning of the JSCI is limited, especially in connection with the IG's investigation that resulted in the dismissal of the DG

for the NIA. However, research reveals that the JSCI seems to be interrogating and holding to account the actions of the intelligence community, including the executive.

One of the key aspects enabling the JSCI to conduct oversight effectively is the multiparty nature of the committee. A concern can, however, be raised in this regard: The objectivity of the JSCI may be threatened by the fact that the President appoints the members and the majority party can hold up to 8 of the 15 seats on the committee. Although current trends do not reveal that the JSCI has faltered in its role, caution can be advised about the committee's maintaining its objectivity and ability to continue to fulfil its essential role in the democratic control of the intelligence domain. Therefore, because of the special nature of the work conducted by this committee and the need to balance secrecy and transparency, one could recommend that a member from an opposition party chair the JSCI. This element, as practiced by the Select Committee on Public Accounts (SCOPA), for example, adds a further dimension of accountability to the mechanism for legislative control.

An issue of concern in the functioning of the JSCI, which has been raised in a research paper prepared by Dlomo (2004:75), is the attendance of meetings and the forming of the necessary quorum. The JSCI is made up of senior members of political parties who often fulfil a variety of functions in their parties and other parliamentary committees. Limiting the number of committees in which members of the JSCI may participate could enhance the ability of the JSCI to focus on and make a contribution to the oversight of intelligence.

A moment of true democratic transparency is celebrated annually in the South African Parliament when the Minister of Intelligence Services publicly delivers his budget speech and members of the JSCI are given the opportunity to respond and highlight issues of concern. On 25 May 2007, the annual intelligence budget vote was hosted and it was noteworthy that the members of the JSCI commended Minister Kasrils on his engagement with the oversight mechanism and the transparency and accountability he practises. Interestingly, the JSCI highlighted some concerns relating to the South African intelligence community, such as the poor public perception of the intelligence agencies and the involvement of elements of the intelligence community in domestic politics, especially in the ANC succession debate. The parliamentarians reiterated that the intelligence services are a national asset and that efforts should be made to improve public trust and increase the services' role, using civic

> The JSCI seems to be interrogating and holding to account the actions of the intelligence community, including the executive

education and training programmes within the services to improve professionalism and non-partisanship.

One should furthermore note the level of concern with which the JSCI regarded the public financial management of the intelligence services. Through public engagements such as this, the JSCI and the intelligence community provide practical examples of budgetary oversight. The JSCI reported on the auditor-general's report and highlighted the lack of compliance by some of the intelligence spending agencies to the Public Financial Management Act, especially in regard to procurement issues. As expected, many of the problems relating to the auditing of the intelligence services result from the funding of secret, covert and sensitive operations.

As with much of the public service in South Africa, capacity remains a problem for the intelligence services. They experience problems in terms of personnel shortages and staff retention. This issue is not unique to the intelligence domain in South Africa, and it continues to haunt much of the public service in general. A further capacity-related concern was highlighted by the JSCI; it relates to the ability of the intelligence community to remain up to date with technology to improve or maintain operational and tactical efficiency.

One of the key points emerging during the 2007 budget vote was the work of the national intelligence community which is often complicated by the need to coordinate and cooperate with other government departments. Examples range from difficulties with border control activities owing to the high levels of corruption within the Department of Home Affairs and problems experienced by the Department of Justice and Constitutional Affairs in appointing a judge to grant warrants for the interception of communications, to difficulties experienced in establishing the Office for the Interception of Communications which requires close coordination with the Department of Communication. The intelligence community is hampered by what may be perceived as other departments' lack of understanding or prioritisation of the role of the intelligence services and the problems of integrating the state intelligence structures into the larger body politic. This was highlighted in July 2007 with the Special Browse Mole Report, which indicated that government departments were using private intelligence services instead of the state agencies.

As indicated, the JSCI is seemingly playing an effective legislative oversight role overall. The success of its role depends on the personalities of the minister and members of the committee and the appreciation of

the importance of legislative oversight. The challenge is going to be to ensure a level of continuity in the functioning of the JSCI when new parliamentarians are elected. Continuity could be ensured by JSCI's maintaining an effective committee support and research team and by its utilising the services of civil society experts and academics to build the capacity of new parliamentarians to understand the intelligence environment and the role of legislative oversight.

Civilian oversight of the intelligence services

A key element of the transformation of the intelligence community in the post-1994 era has been the introduction in law of oversight mechanisms. One such mechanism that deserves further attention is the Office of the Inspector General for Intelligence. The function was established in terms of the Intelligence Services Oversight Act 40 of 1994 (ISOA), and the IG is appointed by the President after nomination by the JSCI and approved by Parliament. The IG is accountable to the JSCI and has the following functions in terms of the civilian intelligence agencies (Intelligence Services Oversight Act 40 of 1994: Section 7.7):

- To monitor compliance of NIA and SASS with the Constitution, applicable laws and relevant policies on intelligence and counter-intelligence
- To review intelligence and counterintelligence activities
- To perform all functions designated by the President or Minister for Intelligence Services
- To receive and investigate complaints from the public or members of the intelligence services on alleged maladministration; abuse of power; transgressions of the Constitution, laws or policies; corruption or fraud

The national intelligence apparatus was rocked with scandals relating to the abuse of position and the misconduct of surveillance operations during 2005. The latter largely revolved around the unlawful interception of telephone calls and the illegal surveillance of prominent business people, high-level ANC members and the parliamentary office of the opposition party, which occurred during the course of now infamous Project Avani. Project Avani was a Political Intelligence National Stability Assessment Project legally constituted under the provisions of the National Strategic Intelligence Act 39 of 1994 and the Intelligence Services Act 65 of 2003. The mandate of the project was 'to gather, correlate, evaluate and analyse intelligence in order to identify any threat or potential threat posed by the presidential succession debate, foreign services interests therein, the impending Jacob Zuma trial and poor service delivery impacts and dynamics to the security and stability of the Republic and its people' (Republic of South Africa 2006:15). Initially, the project did not identify any specific targets

and was conceived as a 360-degree scan of the political horizon.

During the course of Project Avani, physical surveillance operations were launched against at least three civilians, and voice communications of at least 13 people were intercepted. On 5 September 2005, Minister Kasrils received a complaint from Mr Saki Macozoma, member of the ANC National Executive Committee and leading South African politician turned businessman, that he and his family had been harassed by the NIA between 29 and 31 August 2005. Two days later, the minister received an interdict from Mr Macozoma's lawyers to stop the NIA from further disturbing him and his family. On 20 September 2005, the minister formally requested the IG to investigate Mr Macozoma's allegations.

According to the IG's conclusions, the physical surveillance operation against Mr Macozoma was not authorised in terms of existing NIA operational policy, and resources were deployed without proper justification; the operations, therefore, lacked legitimacy (RSA 2006:14). The IG found that the interception of voice communication by means of the National Communications Centre (NCC) was not only a gross abuse of the facilities of the NCC but also illegal as the requisite authority of a judge for the interception of such communications had not been obtained. The NCC focuses primarily on the interception of foreign communications and should not have been used for the domestic interception of bulk voice communication. At the time, however, Masetlha was the Acting Executive Director of the NCC.

The conduct or misconduct of surveillance associated with Project Avani is further complicated by what has since become known as the 'e-mail hoax'. Masetlha is accused of having fabricated a conspiracy through the 'interception' of e-mails that supported the notion of a grand conspiracy against the former deputy president, Jacob Zuma, and the secretary general of the ANC, Kgalema Montlanthe and Masetlha himself.

The investigation by the IG found that the intercepted e-mails, which outlined a political conspiracy, were in fact 'faked mock-ups' (RSA 2006:24). This conclusion was based both on an analysis of the technical feasibility of the e-mails having been intercepted and on an analysis of the style and language used. In other words, the e-mails had not been intercepted but had actually been fabricated.

Masetlha outsourced the interception of the now confirmed hoax e-mails from selected targets to a third party, which is a statutory contravention of intelligence operating procedures, and effectively placed the e-mail surveillance outside the authority of the oversight regime (RSA 2006:18). Furthermore, the

authenticity of the e-mails was not examined as part of Project Avani.

After the investigation by the IG, Masetlha was dismissed as DG of the NIA and a flurry of court cases ensued. This was the first occasion on which the IG had been called into action in such a manner, and the step was taken because of the politically sensitive nature of the Avani debacle; it was a case of trial by fire for the civilian oversight mechanism.

On 23 August 2006, the IG presented a report to the JSCI on the findings on the suspected abuse of the security services during Project Avani. The IG is required by the Intelligence Services Oversight Act to report on his or her functions and activities. After considering the procedures adopted by the IG in carrying out the investigation, the JSCI identified the following important concerns:

• Lack of standard operating procedures for investigations by the IG
• Limited capacity in terms of staff and resources

The establishment of the Office of the Inspector General has not been without challenge, first in terms of finding a suitable candidate to assume the position (and hold office for longer than six months); and, second, now that the IG has withstood the first real trial, in terms of developing the capacity of the Office to fulfil its mandate. The IG is assisted by a staff complement of approximately 10 people running on a budget of R8 million per year (Monare 2004). During the investigation into the Macozoma surveillance, the IG was assisted by staff from the Ministry, notably by a legal advisor. The lack of capacity combined with that of standard operating procedures contributed to the report of the IG's being questioned by certain political elements.

Being charged with the civilian oversight of intelligence is an arduous task that does not invoke envy and requires independence and a high level of trust. These elements have been noticeably absent in the events of the past year. First, questions have been raised as to the independence of the IG, Zola Ngcakani, given his involvement with ANC intelligence structures since 1974. Second, the investigation into Project Avani was described as being partial because of the inclusion of the minister's legal advisor. Finally, the report of the IG was rejected by the ANC National Executive Council, indicating a lack of trust in the oversight mechanisms established by the post-apartheid government.

One should note that the IG is appointed with the approval of two-thirds of the National Assembly, thereby possibly contributing to the selection of impartial candidates. Vigilance is, however, necessary to avoid a theoretic bastion of democratic civil security relations' becoming empty tokenism paying nothing more than lip service to democracy.

Balance between secrecy and transparency

It is often said that secrecy is an inherent characteristic of the intelligence realm and that the intelligence services depend on secrecy to be effective. This assertion is an overstatement rather than a reality. Current international estimates indicate that approximately 90 per cent of intelligence comes from open sources. Intelligence services use all available sources of information and employ open, grey and secret or covert methods. The challenge is to avoid promoting secrecy in areas where it should not be used. In line with democratic rhetoric and in the interests of protecting civil liberties, the use of clandestine methods of investigation should be governed by clear procedures based on criteria enunciated in legislation.

> The challenge is to avoid promoting secrecy in areas where it should not be used

The Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 provides the legal framework for the interception of communications by the South African intelligence services. The law fulfils the abovementioned guidelines and establishes the need, criteria and procedures for the judicial authorisation of warrants. However, in 2007 the JSCI raised the concern that the Department of Justice and Constitutional Development was failing in its responsibility to elect a judge to fulfil this responsibility. Contention arose around finding suitable candidates for the position, but in answering a question on the issue in Parliament, the Minister for Intelligence Services ensured the public that this position had been filled.

The issue of secrecy is intrinsically linked to those of civil liberties and the right of access to information. The secrecy versus transparency dialectic centres on two themes: First, when the security of the state is in contention, it becomes the dominant concern; and, second, democratically, people need to be informed to be able to participate fully in governing the state, an essential precondition for good governance.

In theory, civil society participation in policy- and decision-making processes enhances the legitimacy of decisions and prevents the subversion of state power to personal or group interest. Good governance concerns the relationship between the state and civil society, specifically the way in which power is exercised (Caparini 2002a). Participation as an element of the

good governance agenda emphasises a relationship of trust and dialogue between government and the governed and recognises that citizen participation beyond formalistic expression of democracy, such as periodic elections, is legitimate and to be encouraged (Caparini 2002a).

The intelligence sector is possibly the most difficult one for civil society to engage in, and yet it holds the greatest potential to impinge upon civil liberties and the rights and freedoms of citizens (Caparini 2002a). The challenge for the intelligence services is to overcome the tendency to formalise the bureaucracy of secrecy, which has resulted in an obsession with secrecy. However, the South African intelligence community shows signs of becoming more open to engagement with civil society but severe constraints still remain. Most importantly, in South Africa's constitutional democracy, the onus for justifying the suppression of information lies with those who want to keep it secret. Unfortunately, to date this aspect has not often been challenged in South Africa as civil society and the media rarely challenge the intelligence services in order to gain access to classified information. Recent examples in this regard exist, but they are mostly due to circumstances in which media agencies seek further information about situations of misuse or scandal within the agencies. To stimulate debate on intelligence governance in South Africa, civil society should take an active interest in these matters and should have clarity on the content to which it wants access.

Furthermore, civil society and the media have not fully taken advantage of opportunities to engage with the intelligence community on essential issues. As witnessed with the 2002 legal reforms, there was neither public engagement nor substantial commentary, even when parliamentary meetings were open to the public (Dlomo 2005). During the 2002 processes only one non-governmental organisation, the Institute for Democratic Alternatives for Southern Africa (IDASA) participated. In 2007, the Ministerial Review Commission on Intelligence called for public submissions, and only four were received: those from the Institute for Security Studies, the South African History Archive, the Open Democracy Advice Centre and the South African National Editor's Forum. Recently, the South African media have increasingly been publishing articles on the intelligence sector; unfortunately, the work was largely due to the scandals emanating from within the NIA and their preoccupation with the ANC succession debate and tales of political conspiracy.

The most fundamental challenge to transparency is embedding a culture of openness in the intelligence community and enhancing the understanding of the processes and principles of access to information, especially in terms of the classification and declassification of information. Two consecutive Ministers for Intelligence Services have touted the introduction of legislation with a process for the declassification of information as a goal. This legislation is yet to be seen. Openness in terms of providing the public with greater access to information has the potential to enhance the public perception of the intelligence services.

Key issues and challenges for the South African Intelligence Services

No state intelligence apparatus can be immune from failures because intelligence, like warfare, is not a science but an art (Kruys 2006). For the South African intelligence community, one of the greatest challenges has been to overcome the apartheid legacy of partisan involvement in the country's domestic political arena. In general, the efficacy of the South African intelligence services has not been an item of public questioning. The events of the 2005/2006 Project Avani scandal, however, clearly repositioned the national intelligence structures as a matter for public scrutiny.

Whereas the US intelligence services are often criticised for their lack of coordination, the South African intelligence agencies are ultimately condemned for their inability to overcome the politicisation of intelligence (Kruys 2006) and their failure to break away from internal personal or group political interest. The Minister for Intelligence Services is reported to have admitted that impressing non-partisanship on the South African intelligence community is a continuous battle (Kruys 2006). However, one must stress that any intelligence service will reflect the general properties of the state it serves. The tendency to favour partisan interests in appointments continues to be observed throughout the public sector with cadres who cut their teeth in the liberation struggle being awarded with portfolio and position and access to economic power.

Interestingly, in 1992, Prof Willie Breytenbach, who wrote extensively on security sector reform in the transition, commented that combining the apartheid intelligence services with those of the liberation struggle is not doctrinally feasible, not only because it would create an oversized intelligence bureaucracy

> … but also because it would most likely have a multiplier effect on partisan loyalties where different components end up spying on one another. This implies that instead of

> For South Africa, one of the greatest challenges has been to overcome the apartheid legacy of partisan intelligence involvement in domestic politics

creating a leaner and more coherent non-partisan intelligence service, it could fragment quite easily, and deteriorate into intra-service plotting and scheming. This must be a probable scenario. (Breytenbach 1992)

Often a critic of the poor tradecraft and inferior quality of products of the South African intelligence services, President Mbeki called upon the members of the intelligence services to be 'politically non-partisan' (Mbeki 2005). Tradecraft and the quality of intelligence products can be improved through training and enhanced recruitment practices, but building a non-partisan intelligence service entails a deeper interrogation into the role of intelligence in a democratic South Africa and for an open public debate on the security requirements of its people. For intelligence services to maintain a high degree of efficacy and relevance, they need to be acutely aware of the strategic and political environment in which they operate. Furthermore, they have to be flexible and independent enough to change or run the risk of facing increasing intelligence failures and embarrassing public criticism.

The current political and strategic realities of South Africa are congruent with a need to review the mandate of the intelligence services, with special regard to the NIA's authorisation to conduct domestic political intelligence operations. One may argue that the only way to overcome the perceived partisanship of the intelligence services is to tighten the current mandate of the NIA to limit the involvement of the domestic intelligence body in domestic political affairs.

Part of the challenge of creating a non-partisan intelligence service lies in the political and cultural transformation of the community. According to O'Brien (2005:200), one the legacies of the apartheid intelligence culture is its impact on the state of mind of the individuals responsible for intelligence. It is manifest in the lack of trust among individuals of different political persuasions; in the institutions, especially the NIA and its functions; and in the intelligence products. Furthermore, one should remember that the current intelligence community is the product of the amalgamation of a Soviet-trained liberation struggle intelligence capacity and an undemocratic, highly centralised, militarised and illegitimate apartheid intelligence structure. Both the ANC and the apartheid state used intelligence (*intelligence* here meaning the gathering and use of information to undermine and score advantage over one's enemy) as a critical lever (Africa 1992a). This functional approach to intelligence as a tool to score advantage over *domestic* enemies remains characteristic of the intelligence domain and relates heavily to the manner in which the role of intelligence is conceived in South Africa, the lack of national

consensus and participation in defining this role and the continuing relevance of the need for a domestic political intelligence capacity.

Several key questions about intelligence governance in South Africa need to be considered:

- Question of threat perception–Given the highly complex nature of the South African political environment and the history of highly partisan intelligence services, the definition of threats to the Republic and its people is conditioned by the political intrigue in which the intelligence services find themselves[2]. This situation is complicated by a lack of legislative clarity on threats to stability and those to security, as discussed previously. Furthermore, the intelligence actors have been given a broad spectrum in which to define intelligence priorities and the continuing prioritisation of domestic political intelligence as a legitimate activity of the intelligence community increases the complexity of defining threats to stability.
- Question of the definition of national security–This question is aligned to the first. Although South Africa adopts a broad notion of security in post-apartheid security policy, one finds little national consensus on the definition of *South African national security policy*. The process is currently underway and is being driven by the intelligence community, with the policy reportedly being developed by NICOC. Related to the issue of defining national security is the fact that intelligence always runs the risk of serving powerful groups or personal/group political interest at the expense of the nation at large. Overcoming this inherent tension will remain a challenge for the intelligence community the world over.

Issues that require further definition are the following: First, in a defined security context, what are the roles and requirements of the national intelligence apparatus? Second, when is it necessary to employ covert forces against security threats? These fundamental questions will shape the nature and activities of the South African intelligence community. If issues such as service delivery (or lack thereof) are securitised, the role of the security services in countering the possible threat of instability needs to be clarified. The key question would be the following: When could the state's coercive and covert capabilities be legitimately utilised against the citizens of the state?

- Question of control–Given the history of the security services in South Africa, how should operations be controlled to minimise infringements on civil liberties when covert forces are mobilised against the domestic population? This question relates to the levels of authorisation required for intrusive and politically sensitive operations and includes executive and judicial sanction. Further

issues that arise are controls over the use of funds and the availability of avenues for the public and members of the services to express concern or report abuses. Control and accountability should, however, not become synonymous with bureaucratic inefficiency. Rather, they should be exercised through a multilevel approach with the various oversight mechanisms each contributing to the efficient functioning of the system.

- Question of the future of intelligence–Given the rapidly changing domestic, continental and global political security environment, a fundamental question concerning the future of state intelligence services arises. Already notable is the increasing activity of private intelligence services in South Africa and the Southern African region. This sector is largely unexamined and unregulated in the country. Possibly because of the large number of qualified, experienced intelligence personnel produced by the apartheid security system and a lack of trust in the quality of the intelligence products of the state intelligence apparatus, government departments are reported to be utilising private intelligence services instead of state bodies[3].

Furthermore, initiatives have been launched at regional level in the African Union (AU) to create a more open intelligence-sharing environment on the continent. Intelligence cooperation in Africa has certain implications for the national intelligence agencies and especially for the relationships between the South African and the foreign intelligence community. Furthermore, it has possible significance for the relationships between the South African intelligence community and other African intelligence services. The South African intelligence community is taking the lead on the continent both at AU and at regional level for the establishment of a continental early warning system and other intelligence-sharing activities.

Finally, one needs to note that the priorities of the intelligence community have changed in the altered global political strategic environment. The South African intelligence community is now regularly involved in peacekeeping missions, for instance in Burundi and the Democratic Republic of the Congo; trade negotiations, for instance bilateral negotiations with China and multilateral negotiations with the European Union; peace negotiations, for instance in Burundi and Sudan; and international diplomatic efforts, for instance engagements on the Northern Ireland and Palestine issues. These are not traditional intelligence roles and the specific qualities, capacities and capabilities of the intelligence community continually need to adapt to suit the purposes. The challenge is that much is needed and asked of the intelligence apparatus, and these demands need to be balanced with the necessary skills and resources in a human- and financial-resources-constrained environment.

- Question of rationalisation–It is not uncommon for the intelligence community to be plagued by interagency rivalries. In recent times, South Africa witnessed the creation of parallel intelligence structures in the Presidential Intelligence Unit and the Directorate for Public Prosecutions. A certain degree of tension is inevitable, but a struggle for dominance, as witnessed during the apartheid era, needs to be avoided. The challenge is to create an intelligence apparatus that is appropriate to the security needs of the state and that is adequately resourced, without generating an intelligence monster that could attain the degree of autonomy characteristic of the Botha regime.

Conclusion

While much has been accomplished in the establishment of democratic governance of the South African intelligence dispensation in the post-apartheid years, certain challenges facing these structures remain. Among the potentially most damaging is the subversion of the state security services for personal, group or party political interests. Tension between politics and the requirements of non-partisanship, impartiality and a degree of independence is not unique to South Africa. Overcoming the subversion of intelligence for political or policy needs remains the greatest challenge for intelligence services in democratic South Africa. However, expecting the intelligence community not to be politically driven is unrealistic. The aim is for the intelligence community to operate in a non-partisan manner, serving to the greatest extent possible the security needs of the people of South Africa in a manner consistent with the values enshrined in the Constitution.

Notes

1   When testifying before the Truth and Reconciliation Commission, Major-General Joubert, commander of the Special Forces between 1985 and 1989, listed the tasks of the Civil Cooperation Bureau (CCB) as the destruction of ANC facilities and support services and the elimination of ANC leaders, activists, sympathisers, fighters and supporters. The CCB's work included sanctions busting and the spreading of disinformation and sabotage (Sanders 2006:152–153). Vlakplaas was founded in 1979 as a base for training *askaris*, black South Africans who were to infiltrate liberation organisations, gather intelligence and generally disrupt the struggle. However, the Vlakplaas death squad killings reportedly started in October 1981. Under command of Eugene De Kock, the Vlakplaas death squads were involved in kidnappings, cross border raids and murder. Eugene De Kock was arrested one week after the 1994 democratic elections and is serving a double life sentence.
2   Sandra Africa made a similar argument in 1992 in regard to the future of the South African intelligence services. See Africa 1992b for a full reference.
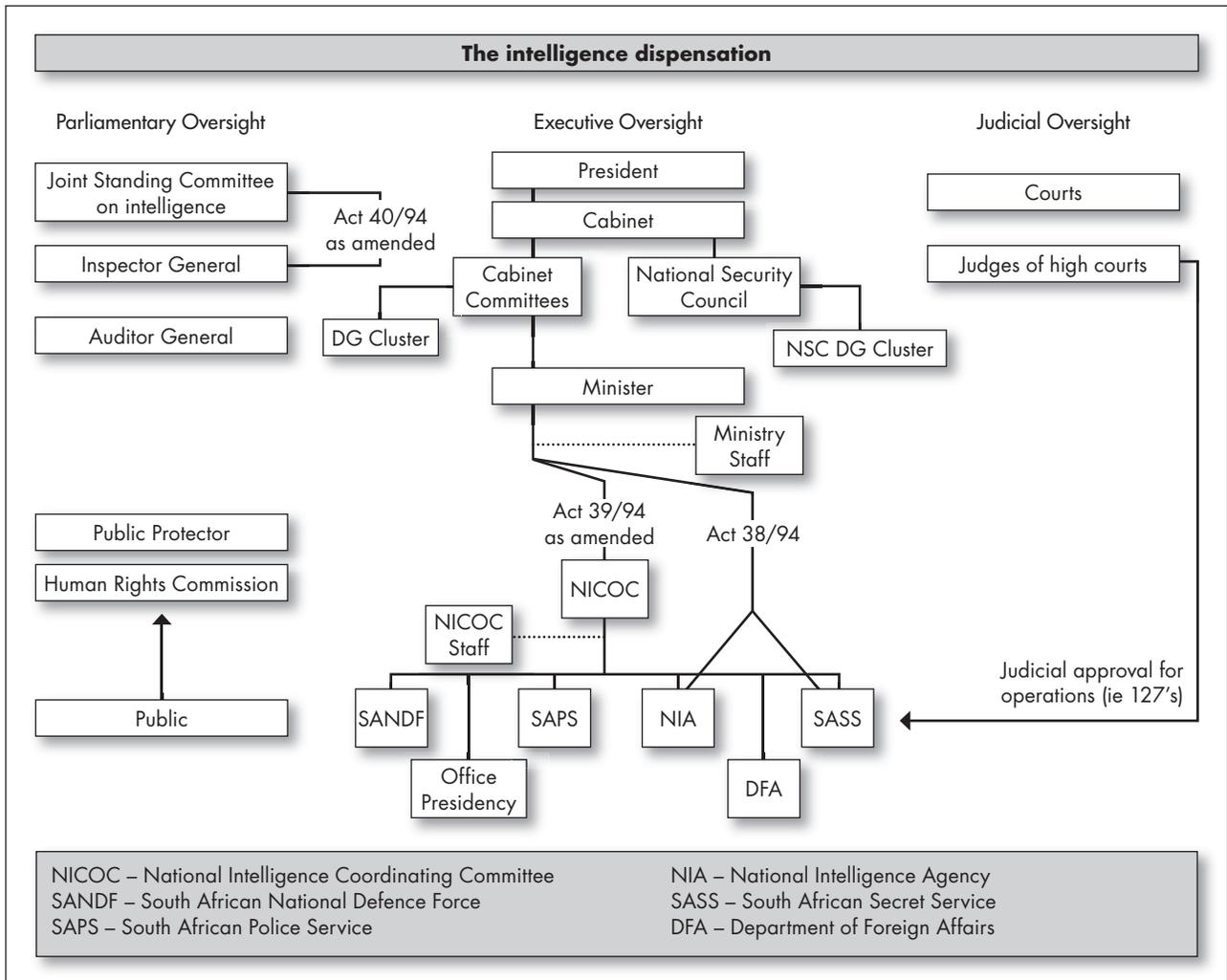
3   See, for example, the government statement on the Special Browse Mole Report available at <http://www.intelligence.gov.za>

Bibliography

Africa, S 1992a. *Intelligence, accountability and democracy: prospects for South Africa.* IDASA Occasional Paper No 5. Cape Town: IDASA.

Africa, S 1992b. The role, prospects and expectations of the TBVC intelligence services during and interim government. *Strategic Review for Southern Africa: Security and Intelligence in a Post-Apartheid South Africa*, October, XIC(2):78–95. Pretoria: University of Pretoria.

African National Congress 1997. *Operations report: the Department of Intelligence and Security of the African National Congress*. Second submission to the Truth and Reconciliation Commission, Part 5. Available at <http://www.anc.org.za/ancdocs/misc/trc2.html> [accessed 23 February 2007].

Air University 1996. *Strategic Assessment 1996: Instruments of US Power.* Available at <http://www.maxwell.af.mil/au/awc/awcgate/sa96/sa96ch06.html> [accessed 4 April 2007].

Born, H and Leigh, L 2005. *Making intelligence accountable: legal standards and best practice for oversight of intelligence agencies.* Oslo: Publishing House of the Parliament of Norway.

Born, H, Johnson, LK and Leigh, I (eds) 2005. *Who's watching the spies? Establishing intelligence service accountability.* Washington, DC: Potomac Books.

Breytenbach, WJ 1992. Security and intelligence structures in 'new' South Africa with special reference to regionalism within the context of the federal/unitary debate. *Strategic Review for Southern Africa: Security and Intelligence in a Post-Apartheid South Africa*, October, XIC(2):23–43. Pretoria: University of Pretoria.

Caparini, M 2002a. *Civil society and democratic oversight of the security sector: a preliminary investigation.* Paper presented at the Fifth International Security Forum, Zurich, 14 to 16 October.

Caparini, M 2002b. *Challenges of control and oversight of intelligence services in a liberal democracy.* Geneva: Geneva Centre for the Democratic Control of the Armed Forces.

Democratic Control of the Armed Forces Intelligence Working Group 2003. *Intelligence practice and democratic oversight–a practitioner's view.* Geneva: Geneva Centre for the Democratic Control of the Armed Forces.

Dlomo, DT 2004. *An analysis of parliamentary intelligence oversight in South Africa with specific reference to the Joint Standing Committee on Intelligence.* Pretoria, South Africa: University of Pretoria.

Dlomo, DT 2005. A review of South Africa's legislative transformation of 2002. In A Lala (ed), *Intelligence in practice: South Africa's transformation.* Shrivenham: Cranfield University, Global Facilitation Network for Security Sector Reform (GFN–SSR). Available at <http://www.ssronline.org/ebooks_pages.cfm?b=8&id=195&p=190>

[accessed 4 October 2007].

Dombroski, K 2006. Reforming intelligence: South Africa after apartheid. *Journal of Democracy*, 17(3):43–57. Baltimore, Maryland: Johns Hopkins University Press.

'Governance debate' 1997. Editorial in *African Security Review*, 6(4). Pretoria: Institute for Security Studies. Available at <http://www.issafrica.org/pubs/ASR/6No4/Editorial.html> [accessed 5 October 2007].

Gregory, S 1997. *Economic intelligence in the post-Cold War era: issues for reform.* Available at <www.fas.org/irp/eprint/snyder/economic.htm> [accessed 12 April 2007].

Kasrils, R 2007. *Emulating the skills of the African spies of yesteryear.* Address by the minister for intelligence services on the occasion of the Intelligence Services Budget Debate, National Assembly, Cape Town, 25 May 2007.

Kruys, GPH 2006. Intelligence failures: causes and contemporary case studies. *Strategic Review for Southern Africa*, 28(1):63–96. Pretoria: University of Pretoria.

Laurence, P 2005. Red Ronnie's faith in the holy trinity, *Focus*, (39).

Mbeki, T 2005. Address of the President of South Africa, Thabo Mbeki, at the Intelligence Services Day 10th Anniversary Awards Ceremony and Inauguration of the Wall and Garden of Remembrance, Musanda, Tshwane, on 24 November 2005. Available at <http://www.dfa.gov.za/docs/speeches/2005/mbek1125.htm> [accessed 5 October 2007].

Monare, M 2004. Spy monitor has no time for political games. *Sunday Independent*, 15 February. Available at <www.iol.co.za> [accessed 15 August 2007].

Monare, M 2006. Rules of the spying game to change. *Pretoria News*, 4 May, p 5.

Nathan, L 2007. *No ownership, no commitment: a guide to local ownership of security sector reform.* Birmingham: University of Birmingham: Global Facilitation Network on Security Sector Reform.

National Intelligence Agency *Annual Report for 2002/2003* Available at <www.nia.gov.za> [Accessed on 23 October 2007]

National Intelligence Agency, *Annual Report 2003/2004.* Available at <www.nia.gov.za> [Accessed 23 October 2007]

Nhlanhla, J 1992. The modalities of combining the SATBVC and liberation movements' intelligence services in a changing South Africa. *Strategic Review for Southern Africa: Security and Intelligence in a Post-Apartheid South Africa*, XIC(2):66–77. Pretoria: University of Pretoria.

O'Brien, K 2005. Controlling the hydra: a historical analysis of South African intelligence accountability. In H Born, LK Johnson and I Leigh (eds), *Who's watching the spies? Establishing intelligence service accountability*. Washington, DC: Potomac Books.

Republic of South Africa, Office of the Inspector General of Intelligence 2006. *Executive summary of the final report on the findings of an investigation into the legality of the surveillance operations carried out by the NIA on Mr S Macozoma. Extended terms of reference report on the*

authenticity of the allegedly intercepted e-mails. Media Briefing, 23 March 2006.

Smith, MY and Stacey, R 1997. *Governance and co-operative networks: an adaptive systems perspective.* New York: Elsevier Science.

Sole, S, Dawes, N and Tabane, R 2006. *Why is Billy Masetlha still at large? Mail & Guardian* [online], 31 March, Available at <http://www.mg.co.za/articlePage.aspx?articleid=268165&area=/ins> [accessed on 23 October 2007].

South African Secret Service 2004. Ten year review report. Available at <www.sass.gov.za> [accessed on 23 October 2007].

Southall, R 1992. Restructuring intelligence in post-apartheid South Africa*. Strategic Review for Southern Africa: Security and Intelligence in a Post-Apartheid South Africa*, XIC(2):1–21. Pretoria: University of Pretoria.

Wilson, P 2005. Intelligence in practice. In A Lala (ed), *Intelligence in practice: South Africa's transformation.* Shrivenham: Cranfield University, Global Facilitation Network for Security Sector Reform (GFN–SSR). Available at <http://www.ssronline.org/ebooks_pages.cfm?b=8&id=213&p=191> [accessed 4 October 2007].

The South African Intelligence Community 2007

The intelligence dispensation

Parliamentary Oversight	Executive Oversight	Judicial Oversight

Parliamentary Oversight

- Joint Standing Committee on intelligence
- Inspector General
- Auditor General

Act 40/94 as amended

Executive Oversight

- President
- Cabinet
- Cabinet Committees
- National Security Council
- DG Cluster
- NSC DG Cluster
- Minister
- Ministry Staff

Act 39/94 as amended

Act 38/94

- NICOC
- NICOC Staff

Judicial Oversight

- Courts
- Judges of high courts

Judicial approval for operations (ie 127's)

- Public Protector
- Human Rights Commission
- Public

- SANDF
- SAPS
- NIA
- SASS
- Office Presidency
- DFA

NICOC – National Intelligence Coordinating Committee
SANDF – South African National Defence Force
SAPS – South African Police Service

NIA – National Intelligence Agency
SASS – South African Secret Service
DFA – Department of Foreign Affairs

About the Defence Sector Programme

The Defence Sector Programme (DSP) focuses on issues relating to security sector governance and civil-security relations. The primary aim of the programme is to strengthen democracy and good governance of the security sector and thereby contributing to human security and development. Focusing on Africa and comparative research, programme objectives are the enhancement of democratic civil-security relations, efficient security management and collaborative defence and security. Programme activities have moved towards capacity building, on a collaborative basis, through our expert workshops with national, regional and continental state and civil society parties.

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Projects

African Security Sector Governance Project

Project objectives include:

- Enhance the accountability of the armed forces and intelligence services to elected civil authorities.

- Enhance transparency in defence and intelligence matters.
- Build capacity of parliamentarians to exercise political control and oversight of the defence and intelligence sectors.
- Build capacity within civil society to monitor the defence and intelligence sectors and to engage in the broader security debate.
- Strengthen constitutional and legal frameworks.
- Build public awareness to encourage public debate on defence and intelligence issues.

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About this paper

The governance of the intelligence sector presents a unique set of challenges to democratic governance and the practice of the principles of transparency, accountability and participation. South Africa has experienced a transition to democracy, which has been accompanied by reforms to the security sector of the state. The intelligence services have not been immune to the deepening vibrancy of the democratic South African state. Mechanisms of control and accountability have been established, and democratic oversight as prescribed by the Constitution is exercised through a parliamentary committee. The reputation of the intelligence community has, however, been tarnished by scandals, allegations of misuse of power and position, partisanship, lack of professionalism and poor-quality intelligence products. This paper seeks to analyse the current state of governance of the South African intelligence community and ascertain whether or not indications of an evolution towards greater accountability, transparency, participation, efficiency and effectiveness are evident.

About the author

LAUREN HUTTON is a researcher with the Defence Sector Programme of the Institute for Security Studies. As part of the African Security Sector Governance Project, she works on broader issues relating to Security Sector Reform in Africa, in particular on the democratic governance and oversight of the security services. In 2007, Lauren began focusing on intelligence sector reform and governance in South Africa and made a submission to the Ministerial Review Commission on Intelligence in this regard.

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