

Changing Intelligence Dynamics in Africa

Edited by
Sandy Africa and Johnny Kwadjo

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Preface

Eboe Hutchful

Engagement with intelligence issues and structures in Africa has to contend with a political paradox. In a context of profound (and ongoing) political change that has left virtually no institution in the public domain unscathed, Intelligence continues to be excluded from both the democratisation and SSR agendas. Intelligence in Africa (and the manifold issues confronting it) has yet to attract much scrutiny or debate outside South Africa – certainly much less than other organisations in the security sector. It appears that at the best of times, the role of Intelligence has been under-appreciated by the public – not least scholars and civil society organisations – while often being misrepresented by politicians and media. Yet, arguably, Intelligence more than any of the security services has undergone profound challenges and transformations over the preceding two decades. After a steep recession in the post-Cold War period, Intelligence has once again been thrust to the forefront of the global public agenda by radically redefined threat environments (political fundamentalism, terrorism, drug and human trafficking, cyber crime and international criminal rings, etc) that place primacy on (and at the same time have sharply tested) Intelligence capabilities.

Thus, the silence over Intelligence in Africa would seem to contrast with the renewed controversies over the role, strategic mission, and governance of Intelligence in the global arena. Intelligence failures associated with the so-called ‘war on terror’ and the Iraq invasion have radiated an impression of hubris and precipitated the largest reorganisation (or reorientation) of Intelligence structures in recent times. Of course, some may well think the resulting cure worse than the disease. In the United States, the struggle against ‘terrorism’ has spawned sprawling new ‘homeland security’ complexes, blurring of mandates between internal and external security (with consequent conflicts over turf),¹ unwieldy new oversight mechanisms,² massive new security funding programmes (often poorly allocated and with minimal oversight),³ intrusive new investigatory and surveillance powers, and legal and judicial processes (or lack thereof) that raise unprecedented concerns for privacy rights and rule of law. On the other hand, these new (or not-so-new) governance challenges should remind us of Lustgarten’s point that historically within Western democracies, such moments of perceived failure and/or abuse of Intelligence have provided the incentive for closer scrutiny and oversight.

This political paradox is rooted in at least three broader paradoxes regarding the present status of Intelligence:

- *The first lies in contending perceptions of power and vulnerability around Intelligence:* African Intelligence organs have long been associated in the public mind with limitless political power, lack of accountability and (frequently) impunity. This is the dominant (and traditional) narrative of Intelligence accepted by scholars as well. Yet there are many anecdotes that point at the same time to the fragile basis of this power and the vulnerability of intelligence organisations to political pressure, manipulation and (worse) marginalisation by prickly political masters. From this standpoint Intelligence agencies appear to derive their power (or lack thereof) from the dispositions of their political overlords. Ironically, both derive power and vulnerability from the same source: the covert character (and political sensitivity) of Intelligence organs, which means that their operatives do not in many countries enjoy the security of tenure that other security services with more ‘open’ mandates

enjoy. One might point to the massive shredding of Intelligence staff in my own country (Ghana) with every political succession from the mid-1960s to the late 1980s to illustrate the insecurity that can afflict careers in African Intelligence.

In turn, these fraught relations between political authorities and their Intelligence operatives is connected intimately with the failure to define the proper scope and legitimate role (and location) of Intelligence. In few African countries has the mandate of Intelligence agencies been set down in law; indeed many intelligence agencies have no legal existence whatsoever. In Ghana, where we now have one of the most progressive Intelligence legislation on the continent, Intelligence agencies did not actually acquire legal status until Act 526 of 1996. No matter: it is clear enough that in the view of African politicians, the predominant role of Intelligence is that of regime security, in which role many intelligence organisations have been little different from political police. This has been responsible for the governance pathologies that have so marked African intelligence agencies. As described by a former Ugandan chief of foreign intelligence, such organs have thus come across as ‘instruments for regime survival rather than for promoting and consolidating democracy and [the] national interest’, defined by their ‘allegiance to the presidential person and political clientelism’. Presidents, in turn, utilise ‘irregular methods of managing intelligence services’, with the result that many African intelligence services remain ‘unreformed, mystified and relatively dysfunctional’.⁴

On the other hand, intelligence agencies are clearly not just tools of errant presidents. Indeed, the first coup in Ghana (against Nkrumah) was classically an ‘Intelligence’ coup, in the sense that it was initiated by the Special Branch and precipitated by a struggle for control over Intelligence agencies. This politicised the profession for the foreseeable future, with contentions around the use of and/or control over intelligence becoming a central feature of virtually every subsequent coup.

This development was not necessarily exceptional or unique. By all indications, Intelligence organs have considerable capacity for autonomous action; in this regard, the misdeeds of Intelligence agencies in recent years (in countries ranging from Peru, Brazil and Mexico to Iran, Zimbabwe and Nigeria) make for breathtaking reading, and include spying on both government and the opposition, extortion, and murder.⁵ Intelligence and secret police agencies (in many countries the distinction between the two is blurred) have functioned as death squads, agents of torture, and political *agents provocateurs*.

If indeed control over Intelligence is at the core of state power, then relations between Intelligence organs and their political masters in Africa would seem to have been highly problematic (if not outrightly dysfunctional); there are many anecdotal reports in the past of presidents not listening to their Intelligence bosses (usually in relation to unfolding coups), and on the other hand of ‘intelligence pedlars’ filing misleading reports (of plots, subversion, etc) designed to ingratiate themselves with their political bosses.

- *Second is the changing spatial dialectics of Intelligence, with the simultaneous constriction and expansion of the scope of Intelligence activity::* As Sandy Africa points out in the Introduction, Intelligence organisations are threatened with loss of their pre-eminence in generating security information and analysis with the rise of competing non-state sources (the internet, civilian research centres and databases, even NGOs and advocacy groups). On the other hand, prosecution of the war against terror has involved the increasing ‘securitization’⁶ of a wide range of private and civil institutions (banks, corporate and commercial databases, even libraries, growing surveillance of public – and not so public – spaces, and of course the incorporation of law enforcement institutions into counter-terrorist structures), greatly extending the traditional range, penetration and meaning of Intelligence activity;

- *Third, Intelligence as both a sovereign and globalised asset:* Virtually as a matter of international consensus, Intelligence issues and organs are perceived as being at the very core of national sovereignty; and thus off-limits to external ‘interference’. At the same time, the reality is that Intelligence agencies are *possibly the most globally networked of all public institutions*, enjoying extensive (and covert) international connections *and as importantly, the only ones not subject to public scrutiny (thanks to strict state security laws) or legal challenge.*⁷ These networks are regularly tapped into by foreign powers, which grant additional incentive to shield these agencies from public scrutiny (one possible reason why Intelligence has been kept carefully off the SSR agenda).

For this and other reasons, Intelligence continues to raise profound governance challenges not only in Africa but also in other transitional polities. One is tempted to attribute this to the fact that Intelligence has not been incorporated into the agenda of democratisation and good governance, and that most African states still lack clear mechanisms for governing intelligence beyond the presidential personage (for instance, few African Parliaments have oversight committees for Intelligence), but this would ignore the reality that even in advanced democracies political control over Intelligence remains far from assured and very much still a work in progress, particularly in regard to covert activity and relationships with foreign agents and agencies.⁸

While the context is different, the challenges confronting African Intelligence are no less daunting. African intelligence organisations face dramatic challenges relating to conflict, refugees and illegal migration, activities of local and transnational criminal networks, political instability, peacebuilding and statebuilding, and democratic consolidation, and there are genuine capacity issues in attempting to carry out these manifold responsibilities that need addressing urgently. To be sure, intelligence has its high-profile aspects (such as fighting terrorism), and indeed the recent glamorisation (or demonisation) of Intelligence has focused overwhelmingly on this element. In reality, it is in relation to its more prosaic roles – as the basis for domestic and foreign policy

and decision-making, and a tool for national security and strategic planning – that intelligence plays its most essential role in the state. In short, good Intelligence is the foundation of good everyday decision-making. And open sources and skilled analysis, rather than so-called ‘covert’ activity, are the key to good Intelligence. Unfortunately, these are also the features of Intelligence that receive the least recognition among African governments.

Change may be slow and limited, but (as these studies document): change there is, emanating both from design and from pressures of circumstance. South Africa has undertaken (yet another) wide-ranging review of its Intelligence structures, and in Ghana a new Intelligence law, incorporating for the first time some legislative and judicial oversight, was introduced in 1996. As important, there is evidence that democratisation has stimulated critical reflection by intelligence practitioners as to their proper role in a democracy.⁹ At the regional level, the formation of the Committee of Intelligence and Security Services of Africa (CISSA) is an indication at least that challenges of cross-border Intelligence coordination are increasingly recognised, as is the role of Intelligence within a framework of collective security.

This book is designed to stimulate the debate around Intelligence and (as importantly) engage African Intelligence practitioners in this process of reflection and change. It expresses the conviction that while governance of Intelligence has never been a greater challenge, at no time have prospects for evolving good governance of Intelligence appeared more propitious. The book itself is a project of the Intelligence Working Group of the African Security Sector Network (ASSN), the membership of which is drawn primarily from the ranks of former career Intelligence officials within the network. The four country studies represent a very modest beginning on which the Working Group hopes to build in the near future, with further country and thematic studies. As with all such endeavours, many thanks are due to a variety of individuals, but none more specifically than our colleagues at the Global Facilitation Network for Security Sector Reform (GFN-SSR) at the University of Birmingham, in particular Paul Jackson, who reviewed the drafts and made many important

suggestions for improvement; Shiv Bakrania who helped to arrange the funding for the publication; and Benedict Kelly, who was responsible for laying out the design for the book.

Eboe Hutchful

Chair, African Security Sector Network

Footnotes

- ¹ See for example 'F.B.I.'s Recruiting of Spies Causes New Rift with the CIA', New York Times, February 11, 2005, A19
- ² For example, the Department of Homeland Security, the most extreme example of this, is overseen by fully 88 Congressional committees.
- ³ 'Handouts for the Homeland', 60 Minutes (CBS), 10 April, 2005.
- ⁴ David Pulkol, 'Role and Importance of Intelligence in National and Regional Security: Challenges and Implications for Security Sector Reform in post Cold-War Africa', paper presented at the meeting of the Eastern Africa chapter of the African Security Sector Network (ASSN), Kampala, Uganda, June 29, 2006, p. 6.
- ⁵ Intelligence agencies reportedly bugged the phones of prominent political leaders in Spain and Australia, and actually plotted the assassination of a Prime Minister in Britain in the 1960s.
- ⁶ As a consequence, the notion of 'security' itself has become so broad that it now encompasses virtually all social, economic, and cultural institutions.
- ⁷ The legal convolutions around the ongoing 'external rendition' trial in Italy are an interesting reference point in this respect
- ⁸ The most recent reminder of this is the Canadian investigation of CSIS for illegally handing over information to American Intelligence in the infamous case of 'external rendition' involving a Canadian citizen.
- ⁹ Johnny Kwadjo, Intelligence Sector Reform and the Democratisation Process in Ghana', Paper Prepared for the ASDR Network on 'Security Sector Reform and Democratisation in Africa: Comparative Perspectives', January 2002.

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Introduction

Sandy Africa and Johnny Kwadjo

A common public perception about modern day intelligence services in Africa is that they are mere extensions of the too-often authoritarian leaders under whom they operate. In some cases, the intelligence services appear to tolerate this perception – some would suggest even fuel it – because of the apparent power, access and influence intelligence provides. As despised or ridiculed as intelligence services might be, they often hold a trump card in domestic and international relations, and are quite aware of this relative advantage.¹

Another view is that intelligence services are ineffectual and irrelevant dinosaurs, and that effective power and influence in society and the state lies elsewhere.² Genuine power and influence may be, for example, in the hands of the armed forces or political parties or whoever controls the disbursement of finances. In this scenario, intelligence services, if they know what is good for them, had better seek accommodation with these elements.

There is a third, alternative and global narrative, one which argues that traditional intelligence services - secret intelligence gathering entities still in their Cold War vestments - are wholly unsuited to anticipating and addressing the complex security threats facing whole countries, regions and blocs. This narrative ponders the proliferation of sources of information and asks whether

innovations in information gathering and dissemination are rendering intelligence organisations as just another resource that must compete with other state actors for resources, respect and the space to perform.³ An extension of this school of thought is that the world in which intelligence services operate is so complex that it will require very different architectures and capacities to make an impact on the kinds of security threats currently faced by countries and the world.⁴

Which school of thought is the most valid: intelligence as the power behind the throne, the mediocre bureaucracy that delivers unhelpful intelligence reports, or the entity that must adapt to the times and constantly reinvent itself to stay relevant and to ensure its survival? Though there has been little critical analysis of the role of African intelligence services – not least because they have tended to operate in the political shadows - there is enough anecdotal evidence to suggest that talk of their pervasive powers is reasonably well founded. And yet a more introspective study reveals a more nuanced picture - their power is wielded at varying times and in differing circumstances, to differing and not always spectacular effect.

In the debate on security sector reform in recent years, intelligence services have tended to be among the last sectors to be addressed. This has extended to the academic and policy debate on the role and governance of the intelligence services, much of it taking place away from the shores of Africa.⁵ The possibility exists that improved governance and therefore optimal utilisation of intelligence will not be fundamentally addressed. These matters can only be investigated where there is adequate understanding of the state of intelligence services by actors wanting to engage in the debate, and in particular, by citizens on whose behalf they purport to act. But so deeply rooted is the notion in African political society that intelligence services have the inalienable right to secrecy; so shrouded in secrecy are their workings and so generally fearful are their societies of questioning and challenging their authority, that a deep, introspective effort is needed to peel away the many layers of confusion, ignorance and mystique that surround these institutions.

The aim of this book is to scrutinise some of the dynamics of the functioning of intelligence services in Africa. Contributing authors describe and analyse the emergence of intelligence services in several African states - their colonial origins, post-colonial characteristics and contemporary challenges. The study is grounded in the work of the African Security Sector Network (ASSN), in particular, its work to promote holistic conceptions of security sector reform that address the control of the military, police, intelligence services, the justice system and other related agencies under democratic forms of governance.

Definitions and typologies

Applying the label “intelligence services” uniformly in Africa, for that matter in other contexts such as the developed world, is problematic enough. In some countries, the more acceptable label for domestic agencies conducting strategic intelligence work is “internal security service”, a label meant to distinguish such structures from those engaged in policing activity.⁶ Compounding the definition dilemma is that some domestic or internal security agencies, aside from whatever strategic role they might play, also have executive powers of detention and arrest, where in other contexts, intelligence services are confined to information gathering and strategic analysis. Because the functional and structural differences among agencies are caused by different political and administrative systems creating different organisational forms, any credible definition of intelligence services must be broad. This is particularly so in the African context, at least in the formerly British-held territories.

As evident in the papers in this collection, intelligence services in Africa appear to follow several typologies:

- Intelligence agencies as an offshoot of policing structures, embodied in the phenomenon of security police, which characterised the colonial period;
- Intelligence agencies as executive instruments usually located in Presidential offices, a favoured organisational form in the immediate post-colonial period;

- Incursions into domestic intelligence matters by the military which reflected the power struggles between police and military. This usually involved ascendancy of the latter over the former, which inserted a military ethos into the intelligence system; and
- establishment of more or less autonomous intelligence structures separate from the military or police and established by legislation, not by executive decision.

The definition of intelligence activity that informs our analysis is a process that involves the collection, collation, evaluation, analysis, integration and interpretation of information on threats to national security. Generally of an early warning nature, it is the particular type of information derived through this process that is normally referred to as intelligence. This is a fairly universal understanding.⁷

Scope of the book

A major section of the book focuses on four countries – South Africa, Uganda, Kenya and Ghana, whose intelligence services have undergone unique metamorphoses in the past two decades. These country studies demonstrate the interconnection between intelligence and political power and assess the extent to which intelligence has been of benefit to the processes of policy making and implementing strategic programmes. The book also explores some areas for a normative agenda for intelligence, which is a timely initiative given that the issue of more accountable intelligence services is appearing, albeit hesitantly, on the democratisation agendas of many countries.

Thematically, and taken as a whole, the book explores the following issues:

- the evolution of the mandates of African intelligence services and their role in policy making processes;
- the defining features of the constitutional and legal frameworks to which current day intelligence services are subject and the limits and possibilities presented by such frameworks;

- the complexity of threats perceived and projected as the rationale for intelligence activity in Africa;
- the capacity of African intelligence services to fulfil their mandates, and how they are responding to competing and alternative sources of knowledge and power available to their governments; and
- the prospects for a normative agenda promoting good governance and accountability of African intelligence services.

The title of the book is a reference to several layers of changing realities that have influenced and are currently impacting on African intelligence services. At the same time, the title suggests that African intelligence services are conscious security actors whose sense of agency at any one time, leads to the choices they make. The layers of reality that this book focuses on are the political dynamics and power relations; the changing security conditions and threats that African intelligence services must address, and the changing normative context – a global human security agenda; pressures from domestic constituencies for transparent accountable institutions; and the multiplier effect of increasing numbers of intelligence services and their mandates being subject to legislative control and oversight, among other factors; these are some of the changing dynamics that the authors have attempted to describe and analyse.

Changing political dynamics and African intelligence services

The political dynamics at any one time have had a lasting effect on the nature, role and impact of African intelligence services. These intelligence services have to a large extent emerged in the context of imposed post-colonial constitutional and legal frameworks. Boinett, in his contribution, paints a rich picture of the role of intelligence in traditional African societies, and of how these systems came to be dominated and redirected to serve colonial interests. Few would disagree that this went hand in hand with other machinations of colonial rule. As Okola-Onyanga remarked, “...The overt and immediate antagonism to colonial rule in Kenya led to the necessity to sidestep most traditional organs of traditional authority and to the selection of individuals who were more pliable to the objectives of colonial rule”.⁸

But as we shall see, conscious political choices have also shaped their direction and roles. In our four country studies, post-liberation political systems have inherited some of the features of the British Westminster system, but also contained strong elements of executive control. Thus, elected parliaments with authoritative executive heads at their helms were more or less the order of the day. Much power was centralised in the hands of the President, who was often the head of the political party in power. Political representation and influence tended to arise as a result of influence within the political party system, not as a result of popular constituency support. This was an ideal breeding ground for the political partisanship that intelligence structures invariably became subject to.

In the post-liberation periods, the former colonies tended to adopt the same legal frameworks for early intelligence activity, namely a branch within the police that continued the role of social and political control – the mandate associated with domestic intelligence or internal security structures. More innovation was evident around how African states positioned themselves to understand the international environment. Realising the constraints of the inherited “Special Branch”, one of Nkrumah’s first initiatives in Ghana in 1958 was to establish a separate institution, the Foreign Service Research Bureau, to gather external intelligence. The aim of the Bureau was to support the government’s strategic vision of radical Pan-Africanism – a vision that involved active military, economic, financial, political and diplomatic support for liberation and independence movements across Africa, opposition to Western imperial interests on the continent and the development of a non-aligned bloc of countries. The Bureau, initially under the control of the Ghana Foreign Ministry, posted officials abroad under the cover of regular Ghanaian diplomats. Operational control of its activities was exercised by the Presidency. Later, as Kwadjo writes in his contribution in this book, as the issues became more complex, an elite corps was established (carved out of the Bureau) and located directly in the President’s Office.

Significant reform of the intelligence sector in all four country cases came about only after protracted civil conflicts, in which the politicised role of the intelligence services was clear for all to see. Such reforms were an extension of constitutional reform or at the least generated the opening of political space. In South Africa, Kenya and Ghana, there are now elaborate laws providing for the establishment, mandates, and powers of the intelligence services, the supervisory/oversight roles of the Executive and Parliament and how they are to be resourced. This is an advance; the book's country studies indicate to what extent these legal frameworks have enabled public participation and debate and to what extent constraints still exist. At least one of the studies – the Ghana case – assesses the extent to which the specificity of local government has been taken into account in the devolution of intelligence powers. Kwadjo describes Ghana's decentralisation of intelligence activity and accountability to local governance structures and the ensuing consequences for the threat focus of intelligence structures. The shift in attention from the centre to the regions or districts not only generated changes in priorities, but also the unintended involvement of the intelligence structures in traditional police duties. As a result, local involvement in intelligence has come to play an important, not unwelcome conflict-detection and management role, as the alternative might have been an escalation of local problems into violence.

The book discusses the intelligence capacities of both larger, more established states and those of smaller and weaker states. Sometimes such states exist in a regional context, as is the case in the Great Lakes region. Here stronger states (Tanzania, Uganda) coexist with smaller ones (Burundi, Rwanda). Sometimes the size of a state does not necessarily translate into strength; the Democratic Republic of Congo is geographically large, but its state formations are relatively weak and in need of further development.

Changing security dynamics and African intelligence services

Changing security conditions, or at the very least, decision-makers' perceptions of these dynamics, determine the agenda of an intelligence service. During the period of the Cold War, the interests of African countries were by and large tied to the interests of their foreign powers allies. African states, to put it bluntly, were dependent for material support on one or the other Cold War ideological bloc and tailored their domestic politics to suit these needs.⁹ Domestically, the pressures to maintain coherent state formations - delivering social services, sustaining viable economies and promoting (or suppressing) political participation - were additional drivers of the security assessments and choices made by African governments. Those countries aligned to the West saw their intelligence services trained and supported by western countries and their intelligence collection priorities reflecting the interests of the West. African countries aligned to the Soviet or Chinese power blocs found their economies tied to the fortunes of these countries. In South Africa, the intelligence services had close ties with the services of the United States, Europe and Israel, whose economic interests in the country were sufficient to rationalise intelligence partnerships that allowed the apartheid regime to remain in place for many decades.¹⁰

In the countries under review, governance in the immediate post-colonial or liberation period generally coalesced around these Cold War factors and was marked by a high degree of public interest in governance performance. A degree of nationalist feeling - buoyed by the Africanisation of the institutions of state, may initially have been present – Ghana under Nkrumah and South Africa under Mandela are cases in point. Yet in other cases, it was the tactics of divide and rule, and not an inclusive nationalism that formed the backdrop against which insecure regimes gained their independence. Uganda was such an example. Here the slippery road to intelligence promoting a narrow, regime-centred security was virtually instantaneous.

For a number of reasons, the failure of African governments to meet public expectations caused them to become increasingly defensive and to regard public dissent as threatening. Foreign powers inserted themselves into this anxiety complex, offering development aid or loans that tied the African states into a system that surrendered their natural resources and to a large extent, their political autonomy and sovereignty. For many new regimes, public interest in political life itself became a source of regime insecurity. Laws evolving under these conditions tended to restrict personal freedoms and close down the space for political participation. And the security institutions, most notably became notorious for the vigour with which they suppressed and undermined the rights of opponents of those whom they served. Their methods were generally draconian: detentions without trial with detainees denied access to lawyers and family; beatings and torture; undisguised surveillance and harassment, and even political assassinations.

In the post-Cold War period, the ideological rationale for intelligence partnerships was removed significantly. The question posed by some was whether, with the end of the Cold War, there was still a need for intelligence services as constituted. This rather optimistic outlook was short-lived. New threats to security began to emerge as focus areas for intelligence services: post-conflict civil wars, genocide, transnational crimes such as money laundering, international terrorism, the smuggling of people, drugs and arms and political extremism. Many western countries, as well as non-African states who are part of the South-South complex, have sought out African states as intelligence-sharing partners. The cross-current of information and technical and training exchanges that are now part of the intelligence landscape are a reflection of the international character of many threats. In addition, as a result of the growing gap between African political and economic elites on the one hand, and their countries' populations on the other, socio-economic conditions have generated civil tension that intelligence services have been required to address.

In fact, as the book demonstrates, persisting poverty and real or perceived political exclusion have led to violent and intractable civil wars, military coups and other violent conflicts. In the period from the mid-1990s, Africa was thought to be entering a golden age of democratisation, where orderly constitutional processes promoting elected governance would replace the chaos of earlier times. This happier state of affairs was due, in large part, to donor communities insisting that donor support would be tied to demonstrable improvements in governance. Nonetheless, political conflict and civil wars continue to be an ongoing source of insecurity; thus resolution of these conflicts has become the focus of dozens of intergovernmental bodies and regional political and economic communities. Intelligence services have found these conflict and post-conflict scenarios are now a major focus of their attention, as it has increasingly been demonstrated that the troubles in one neighbouring country are bound to impact on another's domestic stability.¹¹

That security threats can seldom be contained by national borders underscores the need for the intelligence services to operate in a regional context and cooperate with other services to achieve commonly-identified solutions. In situations where conflicts of interest exist between countries, different policy agendas could be reflected on the ground. It is difficult to attribute outcomes to intelligence services when they operate in so much secrecy, but the question arises whether there is any room for intelligence services to manoeuvre and whether they can in fact rise above conflicts and provide “without fear or favour” objective intelligence that advances a citizen-sensitive policy agenda.

The changing normative dynamics around intelligence services in Africa

The behavioural norms and standards of conduct of intelligence services in Africa remain sensitive issues. Even when it is an open secret that intelligence services act with impunity in their dealings with citizens, this may draw little if any criticism from other governments or their intelligence services, even those that have undergone some reform. This is because intelligence is still largely about “interests” to the exclusion of all else. There seems to be an

unspoken understanding that intelligence services should keep their own houses in order, and not interfere in the affairs of others. This apparent interpretation of the right to sovereignty is increasingly subject to debate and contestation. The right to protect (“R2P” as it is already fashionably known), has recently appeared in the lexicon of the United Nations.¹² This notion holds that states – in partnership with the international community - have a duty and responsibility to protect their citizens from abuse and impunity.

Already the notion of security sector accountability had begun to translate into concrete measures in country security systems. The oversight of the intelligence services, the need for them to abide by the rule of law, and the requirement that the methods of intelligence gathering do not infringe on citizen liberties, is gaining prominence. In the international community, there is a move towards coherence in what is expected of intelligence services, which are being included in holistic conceptions of the security sector in platforms and conceptions of security sector transformation or reform. In 2008, the United Nations went as far as establishing a high-level Unit for Security Sector Reform (SSR) under its Office for the Rule of Law.¹³

Among African intelligence services, the culture of excessive secrecy is still the norm, making it very difficult for members of the public to insert themselves in the value chain – debating what constitutes a threat to security, and how to address the threats; holding the intelligence services to account; assessing the performance and effectiveness of the services to the extent that it is reasonable – as examples. Not surprisingly therefore, intelligence still associated with regime security rather than human security and the promotion of development. Yet the history of African countries suggests strongly, that instituting mechanisms of regulation and accountability of the intelligence services would be in the interests both of the intelligence services – which would enjoy the spin-off of institutional legitimacy – and society more broadly – which would have dependable and non-partisan professional services to entrust their national security to. It is remarkable, given the obvious win-win possibilities, that there is such ambivalence about moving in this direction. The example of

countries that have begun to insist on accountability does demonstrate that there are profound questions to be dealt with along the way. But in an increasingly uncertain world, where the threats are life-threatening and serious, the need for competent and effective intelligence services on the African services could not be more urgent.

The African Union has begun to forge common, value-driven approaches to questions of peace and security. These are meant to tie in the security actors of different states into mutually binding goals and programmes. The intelligence services must surely be at the heart of these, seeing that the success and failures of these operations, are contingent on reliable intelligence. The danger of a lack of core values means that intelligence services might do anything, for trade offs. It is therefore in the interests of peace and security in Africa, to welcome an open discussion on the norms that should govern intelligence conduct.

The papers in this book all suggest, in their own ways, that the time for debate on an appropriate normative agenda for African intelligence services is overdue. Some promising work has already begun, some of it at the instance of African intelligence services themselves.¹⁴ This potential can be further exploited if the will to interact persists, and as the interaction revealed, if the professionalisation of the intelligence services is standardised, with countries adopting each others best practices. Though it has much to learn from maturer African states, South Africa's example of multi-party parliamentary oversight has been a source of inspirations in the direction of improved oversight on the continent. The South African experience though is not perfect and has been the subject of some concern and critique, as both Africa and Nathan point out in their contributions.¹⁵ On the other hand, South Africa being the much younger democracy – fifteen years in relation to Ghana's forty years for example – would do well to take note of the cycles of change which the intelligence systems of maturer countries have gone through, lest it find itself walking similarly woeful paths.

The papers in the book all attest to the power of personal agency. Not only have several of the authors been personally involved in the critical intelligence reform processes in their countries, they also are revealing in exposing the role of various personalities that have enhanced (or not) the reputation of the intelligence profession over time. This suggests that even today, strong leadership and a vision of accountability and good governance, even if championed by the few, can gain momentum to the point of becoming an institutional norm.

The structure of the book

This book consists of eight chapters. Following the Introduction (Chapter 1), four country studies are presented. As stated earlier these studies are of reform of the intelligence systems of Kenya, Uganda, South Africa and Ghana (Chapters 2–5) Then follows a critique of the role and interconnected destinies of the intelligence services of the Great Lakes Region (Chapter 6). The next chapter (Chapter 7) is a commentary on the intelligence mandate of the National Intelligence Agency in South Africa; this is a timely critique because control of the intelligence services has recently been the subject of a review commissioned by a former cabinet minister for the intelligence services. Finally, Chapter 8 attempts to distil an analysis and trends, and suggests an agenda for further research and advocacy.

Footnotes

- ¹ See for example, Quantson K. (2004) *Bogus Informants...Nation Wreckers*. Accra:Napasvil Ventures. This is a fascinating partly autobiographical account of how successive ruling elites in Ghana have tended to resort to labelling opposing voices “nation wreckers”, and turning the might of intelligence and security machinery against them.
- ² In the policy studies literature, the argument is articulately stated in McCartney, J. “Intelligence and bureaucracy” in Kozak D. & Keagle, J (eds.) 1988, *Bureaucratic politics and national security: theory and practice*. London: Lynne Rienner Publishers. After 1994, such cynicism about intelligence was repeatedly expressed in South Africa by the media, political analysts and even some politicians who contended that intelligence could not possibly be a priority in a post-apartheid, post Cold War world, as South Africa faced no credible threats. During budget votes in Parliament, several cabinet ministers appointed to oversee the intelligence services expressed the view that the resources allocated suggested that the country did not appreciate the role of the intelligence services.

- ³ See for example, Todd. & Bloch, J. (2003) *Global intelligence: the world's secret services today*. London, New York: Zed Books.
- ⁴ Looking at another geo-political context, Williams, K and Deletante, D. (2001) *Security intelligence in new democracies. The Czech Republic, Slovakia and Romania*, Hampshire, New York: Palgrave.
- ⁵ Good examples are: Lustgarten, L. & Leigh, I. 1994. *In from the Cold. : national security and parliamentary democracy*. Oxford: Clarendon Press; and from an earlier period, Turner. S. (1986) *Secrecy and democracy. the CIA in transition*. London: Sedgwick.
- ⁶ In Oloka-Onyanga, J. 1990. "Police powers, human rights and the state in Kenya and Uganda: a comparative analysis" in *Third World Legal Studies – 1990.(Police, security Forces and Human Rights in the Third World)*,INTWORLSA, the author discusses traces the complex and often blurred character of security force mandates to the sociological and historical emergence of the coercive apparatuses of post-independence states.
- ⁷ Text book definitions can be found in the works of writers such as the American Roy Godson, who in the 1980s published a volume of titles on intelligence, covering matters such as clandestine collection, covert collection, and counterintelligence.
- ⁸ Okola-Onyanga, J. op.cit.
- ⁹ See for example, Ray, E. 1979. *Dirty work 2: the CIA in Africa*. Secaucus, NJ: Lyle Stuart.
- ¹⁰ Saunders, J. (2006) *Apartheid's friends: the rise and fall of South Africa's secret service* London: John Murray (Publishers).
- ¹¹ See Cawthra, G. & Luckham, R. (2003). *Governing insecurity: democratic control of military and security establishments in transitional democracies*. London, New York: Zed Books.
- ¹² See International Commission on Intervention and State Sovereignty (ICISS). 2001. *The Responsibility to Protect*. Ottawa,:ICISS. The United Nation Secretary General has recently published a report exploring the implications of the right to protect for the governance norms of the UN. The concept has generated hope, controversy and challenges in Africa. , See the analysis provided in Kindiki, K 2007. *Interventions to protect civilians in Darfur: Legal dilemmas and policy imperatives*. Pretoria: Institute for Security Studies Monograph series.
- ¹³ The first person appointed to head this office is Dr Adedeji Ebo a respected analyst and academic on security matters, and prominent member of the African Security Sector Network.
- ¹⁴ The Committee on Intelligence and Security Services of Africa (CISSA), a body consisting of the heads of intelligence services in Africa, made tentative overtures to civil society organisations when it invited the African Security Network and other organisations to its annual conference in 2008. The conference, hosted by the South African intelligence services, allowed civil society to engage CISSA on the question of a Pan-African security agenda.
- ¹⁵ See Hutton, L. (ed) 2009. *To spy or not to spy: Intelligence and democracy in South Africa*. Pretoria: Institute for Security Studies.

The Origins of the Intelligence System of Kenya

Brigadier (rtd) Wilson Boinett

Introduction

History tells us that intelligence in some way or another is as old as man; even the most primitive people practised the craft of spying. Gathering of intelligence can claim scriptural authority.¹ Moses sent agents to spy in the land of Canaan - and spies are with us today.²

The importance of intelligence in the fortunes of any nation cannot be overstated. Its existence or absence may spell the difference between victory and defeat. The fate of a nation may well rest on accurate and complete intelligence that serves as a guide for decision making on policy and action in a troubled world.³ That is why the role of intelligence in our critical times has become more crucial than ever before.

The first person to analyse and develop a textbook on espionage was Sun Tzu, the author of *Ping Fa* or *Principles of War*, which is said to have been written sometime between 476-221 BC.⁴ Subsequent treatises on war pay intelligence its due as a pillar of a community's or nation's efforts to defend itself and preserve its geographical, political and social identity. In spite of this,

contemporary study of intelligence and security systems, whether theoretical or operational, is relatively limited. Current research and writing on intelligence tends to concentrate on Western systems and rarely addresses intelligence in Africa.

The meaning of the word “intelligence” varies among people and even within governments. In certain contexts, it connotes information needed or desired by government in order to pursue its national interests. It means information or news concerning an enemy or possible enemy or an area of an agency engaged in obtaining such information. It includes the process of obtaining, evaluating, protecting and eventually exploiting the same information. It also encompasses the defence of government’s institutions from penetration and harm by hostile intelligence services. The term is also used to describe mechanisms and the bureaucracies that accomplish these activities. Hence, intelligence is knowledge, organisation and process (Roy Godson 1983). Its four major disciplines (analysis, collection, counter intelligence and covert action) are interdependent. (Ndeda, 2006:13).

In this paper, the words “spy” and “espionage” are used interchangeably with the word intelligence. To *spy* means to watch secretly, usually for hostile purposes, to search or look for intensely. Hence, a spy acts in a clandestine manner to obtain information in the zone of operation of a belligerent, with the intention of communicating it to the hostile party. *Espionage* is the practice of spying or the use of spies to obtain information about the plans and activities of a foreign government or a competing company. This could lead to covert action, which is a clandestine activity designed to influence events in a foreign land either through low-level placement of propaganda or an attempt to overthrow a government deemed to be unfriendly. There are two types of espionage: the first is human intelligence, which involves sending spies into a group or country or suborning individuals working for a target group or nation. The second is cryptology, which is the interception and decoding of coded or ciphered messages.

The origin and development of intelligence in early Kenya relates to the geopolitical conditions of the time. Spies were an integral part of efficient administration and a sound and strong foreign policy; it kept leaders posted on activities and operations of political adversaries and disloyal and disgruntled elements of society. Espionage was considered an indispensable facet of diplomacy and was governed by certain definite rules and usages. People and communities were watched by spies who operated under the guise of artisans, craftsmen, actors, beggars, acrobats and so on.

All African communities had some form of intelligence systems which enabled them to know the strengths and weaknesses of their neighbours and thus determine the nature of their co-existence with neighbours. Intelligence was also significant in surveys of land for possible occupation, either peacefully because it was empty land or by forceful means because it was fertile and well-protected. In most communities, individuals around the age of 40 to 45 were used to gather information, particularly by false pretences. In pre-colonial times, spies operated on the “cover” that they were merely moving to unknown territory to herd cattle in the neighbouring communities’ pastureland or visiting to seek treatment or some other form of help. Even herdsmen, ‘madmen’, and ‘strangers’ pretending to have lost their way were used to gather information.

The information they were expected to gather were on their opponents’ weapons, their strong men and information on their security and warriors. These spies reported to the community’s elders, who were trusted and quite secretive. With very fluid borders and the acceptance of individual strangers to live within the communities, information was easily obtainable. This intelligence was basically military; it facilitated logistics and initiatives for collaboration between African community and its neighbours. It sometimes led to collaboration schemes among communities that produced agreements or peace treaties. For instance, the sour relations between the Luo of the Gem and Seme clans showed evidence of such collaborative schemes (Schiller, 1914:265-275).

Thus, pre-colonial African communities developed a credible intelligence system with which to live cooperatively with their neighbours and, if necessary, protect themselves from incursion or attack by their enemies.

19th century African intelligence and early European contacts

These links among communities cemented by well-organised intelligence systems provided the first news that there were foreigners in the land. Word spread that these aliens were very dangerous: they had many guns and were capable of killing many people.

Response to this alien penetration was diverse and depended upon the perception of the individual community. African leaders had four choices. First, they could meet directly with the aliens and try to discover what their intentions were and accommodate them. Second, they could send servants, tenants or other intermediaries to deal with them. Third, each clan could simply deal with the aliens in an individual and piecemeal fashion. The final strategy was overt opposition, especially if elders saw the possibility of spoils. This was exemplified by the behaviour of the joUgenya and joUyoma in Nyanza Province. (Ndeda, 2006:52).

The Nandi clan did not allow foreigners to enter their territory without express permission. In 1895, they became aware of the British presence when traders Dick and West traversed that area; the Nandi immediately attacked them. (Even before this, the Nandi had become aware of the impending arrival of the foreigners through prophecy. Kimnyole, a 19th century Nandi seer, prophesied that a foreign people would come and rule the Nandi and that one day there would come a big snake from the eastern Lake (the Indian Ocean) belching fire and smoke and quenching its thirst in the Western lake (Lake Victoria). When in 1901 the railway “snake” reached Lake Victoria in 1901, the Nandi became acutely aware of the probability of their being ruled by a foreign people.)

The Kamba clan, on the other hand, were already traversing the central and coastal areas as long-distance traders and gathering information for their leaders. The Akamba maintained a strong hold on the trade routes between the coast and Ukambani. By the 1880s, the Kamba were confronted by a new group led by the Imperial British East African Company, whom they blamed for the calamities that befell them soon after. Some Kambas became sources of information for the British.

There was no way the colonial government could have simply arrived and established its control over the indigenous people; they had to depend on some form of intelligence information by which to develop their system of control. Initially, the most useful sources of information for the British were the Swahili and Arabs, who had travelled upcountry before and had established links with local communities. They linked the British to the same people. After initial interaction, the British also established relations with porters and interpreters, who also became valuable sources of information.

The British colonists hired a motley crowd of mercenaries who served as porters, guides or *askaris*. They initially provided only information, but later served as chiefs in the local communities, where traditional leaders were simply ignored. This means that most of those who became chiefs were opportunists who were never a part of the time-honoured, traditional African community leadership structure. This pattern was evident among the Kikuyu, Embu and Kamba. Missionaries also became a significant source of intelligence information.⁵

Some communities that collaborated with the British actually initiated the contact. For example, the Mukseru Gusii sought the help of the British because the Kitutu were threatening their very existence. This persistent threat caused them to scatter between the Luo and other Gusii clans. When they heard of the British and their military strength, they appealed for help and sent a delegation to Kisumu in November 1900. This pattern of approaching the British for help in defending clans from others was replicated in many areas in Kenya.

The colonial system did not totally destroy existing networks; instead, it used them to construct a new intelligence system. Initially, the primary British security interest was the Buganda road. By the 1880s, they established three food-buying stations – the Machakos, Fort Smith and Mumias – which became the bases of conquest or contracted friendships. Among the Kikuyu, the British depended on Waiyaki, and later Kinyanjui in the South, Karuri in the central region and Wangombe in the north. All had come to prominence due to their trade connections. The initial benefits of collaboration with the British were related to trade; however, the majority of these collaborators later assumed significant roles in the entrenchment of colonial rule.

Thus, until the British could establish an effective intelligence system to protect its colonial rule, they had to depend on the pre-colonial intelligence gathering system. Initiation of this new system would also take some time, because the British were in the process of merging intelligence and police knowledge from Britain and India.

Development of colonial intelligence

The colonial government instituted some form of intelligence gathering system very early by developing a number of information sources - tourists, missionaries and adventurers, to name but a few. The information they gathered was on the type of people they were to colonise, whether these people could be administered peacefully or if there would be need for force to administer them. The colonial government employed their own intelligence gatherers, who could not divulge information to the Africans on their intentions. The number of Africans involved in this early quest for intelligence was very few. Also, very few Africans were aware of the existence of this emergent colonial intelligence system.

After the British occupation of the East African Protectorate in 1895, the British chose to go to the local level to organise its information gathering about the African people. District Commissioners (DCs), Provincial Commissioners and retainers were recruited in this effort. Sources of information varied from the

missionaries and other white people to African allies and collaborators. At the local level, individuals who gathered information were referred to as “collectors”.⁶ Reports of all sorts abounded, but they were mostly from civil servants, such as C.W. Hobley, Mombasa’s Deputy Commissioner.⁷

As of 1906, intelligence reports were submitted to His Excellency the Commissioner and Commander in Chief of the East Africa Protectorate from the sub-commissioner’s office.⁸

These reports discussed administrative problems, politics and general society issues, native tribunals, civil and criminal cases, labour, public works and communications, agriculture, meteorology and military and other matters or events of importance. Before 1906 intelligence reports comprised descriptions of local communities, including information on tribal laws, chiefs, customs, boundaries, religion, food, villages, arms and weapons.

Security was also a crucial factor for the colonists.⁹ The British East African Police was established in 1902; for the next 18 years the force was also used for intelligence and it was within the structure of the police that official intelligence would eventually be situated. Legislation governing the police up to 1906 had been taken from the Indian Police Act (1861) and the Indian Railway Act (1890). There was a veritable spate of legislation enacted during 1906, the most important for the force being the Police Ordinance (No. 23 of 1906).¹⁰ The Police Ordinance of 1906 legally constituted the Kenya Police.

Police duties involved all and sundry. A police officer was expected to be a jack-of-all-trades.¹¹ While intelligence was not yet well-organised, the police engaged in intelligence information gathering.¹² It is difficult to isolate the police and the functions of policing from the broader fabric of colonial rule. Similarly, it is significant to fix the whole notion of the acquisition of intelligence information, as David Anderson argues, as within the rubric of policing the empire.¹³ Because of the political and economic requirements of colonial rule, all agents of colonialism were on some level involved in policing as well as intelligence information gathering.

During World War I, there was a change of focus to gathering intelligence on Britain's enemy and its activities in neighbouring countries. An intelligence department was hastily organised in Nairobi. Its nucleus was the Game department, which already had staff of native spies (one of whom was normally attached to each safari to see that the game laws were not infringed) and a corps of informers to detect ivory poaching. Captain R.B. Woosman, the chief game ranger, was placed in charge and Hugh Cholmondeley, the 3rd Baron Delamere, an early British settler and farmer, was appointed head of intelligence on the Maasai border.¹⁴ Delamere's job was to keep intelligence headquarters informed on the movement of enemy troops.¹⁵ With the formation of the war council in September 1915, the game department was closed. In fact, the game department had been transformed into an intelligence unit.

Sources of intelligence during the war years were intelligence officers, local chiefs, heads of all missions, scouts, intelligence agents, hunters, herdsmen, guides, interpreters, messengers and reliable headmen, ex-police and missionaries. In some of the most volatile areas, code messages were wired - telegraphic communication was significant.¹⁶ African agents were recruited merely on the basis that they could garner intelligence information upon instruction; they were engaged in war espionage in Kenya and in neighbouring countries and used every means to get this information. They tapped telegraphic information, tracked the enemy, especially ambassadors of other countries on their trips to their countries. They visited border points, beaches and hotels where cooks and other workers of African descent were contacted and relied on for information.

There was also counter-intelligence, which occurred among coastal traders who sent news to the enemy and walked about the country pretending to engage in trade. The communities were warned that if they saw any such person, they had to capture and handed over to the colonial government.

The War convinced the colonial government of the importance of good information that was reported to the right agencies for deciphering and requisite

action. Because of the urgency of war, all and sundry joined the bandwagon – the military, the police and intelligence. World War I was also significant because it marked the emergence of a rudimentary system of military and police intelligence which was to develop over time. Soon after the war, it was clear that there was need for the reorganisation of the security apparatus to apply lessons learned in combat to intelligence gathering under conditions of relative peace.

Post-World War I intelligence reform

In 1918, the police force under the continued command of Lieutenant-Colonel Notley was targeted for reorganisation. When Kenya became a protectorate and a colony in July 1920, the title of the force also changed from the British East African Police (BEA) to the Kenya Police. This marked the beginning of a new era for the force, as it had to cope with security issues caused by an ever-increasing influx of settlers, causing both expansion of the force and the building of new police stations. (Foran, 1962:53).

The police also had to cope with emergent African nationalism throughout the colony. In 1923, the settler community became incensed at the perceived intentions of the government regarding Asian immigration and land settlement in the white highlands. Such situations called for intensification of police surveillance and reorganisation to meet the needs of the times. Reorganisation entailed increasing personnel and creating better administrative and residential housing according to the suggestions of R.G.B Spicer, the new Kenya Police Commissioner (Kenya Police Annual Report, 1938:64).

During the 1920s, measures were taken to create the Criminal Investigations Department (CID) within the police force. Requisite arrangements had already been made for an allotment of European, Asiatic and African personnel to form the nucleus of an efficient CID. The CID was formally instituted in 1926 (Ndeda, 2006:110). It was initially manned by whites; no intensive investigation courses for CID officers were offered, except for those who came from Britain already trained (Foran, 1961:61).

Originally a special branch of the CID criminal investigation department, the Director of Civil Intelligence (later known as the Director of Intelligence and Security) was responsible for the collecting and sifting of intelligence which emanated from local police formations and the administration. In 1945, an important change was made in the organisation of the Special Branch (SB) of the CID. Over time the SB was separated from the CID and became responsible for all matters pertaining to intelligence and security control (KNA, GO/3/2/73).

During the 1930s, because of the volatile international and local situation, the intelligence required hinged on the security of the nation. The aim of intelligence in this period was: to convey to headquarters the situation on the frontiers, to give warning of changing conditions in foreign territories and to report even the smallest indication of incipient hostilities on foreign soil or British territory (Ndeda, 2006:137). Hence, intelligence reports provided information on tribes, movement of Italian forces and supplies, transport communication, aerodromes and landing grounds, ammunition and explosives, hospitals, personalities and any other helpful materials. Apart from military concerns, the director of intelligence and security also observed the actions of growing number of independent churches as an area of internal security concern.

In the post-World War II period until 1963, the focus of intelligence became the emergence of the Cold War, communism, trade unionism and labour unrests, political activism and religious 'atavism'. It is during this period that the SB began to assume a clear identity. Its activities expanded from collection of intelligence on criminal activities to investigation of citizens agitating for independence and the trade union movement. This expanded intelligence role on the road to independence included the monitoring of movements of prominent African personalities and submitting detailed reports to Nairobi. The SB also dealt with issues concerning the growing Mau Mau uprising against colonial rule. Organisational changes to security forces during this period included the introduction of the district formation, establishment of a central

registry and file room, a modus operandi section and a crime reading section. However, the department continued to experience a shortage of staff, office equipment and other technical aids and necessities during this period (Ndeda, 2006:185).

In the early 1950s, the prosecution SB office in Nairobi was placed under the command of CID Headquarters. When it became apparent that the CID at its existing strength was unable to investigate adequately the heavy and increasing volume of serious crimes, certain highly and experienced CID officers were seconded to the Kenya Police Force to investigate serious crimes committed in various parts of the colony (Ibid, 189). The SB increased its efforts to combat the Mau Mau insurgency by expanding the force. The uniformed force and specialised units (including the SB) were increased; SB's centralised headquarters in Nairobi was enlarged and subordinate formations strengthened at provincial and divisional levels throughout the colony. Military intelligence was attached to all levels of the SB; intelligence officers were employed throughout the Kikuyu, Embu and Meru reserves and the Rift Valley Province

Many changes took place in the intelligence services during the Mau Mau period. It was obvious that shortcomings in intelligence had contributed to the situation, as it had either failed to assess the true level of conflict that the Mau Mau uprising was generating or had failed to impress on the government the growing dangers to state stability. The immediate government response to the issue was to reorganise the intelligence service. Sir Percy Sillitoe, the Director General of Security Services in the United Kingdom, arrived in Kenya in November, accompanied by A M Macdonald of the Security Service, to review the machinery for the collection and processing of intelligence. Macdonald advised that a Kenya Intelligence Committee (KIC) should be established to provide direct advice, particularly on political security intelligence, to the governor. Members of this committee would include, among others, the intelligence advisor to the Governor, the SB, the Secretary of Law and Order, a member of African Affairs and the East African Command Security Liaison

Officer. Macdonald also recommended that intelligence committees be constituted at provincial level.

This reorganisation stood the strains of the Mau Mau emergency; the KIC and its dependent provincial and district intelligence committees became a permanent feature of government. The responsibilities of the SB extended beyond the gathering of intelligence; new provincial-level SB responsibilities ranged from guarding government buildings to advising the government on vetting staff members to ensure secrecy (Ndeda, 2006:230).

The role of intelligence on the road to independence was to monitor movements of prominent African personalities (such as Kenyatta), listen to what they said about the colonial administration and submit reports to Nairobi. The DICs constantly reviewed the district-level political situation and filed similar reports to the government. Suffice it to say that the police, SB and all other security agencies were used to hound those citizens and groups who were against the political status quo. Use of excessive force was an accepted *modus operandi* in order to ensure compliance.

The operational ethics of Kenya's colonial intelligence system, forged as they were in the turbulent years before independence, ensured that the post-independence government would inherit an entrenched colonial intelligence mentality that would continue to hold sway after independence was declared.

Intelligence after independence 1963-1998.

After Kenya gained independence in 1963, changes were made to the administration of the police force, particularly the replacement of expatriate officers in the senior ranks by Africans. Kenyatta and his associates preserved what they most needed from the colonial state, particularly important aspects of the law and order. Institutions such as provincial administration, police and army were taken over intact; Kenyatta even retained the services of many European officers (Ochieng, 1995:102). Under section 104 of the 1963 Constitution, each regional assembly was empowered to establish provincial

and district security committees; it was presumed that in each region there would be a committee dealing with internal security and public order. The meetings held by these committees were attended by the regional SB Officer and a military representative, among others.

The 1964 amendment to the Constitution abolished the Police Service Commission, the National Security Council and the post of Inspector General and placed the police force under a less powerful Commissioner of Police. Lamentably, constitutional safeguards of the police force were absolutely and senselessly destroyed by the Kenya Constitution (Amendment) Act of 1969, leaving only a skeleton, which permitted the appointment of the police officers below the sub-inspectors by the commissioner of police and those above by a weakened Public Service Commission. The removal of all constitutional safeguards for the police force left the relevant Acts of Parliament, including the Police Act, suspended and without a constitutional base. The stipulation that the police force under the Police Act was placed under the Commissioner of Police was inadequate. The linking of the police force to the provincial level exposed the police force to manipulation and fragmentation by the provincial administration, which commanded the police force through unconstitutional security committees (Finance, 8/9/1997, Ndeda, 2006: 259).

In 1965, James Kanyotu began his tenure as spy chief for 26 years until his retirement in 1991. All senior police officer reported to Kanyotu, who oversaw an era in which police and intelligence services were to become politicised and linked to particular individuals. This led to a wide range of nefarious activities, including political assassinations.¹⁷ At the same time the SB also carried out overseas intelligence gathering activities and liaison with other services on its own.

After Moi took over the Government in 1978, he had to quickly take care of potential threats (Ogot, 1995). It could be said that the SB were caught napping during the 1982 coup attempt. A number of SB officers were transferred to uniformed duty while others were transferred to other departments. The coup

also led to an unprecedented strengthening of the Presidency. By early 1982, the police force (SB included) had clearly emerged as a tool of repression (Ndeda, 2006:308). Scores of people were arraigned in court without legal representation and with evidence purportedly extracted through torture. Detention and political repression were used to good effect. By relying on intimidation and violence, the various security branches systematically abused the law and disregarded the Constitution.

The entry of Hezekiah Oyugi Ogango as Permanent Secretary for Provincial Administration to the Office of the President in 1986 changed the political scenario. During his tenure, he effectively dismantled the SB and created his own intelligence service which shadowed the work of the official security forces (Ndeda, 2006:314). Politicisation ensured that traditional intelligence roles were not carried out; in fact, the entire police force was described in 1999 as:

'...demoralised and undisciplined, comprised of mediocre brutes, an institution where promotion is no longer on merit and where the police code is no longer respected. It is possible that the Special Branch acted on wrong information, fabricated its own stories as well. It is possible that the Special Branch could also have had its dirty work in clandestine operations.' (Finance, March 14, 1999).

Even after the repeal of section 2(A) of the Constitution, which ushered in multi-party politics in Kenya in the 1990s, the role of the intelligence service remained ambivalent. Power and policy were controlled by those who controlled files, especially those in the President's and the SB. Their willingness to intimidate political rivals and critics resulted in denial of individual liberties. Politicisation of policing continued well after 1992 and is only now being substantively challenged with a view to reforming the juridical and legislative levels (Ndeda, 2006:332-333).

The National Security Intelligence Service (NSIS) since 1998

By the mid-1990s, it was clear that the SB needed to be replaced with an intelligence service based on democratic principles. The days of the old SB and its crude and inhuman methods to extort information from suspects was over. To replace the SB and modernise the service, the National Security Intelligence Service (NSIS) was created by the National Security Intelligence Act of 1998. Chapter 2 Section 5 (1) of the Act of Parliament states the objectives of the service to investigate, gather, evaluate, correlate, interpret, disseminate and store information whether inside or outside Kenya for the purposes of:

- Detecting and identifying any threat or potential threat to Kenya;
- Advising the President and the Government of any threat or potential threat to the Security of Kenya; and
- Taking steps to protect the security interests of Kenya whether political, military or economic.
- Security vetting for persons who hold or may hold positions that require security clearance.

The NSIS began its operations in 1998 with Brigadier (Rtd) Wilson Boinett as Director General. His period of office coincided with the reinvention of intelligence services in Kenya. He assumed his position in January 1999; by May 1999, more than 170 former SB officers were judged unfit for the NSIS and relocated to the police. As a former chief of the military intelligence corps with training in local and overseas institutions, Boinett was able, professional, understood the core intelligence and institutional issues and enjoyed a sufficient mandate to carry out necessary actions.

Also in 1999, Parliament passed laws that separated the organisation from the police and removed arrest authority from the NSIS. Under this new legislation, NSIS officers can arrest citizens only with direct authorisation by the Director General, only after investigative procedures had been exhausted and only where the case for arrest is very strong. For example, an individual would be

considered a threat to national security if he was involved in acts such as espionage and organised crime and/or if his actions were intended to undermine parliamentary democracy.

In addition, for the first time, there would also be a complaints tribunal where citizens could complain about the activities and abuses of intelligence officers. This tribunal would be headed by a Chairman appointed by the President but with required qualifications that would allow them to be considered for position of judge or the chief Kadhi. This was a major departure from the history of the SB.

It was significant that while the intelligence service became accountable under this enabling legislation, it maintained its secret character. It was also significant that the Director General was authorised to make staff appointments.

Despite these sweeping changes in laws governing intelligence, the need to improve the terms of service of the intelligence personnel in order to attract services of well-trained and technical staff from other professions would remain a continuing issue. Poorly paid intelligence officers can remain vulnerable to corruption and espionage.¹⁸

Now separate from the police department, the NSIS was now defined as a “civil intelligence service” with advisory, but no executive powers. NSIS officials are not allowed to use any force or inhuman and degrading treatment on suspects. NSIS functions include investigating, gathering, evaluating, collating, interpreting, disseminating and storing information from domestic and foreign sources and detecting and identifying any potential threat to national security. It advises the President and the Government on steps to be taken to protect political, military and economic security interests deemed of national importance.¹⁹

The NSIS Act did not discuss the continuity or transfer of officers from the SB to the NSIS. This allowed the NSIS to make a clean break with the past and

begin with a clean political slate. While in the past, intelligence officers were recruited only from the police service, NSIS recruited officers from both the private and public sectors. When the Directorate of Security Intelligence (DSI) was disbanded, all its officers had to resign in order to allow the new service to recruit from scratch. Some of these officers were later re-employed by NSIS; those who did not qualify for the new intelligence service were returned to the police force. The NSIS used the interlude between demobilisation of DSI and its own formation as an opportunity to off-load most of the intelligence officers whose track records were unacceptable. At the same time, it was redefining its priorities to emphasise gathering industrial and economic intelligence as opposed to political intelligence. Thus, the process of constituting the NSIS became a comprehensive programme to rid itself of its tainted past and adopt a clean image, complete with a new recruitment process targeting some of the most talented graduates from local and foreign universities.

These changes brought challenges. The NSIS operations style needed to reflect service provision, not coercion. Expectations were high for the new service; officers were expected to be highly credible, proficient, above board, reliable and readily available.²⁰ The NSIS needed to strengthen its capacity to undertake expert research in crime such as banditry and ethnic warfare. It also needed the intellectual and material resource capacity to unravel sophisticated forms of crime such as money laundering, narcotics, economic crime, sabotage and high tech fraud (Daily Nation, 30 March 1999).

In 2003, four years after its inception, the NSIS conducted internal restructuring, abolished one division and created the analysis and production division which took over most research analysis, production and dissemination from the operational division. It initially had three departments, (Political, Economic, Security and Diplomacy). These were reorganised into Democratic, Economics and Foreign and Diplomacy, all headed by Assistant Directors. Previously, preparation of key products such as briefs for the Head of State and key government departments was shared between the aforementioned three divisions. For the purpose of harmonisation of service delivery and products, a brainstorming centre was opened and an Analysis and a Production Division created.

Recruitment for the NSIS now targets university graduates and those with post-graduate qualifications for a one-year course at its training academy in Nairobi. Entrants are introduced to the world of intelligence and study human psychology, sociology, counter-intelligence, structure and the sciences of ballistics and narcotics. After this thorough training, usually conducted by Kenyan instructors in collaboration with other expert trainers from the United States of America (US), Great Britain and other friendly services, the trainees are evaluated and deployed to the appropriate service branch.

In 2003, President Kibaki grounded the NSIS even more firmly in the country's efforts to respond to modern security challenges. He unveiled new priorities for the service, including the responsibility to provide early warning on matters of national interest, with an emphasis on security, terrorism and involvement in the campaign against corruption.

In the past ten years, NSIS has managed to establish itself as a professional intelligence agency. Its focus and identity are clear and unclouded. Its vision, mission, goals and objectives, commitment, motto and credo support an organisation that is accountable, founded on good ethics, values and culture. It is designed to stand the test of time with well-developed policies for effective human and material resources management, operates within the law and with profound understanding of Kenya's aspirations and national interests.

At the same time, the public needs to have confidence and trust in NSIS in order to cooperate with and respect the service. Citizens need to know that if and when they volunteer information on any organized crime, their identities will be protected. Since secrecy is the hallmark of NSIS, this concern may be unwarranted. However, when all the public hears regarding NSIS is what they fail to do or what they undertake poorly, citizens are understandably wary of involving themselves by providing information. Kenyans need to know that NSIS, even if it is shrouded in secrecy at times, is *their* tool and useful for their well-being.

Despite this and other challenges, the NSIS is one of the most advanced intelligence organisations in the region.

Challenges for Kenyan Intelligence

In 2003, legislators criticised the NSIS on the issue of its budget. They observed that the organisation was receiving generous funding for no apparent reason. According to an assessment by the editor of the *Kenya Times* of 30 October 2003, complaints with regard to NSIS budget could have emerged either because NSIS had not served the purpose for which it was created or that a lot of money was being wasted. The paper said that these were valid issues, given that from its formation, there was no reason to believe that NSIS had performed as well as it could in terms of interdicting local and external threats, with resulting devastating effects on Kenyan lives. Some observers felt that NSIS still lacked an appropriate level of professionalism.

This claim was based on the belief that had NSIS operated optimally, Kenya would not have been subject to terrorist attacks, including the 1998 attack on the US Embassy in Nairobi. Critics suggested that Kenya believed pre-11 September 2001 US government statements that while terrorism was critical, it was being addressed. Thus, Kenya's intelligence services lost the capacity to monitor and interdict foreign and local terrorists. When Kenya was hit, blame was apportioned to certain Kenyans suspected of harbouring suspects and to the intelligence services' lack of technical expertise and equipment.

The NSIS has faced a number of such challenges to its credibility and independence. Just before the close of the Moi era in December 2002, friends of the president tried every means to ensure that he stayed in power. However, the directors of the NSIS, led by Director General Boinett, took a different view. Weeks before the general elections, NSIS directors led several brainstorming sessions and spent sleepless nights poring over intelligence reports pondering the implications of anything less than a smooth handing over of power from President Moi to Mr Kibaki. All intelligence projections seemed to give National Rainbow Coalition (NARC) an overwhelming victory

in both presidential and parliamentary elections. The advice from NSIS was clear: in order to avoid conflict, it was imperative that President Moi hand over power to the winner.

Soon after its formation, NSIS was accused of illegal activities by the Kenya Youth Movement in Sweden (KYMS).²¹ The group claimed that it had come under overt and covert surveillance in Sweden by what the Movement considered the Stockholm branch of NSIS. In March 1999, an officer from the Kenyan Embassy in Stockholm made contact with the KYMS Chairman to gather intelligence about a planned KYMS demonstration at the Kenyan Embassy in Stockholm. The Embassy contact had been triggered by concerns about the safety of Kenyan citizens in Sweden as a consequence of alleged KYMS involvement with the political wing of the anti-Moi Party for Independent Candidates of Kenya (PKK). The KYMS believed that the Kenyan Government had targeted it for alleged aggressive acts of espionage because the movement remained one of the most politically-organised groups in the anti-Moi Kenya African National Union (KANU) diaspora.

In 2006 NSIS faced further challenges related to their alleged incompetence in the security vetting of two Armenian criminals, as it and three other government agencies had failed to detect the criminals' forged travel documents. It was, however, not clear from the evidence whether the security lapse by the NSIS was deliberate. In this instance, the NSIS seemed to have ignored some significant facts.²² However, according to a report in Parliament in September 2007, NSIS advised the National Security Advisory Council (NSAC) that the Armenians resembled drug traffickers. Records show that at a NSAC meeting in April 2006, NSIS had recommended to the Council that the brothers be deported, as their continued stay in Kenya would malign the good name of the country.²³ However, this advice was not taken by NSAC.

Kenyans continue to complain about NSIS funding. While Kenya spends Kenya Shillings 4 billion every year to sustain the agency, an element of secrecy and speculation about that secrecy surrounds its activities. With the recent retirement

of NSIS Director General Boinett, the role of the NSIS in helping secure political, economic and social stability has come under sharp scrutiny. Its relevance to the national interest is a subject of debate as taxpayer's money allocated for its operations remains unaudited. However, due to the nature of intelligence secrecy, it might be difficult to audit intelligence because of the need to protect information sources. Without a developed audit system in place, this issue is likely to continue to cause friction between the public and NSIS.

The role of NSIS in government and policy making

Information gathered and assessed by the NSIS is specifically geared to assist in Government policy and decision making. Its information is intended to help the Government avoid strategic surprise. The agency provides both new intelligence while adding value to other information sources, including Government departments and the media. However, while it advises and supports Government policy makers, it is expected to maintain a distance from direct policy making so as to avoid being politically compromised.

The incorporation of NSIS into government policy making processes has by and large been accomplished. In its advisory capacity, it is embedded in a number of levels of national policy and decision making processes. It makes recommendations to the President in connection with policies concerning security intelligence, security intelligence priorities and security measures in Government Ministries, Departments or agencies. The NSIS Director General consults regularly with the President and the Government; he ensures that a good relationship is maintained between the service, every Government ministry, department and agency and any other institution approved by the President. NSIS is also a member of the National Security Intelligence Council, which is composed of the Ministers for Security, Foreign Affairs, Finance, the Attorney-General, the Secretary to the Cabinet and Head of the Public Service.

As NSIS Director General Boinett noted in 2006, the Office of the President "recognizes and continues to appreciate the significance of Intelligence in the National Security Policy Making Process."²⁴

Conclusion

The history of the Security Branch dates back to the pre-independence days when the colonial government created a department within the police force for gathering intelligence on matters related to politics. It is this beginning that gave the department its unsavoury reputation as a police unit existing exclusively to oppress and suppress the free will of the people. Over the years, the SB operated under various names; its operational methods remained basically unchanged until 1998. From 1970, the SB was technically replaced by DSI. However, even with the changes, the name SB remained in most people's minds. It was only when the National Security Intelligence Service Act was passed in 1998 that the intelligence services began to institute democratic principles in its operation and upgrade its staff and codes of conduct to become a respectable institution in service of the national interests of its country.

When Director-General Boinett retired in 2006, he listed in his farewell speech the following elements that are necessary to manage, uphold and sustain a robust intelligence service:

- The Government needs to continuously invest in the “character of their gatekeepers and its watchdogs”;
- The Director General of the Service should have direct and unfettered access to the Head of State and Government. In order to earn trust, he has to do things right and do the right thing without fear, favour or ill will. In so doing, he must be efficient, loyal and balanced;
- All men and women of the Service must direct their time and energy towards promoting and projecting that which only serves and informs the national interest;
- The Service should operate within the law; and
- The intelligence service is a national insurance for counter-intelligence. A balance must be struck between national security interests and international threats and challenges. Information sharing with other states has been the practice from time immemorial. This partnership will need to be maintained taking into considerations, mutual respect, national interests, international law, and the nature of power and its influence in the globalised environment.²⁵

Despite continuing challenges, the country's intelligence service is now armed with the capacity to address internal and external security challenges and the flexibility to change when change is indicated. It has been a long, but fruitful, journey.

Footnotes

- ¹ Richard Deacon, *The Chinese Secret Service* (London: Crafton, 1974) p.1.
- ² Richard Deacon, *The Chinese Secret Service*, p.15.
- ³ Alexander Orlov, *Handbook of Intelligence and Guerilla Warfare* (Michigan: University of Michigan Press, 1963).
- ⁴ Richard Deacon, *The Chinese Secret Service*, p.7.
- ⁵ Godfrey Muriuki, "Background to Politics and Nationalism in Central Kenya: The traditional Social and Political Systems of Kenya Peoples", in B.A. Ogot, *Politics and Nationalism in Colonial Kenya* (Hadith 4), (Nairobi: EAPH 1972).
- ⁶ Letter from J.O.W. Hope, Collector Kitui to Assistant Deputy Commissioner Nairobi, November 12th 1906 PC/Coast/1/12/38, KNA, 1906.
- ⁷ Letter from CW Hobley HM Deputy Commissioner Mombasa, to Sub Commissioners office Nairobi November 16th 1906 KNA, PC/Coast/1/12/38 Outward File Mwatate.
- ⁸ Letter from Sub-commissioner's Office Mombasa District, 6th September 1906. KNA, PC/Coast/ 1/1/92 Foreign and Miscellaneous 1906.
- ⁹ A letter from the PC's office Mombasa. C W Hobley to Assistant District Commissioner Rabai. July 22, 1915 KNAPC/Coast /1/1/399. See also Mildred A.J. Ndeda, "Ndeda, M.A.J., Secret Servants: A History Of Intelligence and Espionage in Kenya C1887-1999, A report submitted to the National Security and Intelligence Service of Kenya on 30th January 2006
- ¹⁰ W. Robert Foran, *The Kenya Police 1887-1960*, p.25.
- ¹¹ Robert Foran, *The Kenya Police*, p.29-33.
- ¹² Robert Foran, *The Kenya Police*, p.33 and Robert Foran, "Exploits of the Late Major Harry Rayne, O.B.E. M.C." in *The Kenya Police Review*, December 1959.
- ¹³ David Anderson, "Policing the prosecution and the law in Colonial Kenya, C 1905 – 1939." In D M Anderson and David Killingray, *Policing the Empire Government Authority and Control 1830 – 1940*, p 183.
- ¹⁴ Elspeth Huxley, *White Mans Country*. P.6-7; letter written by R.B. WOOSNAM, Intelligence Officer.
- ¹⁵ Elspeth Huxley, *Whiteman's Country*, p.17, the letter was dated 26th November 1914 MORGAN'S CAMP.
- ¹⁶ PC/Coast/1/17/101 Patrols South of the Railway line 1915-1916.
- ¹⁷ For example, Tom Mboya's assassination in 1969 and J.M kariuki's in 1975 (Ndeda, 2006:271).
- ¹⁸ *The Weekly Review* December 6 1996, p .10-11. Shelved in July 1996.
- ¹⁹ *Sunday Nation*, March 19, 2000.
- ²⁰ *Daily Nation*, March 29, 1999.

- ²¹ Letter from the Kenya Youth Movement in Sweden to The Ministry of Foreign Affairs dated 2nd September 1999 (Githuku was Muirani Chairman, Okoth Osewe Secretary For KYMS Executive Committee)
- ²² The Nation, June 5, 2006
- ²³ The Standard, Friday September 28, 2007
- ²⁴ Speech By Director General (Rtd) Wilson A.C. Boinett Of The National Security Intelligence Service Upon Leaving The Service On 17th January 2006.
- ²⁵ Speech By Director General (Rtd) Wilson A.C. Boinett Of The National Security Intelligence Service Upon Leaving The Service On 17th January 2006.

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Intelligence Sector Reform in Uganda; Dynamics, Challenges and Prospects

Andrew Agaba

Introduction

This paper is both a narrative and an analytical study of the intelligence sector of Uganda since Independence in 1964. It describes the particular security experience of Uganda, the poor reputation of the security sector since independence and examines the sector's reform efforts. It also documents the changing dynamics operating within the intelligence community and between the main intelligence bodies and actors within the security network. Although it is currently in transition from a military hegemony to a democratic state, Uganda's post-independence history of military regimes using intelligence services to maintain their power is a theme that recurs again and again in this narrative.

The paper raises security sector and intelligence governance issues that need to be addressed by the Government, security institutions and non-security stakeholders and underscores the need for Parliament to honour the requirement stated in the 2005 Constitution that it would establish a new legal infrastructure through which the intelligence sector can operate. This is paramount, if stability,

prosperity and development are to be achieved and maintained, and even more important if civil liberties, freedom and the constitution are to be safeguarded.

There can not be development without security. Security forces can easily be manipulated, coerced or misdirected by those in charge in order to engage in lawlessness, maintain state power or abuse human rights. A reformed security sector is vital to ensure that this does not happen; a vigilant and informed legislature is equally important to see to it that a clear legal framework is stipulated and a good operational environment mapped.

This paper analyzes the changes that have occurred and gains that have been achieved in reforming the security sector, specifically the intelligence sector. It assesses the role of Uganda's security sector in providing stability after decades of dictatorship, and the level at which the country is at in engaging in democratic control of the security sector.

This paper examines chronologically past and present security forces and governments, the legal framework within which they operated and functioned, the presence or absence of parliamentary oversight and recent improvements, shortcomings and challenges. It relies heavily on written accounts, both academic and government. To ensure literature accuracy, the author talked to history professors on Uganda, as well as other people who lived and/or served in Uganda's government in the recent past.

In this paper, the definition and scope of intelligence is limited to only internal intelligence gathering agencies and the Foreign Service, those agencies which directly confront dangers to the security of the state and its citizens, both within and across borders. Other agencies located within the police department, such as the Special Branch, the Narcotics Division and the Criminal Investigations Department (CID), are not the subject of discussion. Whilst, for example, narcotics and drug trafficking constitute a threat to security in the broader context, this kind of illicit trade does not pose a *direct* danger to national security. The definition notwithstanding, the paper supports the position that

security is a precondition for sustainable development, and that it is a difficult task to transform these institutions that protect the state and its citizens from threats into professional, legitimate and apolitical actors¹.

Security sector reform (SSR), although relatively new, has been growing rapidly. While not seen as a panacea for conflicts, the SSR concept operates as a clear lens through which countries and security forces can begin to make changes from within and embark on ensuring peace and security. Whilst the objective of SSR is to improve the capacity to respond to the needs of all people, most security sector actors, who fear the loss of power, approach reform slowly and unwillingly. But even as reluctant as such leaders may be, the winds of change are forceful. Where there has not been a bloody civil conflict that demands inclusiveness and reform of the armed forces, the insistence of donor countries that reform is in order can be a powerful impetus for reform.

Uganda remains donor dependent; it receives up to 48% of its national budget from foreign aid, and must cope with conditional ties from advanced democracies that agitate for opening political space and reforming government institutions to become more efficient, effective and relevant. Security forces have not been exempt from this donor-recipient pattern, since Uganda also receives substantial military aid from the donor community and consequent external pressure to implement SSR. Whether the changes that are taking place are voluntary or coerced, they are happening and for good reasons.

However, in several countries, the pace is too rapid; there have been questions about the motives and truthfulness by which these changes are being effected. Even though Uganda has been implementing military reforms through the passage of the Uganda People's Defense Act, 2005, the intelligence sector has largely been ignored - no substantial reforms have taken place in this part of the security sector since 1987.

Post- Colonialism and Dictatorship in Uganda

Uganda has recently emerged from turbulent times characterized by brutal regimes, *coup d'états*, high levels of human rights violations and repression of both political and civil liberties. During this period, the governments utilised the armed forces to perpetuate and consolidate their power, as well as to intimidate, harass and execute political opponents. In particular, the Idi Amin administration from 1971 to 1979 was characterized by unparalleled cruelty. Thousands of political opponents were murdered in cold blood by the state's security apparatus. Even though other regimes were not as notorious, the two Obote administrations also relied on the use of armed and security forces to suppress opponents. In fact, the first Obote administration unleashed heavy armed violence on the Buganda Kingdom after a political standoff between the Kabaka and President Obote. As the erstwhile right hand man to Obote, Idi Amin Dada implemented this raid on the king's palace, only to topple his boss later in a bloodless coup whilst the Obote was on a state visit in Singapore.

The immediate politics after independence was that of Obote and the Uganda Peoples Congress (UPC) trying to steer his one-party ambitions on the one hand and the die-hard and separatist inclinations of the Kabaka, the Kabaka Yekka Party and Buganda on the other. Initially, a coalition of the two parties was forged provide national leadership after the British colonial government hand over and Obote as Prime Minister was able to comply with some of Buganda's demands. Obote waited for an opportunity to make a u-turn from Buganda as his UPC gradually gained majority in Parliament. Obote was no doubt envisioning a strong central government, but Buganda's demands had begun to spread 'a disease' that prompted the Busoga and Teso people and others to claim special status². Thus the politics in the run-up to and after independence created a platform for inter-group rivalry that provided fertile ground for subversive activity and led to the government creating security agencies to help it survive.

Due to constant power struggles resulting from constantly repressive regimes, subsequent governments did very little to restore the security of the citizens

and respect for human rights and rule of law. Between 1979 and 1986, Uganda had six presidents; following the fall of Amin with the help of Tanzanian forces, elections were organized to pave the way for democratic rule. The 1980 elections ushered in the second Obote administration, but were fiercely contested by National Resistance Army (NRA) leader Yoweri Museveni on the grounds of vote rigging. The post-election period was also marked by harassment of political opponents by the army and intelligence services, which led to the formation of a guerrilla movement. Thus, Obote had to contend with enemies both from within (in a military accustomed to lack of discipline and power grabbing) and from without (Museveni and the NRA). These are the years in which hundreds of thousands would die in Luwero, the epicenter of the battle between the Uganda armed forces (Uganda National Liberation Army (UNLA) and the NRA³.

As already noted, the military was central to both the gaining of power and perpetuation of regimes. Except for the two terms that Obote served, all other governments, including the one that brought the National Resistance Movement (NRM) into power, were military regimes. The intelligence services not only served and reflected the whims of these powers, but were also very instrumental in collating intelligence that would then be used to contain the opposition and force the citizenry into submission.

The General Service Unit/Department (GSU)

The first elite intelligence service was shaped in the first post-independence administration of the first Obote regime. This was called the General Service Unit and, like its sister security institutions, was largely staffed by recruits from the Langi and Acholi tribes, the former to which Obote traced his ethnic roots. (In fact, at the head of the service was Akena, Obote's blood relative.⁴) The predominance of the northern Acholi and Langi ethnic groups in the security forces has been blamed on the colonial government which, intent on its philosophy of divide and rule, had classified the northern Ugandan region as a labor and military reservoir. The Obote regime took the opportunity to create an intelligence ally it could rely upon to keep opposition, particularly

the Buganda kingdom, in check. As a matter of fact, the service helped depose Buganda's king and further strengthen Obote's power. Even though the agency was formed well before the suspension of the Constitution by Obote in 1966, this security department and others created in his second term were not established by acts of Parliament. Beyond any doubt, this outfit was designed to defend Obote's interests and buttress his intentions to retain power. Ironically, the service could not predict and avert the coup of one of his own army generals: Idi Amin.

The General Service Unit (GSU) was an elite secret service/paramilitary police unit which would later be reinforced with a Special Force taken from the police and the army. The GSU was essentially a paramilitary group designed to counter threats from within the police and the army. It ought to be noted that the GSU was created mainly as a response to growing threats to the regime, especially after the armed forces had, during its demand for a pay rise, successfully mutinied, holding an Interior Minister and several British servicemen hostage. GSU agents were mainly trained by British and Israeli officers.⁵

Both these units provided the Obote regime with espionage on opponents, saboteurs and other general intelligence. The Special Force often interfered with the work of other mainstream security bodies like the CID. In 1967, another unit, called the Military Police, was added and placed under the personal leadership of Amin to further consolidate the regime.

Uganda initially transitioned peacefully from colonialism under Great Britain to independence. At that time, Uganda did not have any security threats from without; hence, it was questionable if GSU was ever involved in intelligence and counter-intelligence, even though it maintained foreign stations at some of Uganda's embassies abroad. For Uganda, the service was designed to divide and demoralise internal rivals, but, as already noted, it failed in that role, since it was not able to predict the coup giving rise to a new government.

The State Research Bureau (SRB) and the Public Safety Unit (PSU)

The State Research Bureau (SRB) and Public Safety Unit (PSU), both established by decree by Idi Amin, had the worst reputations of any security agencies in Uganda. The SRB was headquartered in today's Nakasero, Kampala; several serious crimes were committed in these premises. The PSU operated as a political intelligence unit and recommended killing people involved even in the least of suspicious circumstances. Conservative estimates put the number of these murders at about 300,000 with other, more realistic views that this number could have been as high as 500,000. Unfortunately, apart from prominent political and religious figures that are known or were seen shortly before or soon after being murdered and sent to mass graves or thrown into the river Nile, there is no official record listing these deaths. But the issue of the number of deaths notwithstanding, the effect was to create a systemic horror.

Amin was welcomed with great pomp by the population. He had overthrown the unpopular military regime of Obote, who had made enemies not only in Buganda but elsewhere as well. After all, Obote had been the first to carry out a coup against his own government. Faced with growing opposition from both within and without his party in 1966, Obote suspended the 1962 Constitution, ousted the first president and commander-in-chief and assumed both offices⁶.

The advent of a new regime did not necessitate change *per se*, but perhaps strategically influenced the disbandment of the old and creation of a new intelligence outfit. The GSU clearly didn't work, since Idi Amin, once a confidante to the president, was able to unseat his boss. Amin subsequently ruled the country for nine years through severe oppression and widespread human rights violations. Thousands of political opponents, along with ordinary civilians, were murdered frequently by the army.

Central to Amin's reign of terror was the State Research Bureau. This was an "intelligence" unit that presided without fear over extrajudicial killings. It

was constituted mainly from Amin's tribesmen, which reflected a general northern Ugandan bias in the armed forces. In fact, increased military recruitment was necessary to bolster the longevity of the regime. The new "intelligence" unit combined bloody-thirsty antics with a penchant for sophisticated surveillance gadgets like phone wiretapping⁷.

Amin was as ruthless internationally as he was domestically. He personally took over affairs when a plane carrying some 83 Israeli nationals was hijacked by Palestinian terrorists and landed Uganda's Entebbe Airport in 1976. Ironically, the Israelis had trained Amin; he had maintained close ties with the Israeli military until the expulsion of the Indians and the severing of diplomatic ties with Britain. The Israelis were also involved in a number of key construction projects in Uganda; it was therefore a surprise that Amin was involved as an accomplice with hijackers of a plane carrying Israeli non-military personnel. Perhaps his being Muslim, wanting to put on a show and hoping to get oil money from Arab nations influenced his actions. It is worth noting that Uganda under Idi Amin was the only African country that attacked Israel⁸.

The National Security Service (NSS) and National Security Agency (NASA)

The Tanzanian government gave critical military assistance to and fought alongside the Front for National Salvation (FRONASA) that would later constitute the Uganda National Liberation Front/Army (UNLF/A) and dislodge Amin in 1979. The new government formed the new intelligence service by decree: the National Security Service (NSS). The tenure of this service was only just under a year, although it outlived the Government that created it. Godfrey Binaisa took charge of government and also inherited the NSS, which he tried to use to secure his own Presidential position⁹. 1980 ushered in the second democratic government that resulted in a controversial win for the returning Obote. In the same year, Yoweri Museveni launched a guerilla struggle against Obote. But before that overthrow, Obote had to try his last intelligence experiment.

No sooner had Obote's administration began than Museveni and his group of less than 40 launched an attack on a government military barracks in Kabamba. The attack launched the five-year guerilla insurgency that would leave hundreds of thousands dead in both insurgency and counter-insurgency maneuvers. Faced with this real threat, Obote's first instinct¹⁰ was to respond with a counter-intelligence agency to deal with the new phenomenon. The National Security Agency (NASA) was staffed with close associates and family members at its head, following the model and mandate of the earlier GSU in aiming to protect the regime. Even though these agencies were sometimes staffed and headed by civilians loyal to the president, the majority of their rank and file came from the military. The 1980s is a period marked by further human rights abuses by armed forces, yet the service would not collect data on the abusers or advise on their apprehension and prosecution. This failure to curtail criminals would cost Obote popularity and foment growing dissent that the NRA capitalized on.

Dynamics of intelligence services since 1986

Obote did not last to serve his full term in office. He was overthrown from within his own ranks by General Tito Okello, then army commander of UNLA, who then sent Obote to his second and final spell in exile. After six months, the five-year civil war ended, with the NRA finally defeating the regime. During their tenures, the Obote and successor regimes did not exercise control beyond Kampala. When the NRA movement took over, it initiated fundamental change, signaling a shift from 'business as usual'. This shift was built on a disciplined military with a much better human rights record and the beginnings of placing the security services within a clear legal framework.

Towards legislation and the rule of law in the security sector

The army and other security services had been manipulated by all government heads to prolong their stay, intimidate and inhibit the opposition and in some instances, such as the Amin government, institutionalized to unleash violence on Ugandans. Museveni had watched all this. He had served as Minister of

Defence in the Lule administration in the run-up to the election and had reportedly worked in the Obote's GSU. He was adamant that change had to happen and here was the opportunity for him to make it happen.

The first key issue was the accusations and counter-accusations between the NRA (Museveni) and the UPC (Obote) about gross human rights violations in the Buganda district of Luweero during the liberation struggle. Museveni maintains that UPC and its men harassed and murdered hundreds of thousands of people as reprisals for their support to the NRA. On the other hand, Obote and the UPC contend that the NRA choreographed these killings, using UNLA defectors in order to discredit the regime of Obote. The following can be said, with some degree of certainty, to have happened:

1. The army was so undisciplined during Obote's regime that he was unable to control it. Many Langi and Acholi contended that Baganda were harboring Museveni in Luwero and thus perpetrated reprisals.
2. The NRA was operating in Luwero with resulting dire implications for the civilian population.
3. It is possible that the Obote regime was involved in the killing, though this has been disputed.
4. There are cases of human rights violations by the NRA following the capture of power in Northern Uganda and in Eastern Uganda (the Mukura massacre). These cases could reinforce the theory that some of the NRA officers, unbeknownst to their commander-in-chief, could have had a hand in the Luwero debacle.

Given the importance of these events in recent Ugandan history, it is hardly surprising that control and reform of the security services was near the top of the NRA/M agenda following their victory. The perpetration of human rights abuses by the NRA in the North and East also reinforced the idea that control needed a clear legislative framework¹¹.

The Security Organizations Statute (1987)

The Security Organizations Act of 1987 contains 12 sections covering establishment, functions, discipline and regulations and the foundation of a council of security agencies somewhat like the Joint Intelligence Committee of the United Kingdom¹².

Internal & External Security Organizations (ISO & ESO) and the Problem of a Mandate

Both the ISO and ESO were established in the same section (1) under the Security Services Act. They were instituted as government departments and mandated “to collect, receive and process internal and external intelligence data on the security of Uganda and to advise and recommend to the President or any other authority as directed by the President”.¹³ The Act maintains Presidential control and is extremely vague with regard to accountability and oversight.

The ISO is better placed to gather internal intelligence to secure territorial borders. The ESO, on the other hand, is the foreign service responsible for gathering intelligence abroad to protect Uganda’s interests in the rest of the world. As such, the statute also states that some of these agents may be placed in embassies and other locations and are entitled to all privileges, immunities and other benefits that accrue to an officer in the Uganda Foreign Service.¹⁴ Whether Uganda also maintains covert operatives¹⁵ is a different question altogether, let alone their legal mandate.

In fact, the mandate of the two organizations is so vague as to be meaningless. For example, whilst the functions of the agencies are described in just two sub-sections of a single section, the mandate of the security organizations committee is elaborated painstakingly in 10 sub-sections. Similar discrepancies in the statute are enormous, giving rise to two conclusions: the law makers were ignorant of what to do and/or the operational aspects of the agencies were deliberately avoided to shield authorities from the law. The statute is a classic case of an ambiguous law that does not respond to the demands of

democratisation or general SSR. In its defense, the Government had inherited a ruin, with the armed forces in disarray and intelligence services discredited. There were also not many examples to learn from and perhaps it was too early to trust this kind of sensitive issue to an inexperienced National Resistance Council.

This weak legislation has raised issues about the correct mandate, role and accountability of the intelligence service at the very time that it needed to reclaim some degree of respectability following a rather unsavory history under successive regimes, let alone the immediate need to provide information on internal and external threats and advice on policy making. Given the previous politicisation of the agencies, it is even more important to provide a clear legislative framework to protect not only the roles and mandates of the agencies from political interference but also to protect the intelligence officers and the spending of public money.

For a country that has been subject to soaring corruption in public offices, the secretive nature of intelligence budgeting is open to abuse. Moreover, the Ministry of Defence has been implicated in several financial scandals, ranging from poor military equipment procurement transactions to corruption of officers engaged in contemporary conflicts in the North. In fact, some Uganda Peoples Defence Forces (UPDF) officers have been charged with fraud for misappropriating wages and in some cases deceitfully concocting wages of imaginary personnel and thereby draining off millions of dollars. If this can happen in a military establishment, fully enacted by Parliament and responsible to an oversight defence committee, what about the intelligence services that are only accountable to the president, have classified budgets and are allowed to carry out their secretive work without any independent supervision?

In the 1987 statute, the directors general are responsible and accountable only to the President. The appointments are made by the president without being vetted by Parliament or the opposition. Parliamentary oversight 'enhances legitimate and democratic accountability, while ensuring that security and intelligence agencies are serving the state as a whole rather than narrow or

other interests¹⁶.’ There is a tendency for security services to be abused by the authorities in order to carry forward their personal interests. Given that reality, there is a need to shape intelligence services in a manner in which they are protected from political manipulation and independent enough to be able to carry out their mandated work.

Article 20 of the Uganda 1995 Constitution is devoted to ‘fundamental and other human rights and freedoms.’ Lawmakers recognised that such rights are not granted by the state, but are inherent; in article 2, they equally specify that the ‘rights and freedoms of individuals and groups shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.’¹⁷

But most controversies resulting from intelligence services and their activities are human rights abuses. In Uganda for instance, the intelligence unit within the military or the Directorate of Military Intelligence (DMI) have been cited both in the media and by human rights organizations for cases of human rights violations. Granted, intelligence units should have special powers that enable the detecting, thwarting and countering of threats. But what is the extent to which these powers can be employed and what are the limits to these powers?

Security organizations might be granted powers that are in contradiction to human rights. Granting some of these powers may be in the interest of the security of the whole nation, which may render the rights of just one individual to be of less significance. But this kind of action must be strongly grounded in the law, and this is only possible when the security organizations are plainly legislated. However, there are certain human rights that should not under any circumstances be impeded by a state security agent or agency.¹⁸ It is quite easy, and this has happened all over the world, including in developed countries, to tread on individual rights under the guise of ‘national security interests’, especially if the law is not clear. However, security agencies may be given the powers by legislation to hinder some civil and political liberties for purposes of national security. For example, a terrorism suspect may be detained for more than the 48 hours that the constitution stipulates, pending investigation.

Also, the right to privacy of an individual may also be temporarily obstructed as the result of a wiretap, or someone's house searched without a court warrant. But alternatives to such abridgements of individual rights must be thoroughly considered, so that they are used only as a last resort. As a principle, the rule of law should always be seen to be functioning, meaning that actions are 'proportionate to the threat that they constitute weighed against the possible damage to civil liberties and democratic structures.'¹⁹ All of this needs to be regulated in detail within the law, so that security agencies do not working in total isolation, individuals can seek redress and agencies/agents disciplined if they are seen to be in breach of the law.

In a nutshell, looking at Uganda's situation in retrospect, it seems obvious that the 'why' of collecting intelligence has been far more important than the 'how'. This is in line with the security sector in general and intelligence units in particular. During this turbulent period in Uganda's history, the political leadership determined what the intelligence sector should do, what intelligence it should gather and on whom. Currently, albeit not as brutally, intelligence agencies today are more or less functioning within the same mindset: in the manner of the 'why' superseding the 'how'.

At the same time, contemporary security threats are different and have taken on different dimensions. The practice of intelligence is changing in line with democratic principles of accountability, not just to the political or appointing authorities, but to Parliament. Thus today, the discourse is completely different, with different external security threats and different expectations of accountability and transparency.

The Lack of a National Security Strategy (NSS)

Uganda does not possess a document/policy paper that outlines the Government's national security strategy and clearly maps the direction that the country wishes to take. Such a strategy document is not a secretive military strategy document, but rather is public, just like the Constitution. It is not static, but rather, dynamic and can be re-evaluated and re-focused in consistence with the direction of the government and prevailing trends. It tackles the holistic

security of the state and its citizens. It includes issues such as economic security and growth, fiscal issues, markets and investments, environmental security, population growth and pressures on the environment, climate change and water resources, military security and diplomacy. It is ironic that the intelligence community is indispensable to all this kind of security. In the United States (US), the national security strategy is formulated by the executive branch of Government for consideration by the Congress; it outlines the major national security concerns and how the administration plans to deal with them.

Having an NSS would help Uganda set benchmarks for human security, and underscore the importance of intelligence, not only for physical security but also for development of the country and its citizens.

What are the future prospects?

Despite the challenges, to claim that the situation in Uganda is hopeless would be incorrect. The fact is that Uganda, considering its history of autocracy and bloodshed, has come a long way in terms of security reform in general. There is now a solid platform for carrying out significant intelligence reform. However, there has been stagnation since passage of the 1987 law. Even though the lawmakers involved in the construction of the 1995 constitution envisioned repeal of this law and the establishment of a new one, it has been 13 years and nothing has been done to that effect.

Even though there have been limits in terms of inadequate legislation, policy and a clear working blueprint, the ESO has managed to transform into an effective foreign service. The organisation has been able to identify and train personnel in different specialties; some of these employees have risen in the ranks, with some now in leadership positions. The ESO maintains deep-cover operatives at different official stations and in different countries in which Uganda has interests, political, economic or otherwise. But because of the intrinsic problems that emanate from legislation, accountability, recruitment policies and politics, it is believed that some of the agents, who have been highly prepared for certain jobs, are instead deployed to either unrelated fields

or obscure jobs. These diversionary deployments are often due to political interference.

Another huge positive has been the tremendous improvement in Uganda's human rights record. The forces now train their personnel in human rights and the rule of law. Whilst this has not entirely eradicated human rights abuses, it has led to improvements. Unfortunately, however, there are still some elements intent on breaking the law; moreover, security forces have been used politically to carry out the agendas of those in Government during elections and other periods. Some agents still arrest and even torture suspects. That said, generally the military intelligence unit has been the focus of most of this criticism.

There has also been inter-agency collaboration with other governments, minimizing threats to Uganda and the region. For example, the US government provided intelligence and analysis to the Uganda Government on the Lord's Resistance Army (LRA) after Uganda fulfilled the requirement to pull out of the Democratic Republic of Congo. The threats of terrorism, environment and climate, economic hit men (money fraud, organized crime, corruption, etc.), and cybercrime require international collaboration. Ugandan security agencies have augmented their cooperation with other regional agencies and the security situation continues to improve. The Intergovernmental Authority on Development (IGAD) regional body has been active on the issue of proliferation of small arms and light weapons, while the International Conference on the Great Lakes Region (ICGLR) has been engaged in various peace and security initiatives on behalf of the whole region. Enormous resources exist for security organs to cooperate and to purge the region of instability.

Conclusion

Uganda as a transitional democracy has steadily and successfully metamorphosed from a junta to a single-party system to a fully-functional multi-party democracy. Its security services ought to keep pace with these transformations and become fully-staffed professional intelligence units that are operational within the framework of the law.

It is essential that the Executive work with Parliament to honour the directive stated in Article 218 of the 1995 Constitution and repeal the Security Organisations Statute of 1987. Creating a fresh legal framework for the security services that establishes a clear mandate, accountability mechanisms and oversight by Parliament and the judiciary will go along way to improve the performance of security services and strengthen peace and security. One thing that must be avoided, even when the new law that is envisaged in Article 218 is put in place, is to make the security forces answerable only to the executive. That will not counter in any way the possibilities of political manipulation and abuse.

Strengthening the capacity of the intelligence institutions in the reform process is parallel to democratic ideas of good governance. Equity, participation, pluralism, partnership, subsidiarity, transparency, accountability, rule of law, human rights, effectiveness, efficiency, responsiveness and sustainability²⁰ constitute the core of good governance and must be cherished, fought for and achieved by all means.

This is also the time to develop and strengthen the capacity for oversight groups such as Parliament. It would be ideal to begin education programmes for parliamentarians and create useful guidelines for supervision of security groups. Moreover, the security sector is complex; generally civilian Parliamentarians may not possess the required knowledge of military purchases. Because of limited tenure in office, they may not have time to develop these skills; those that have developed the skills reach the end of their term and leave Parliament. In addition, the secrecy involved within the spy networks may limit the overall performance of Parliamentarians. This creates a problem of continuity. However, the lack of parliamentary legislation and oversight of the security sector casts a shadow on the legitimacy of the sector. This must be circumvented by all means.

In addition, civil society organizations and think tanks can play an important role in training and development of manuals on security sector policies and

functions, financial management and oversight issues. Their alternative voices on issues of security policy options, budgeting, procurement and their encouraging of public debate are very important. The presence of a strong civil society enhances government transparency; civil society's policy research could be instrumental in guiding the country to the correct path.²¹ Active civil society participation in Ugandan security reforms can also serve to further develop the increasing confidence in intelligence services that has been developed since the victory of the NRA.

Footnotes

- ¹ Sean McFate., *Securing the Future*, United States Institute of Peace, 2008.
- ² *Independence: The Early Years*, <http://countrystudies.us/uganda/9.htm>
- ³ The public debate still continues about which of the two groups is responsible for the mass killings in Luwero.
- ⁴ However, Akena is said to have been highly qualified. According to Sam Akaki in the *Sunday Monitor* newspaper, August 24, 2008, Akena was highly educated as a doctor, linguist and an anthropologist. Museveni reportedly served in the GSU, but his role is unclear.
- ⁵ *The First Obote Regime: The Growth of the Military*, The Library of Congress Country Studies; CIA World Factbook
- ⁶ "The First Obote Regime: The Growth of the Military", The Library of Congress Country Studies; CIA World Factbook. www.photius.com/countries/uganda/national_security/uganda_national_security
- ⁷ In his book *A State of Blood*, Henry Kyemba provides an account of Amin government's brutality. Fearful that his phone would be tapped, he kept his conversations on the phone with his wife brief and misleading. Kyemba served as a minister under Obote and Amin before his defection to London in 1977.
- ⁸ Egypt was the other African country involved in the war, but Egypt is an exception within Africa.
- ⁹ Timothy Kalyegira: <http://www.mail-archive.com/ugandanet@kym.net/msg18185.html>. According to Kalyegira, Binasisa had plans to secure hi-tech electronic surveillance devices that would be used for espionage, especially as security threats to his government grew exponentially.
- ¹⁰ Kalyegira writes that Obote had initially tried to name the new agency the "General Service Unit", just like the GSU that served under his first administration. But realizing the errors GSU had made and the public antipathy towards it, he decided to name it the National Security Agency (NASA).
- ¹¹ In 1987, intelligence legislation was in its infancy; even the United Kingdom (UK) Security Service was barely legislated. It lacked a specific statutory embedment which landed it in

trouble at the European Court for Human Rights, in particular by its use of inadmissible evidence such as illegal phone tapping. The UK eventually passed the Intelligence Services Act in 1994, whereby its security organizations and their mandates were grounded in law. Uganda was therefore at the forefront of intelligence legislation.

- ¹² In the UK, this body provides ministers and senior officials with regular intelligence assessment of short- and long term issues. In Uganda, the committees, with directors and officers of the agencies, have a sub-committee that is subordinate to the Security Council which the President chairs.
- ¹³ Security Organisations Statute, 1987.
- ¹⁴ Ibid.
- ¹⁵ Covert actions are intervention measures that agencies carry out in the territories or affairs of another country which is acknowledged. In the event that an operative/spy is caught, the country will deny his/her existence. The US Central Intelligence Agency has both Official Cover (diplomatic and at embassies) and Non-Official Cover (NOC) viewed in espionage as the real spies.
- ¹⁶ Greg Hannah, Kevin O'Brien and Andrew Rathmell: *Intelligence and Security Legislation for Security Sector Reform*, Rand Europe.
- ¹⁷ Uganda 1995 Constitution
- ¹⁸ Hans Born and Ian Leigh, in their book *Making Intelligence Accountable*, cite Article 4 of the International Convention on Civil and Political Rights (to which Uganda is a signatory), which declares that rights that can not be interfered with are the rights to life, to freedom from torture, cruelty and inhuman or degrading treatment or punishment, the right not to be held in slavery or servitude and to freedom of thought, conscience and religion, etc.
- ¹⁹ Ibid
- ²⁰ Born, Hans., et al, *Making Intelligence Accountable*, Oslo, 2005.
- ²¹ The Geneva Center for the Democratic Control of Armed Forces has published a handbook for Parliamentarians on the oversight of the security sector. This book spells out the principles, mechanisms and practices.

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The South African Intelligence Services: A Historical Perspective

Sandy Africa

Introduction

This paper examines the evolution of the South African intelligence services from the time of white minority rule to current day post-apartheid South Africa. This is necessary given that contemporary intelligence services have their roots in formations that pre-date the current period. In the nature of South Africa's transition to democratic rule, they are the product of a negotiated settlement forged from compromises between polarised political foes.

The architecture of the South African political settlement of the 1990s was such that it allowed for retention of many apartheid state structures which were then transformed from within on the basis of a new set of values encapsulating equity, fairness and respect for human dignity. In the case of the intelligence services, modification of this model took the form of an “amalgamation process”.¹ This involved the merging of personnel of the apartheid intelligence services with those from non-statutory services. The nature of this transition meant that not only personnel, but organisational culture, institutional architecture and administrative practices of preceding organisations would be retained, influencing the orientation and performance of, and choices made by, the new institutions. For this reason, it is important to understand the make-up, role and orientation of the apartheid intelligence services.

The post-apartheid institutions are a far cry from those that preceded them. Provided for in the Constitution, they are subject to the rule of law and a Bill of Rights which guarantees freedom of association and speech and the right to privacy. Their powers are limited and subject to multiparty parliamentary oversight. Moreover, the public has the right to complain to an Inspector-General of Intelligence if they believe their rights have been violated by the services.

In spite of these commendable changes, South African intelligence services over the years have been characterised by a number of features which suggest that they are still at risk of reverting to the practices of their apartheid past. It is in the domestic sphere – where intelligence methods have the potential to conflict with citizens’ rights – that the most glaring weaknesses can be found. Given the difficulties of measuring their output and standard of delivery and the fact that they generally operate in secrecy out of the view of the public, concerns about whether the intelligence services are vulnerable to abuse by political actors are probably justified.

The paper raises the question of whether intelligence oversight and controls are adequate to ensure accountability of the intelligence services. It argues that whilst there has been progress since 1994, political and public complacency could erode the gains made in establishing an accountable and restrained intelligence system. It therefore makes the call for a renewed agenda of intelligence reform and vigorous public interest in the affairs of these institutions.

Phases in the history of the SA intelligence services

The policy context for the role of the intelligence or secret services in the years under review (1910 to the present) was, in the years of white minority rule, that of successive white governments leveraging their political and economic dominance to exclude blacks from full economic and political participation and to entrench a racial notion of South African citizenship. In the post-apartheid period, intelligence services are duty-bound to defend and

uphold the Constitution. Nevertheless, there are features of the current intelligence dispensation that are remarkably like those that governed their apartheid era predecessors.

This paper divides the evolution of intelligence services in South Africa into four distinct phases:

1. 1910 to 1969 covers the time when South Africa's four white-controlled colonies merged to become one Union under a central government that owed its allegiance to the British crown to the year that the first national strategic intelligence service of the apartheid government was established;
2. 1969 to 1990 was the period of activity of the National Intelligence Services and its antecedents, the Bureau for State Security (BOSS) and the Department of National Security (DONS). During this period, several successive administrations of the National Party reformulated their security agendas, with the intelligence services' influence being expressed in relative strength or weakness to other security role players, particularly the military;
3. 1990 to 1994 was marked by the lifting of restrictions on political organisations such as the African National Congress (ANC) and Pan Africanist Congress (PAC). This period saw the emergence of transitional forms of control of the security sector as a whole and a shifting of the terrain on which the control of the intelligence services was mediated. As a by-product of the negotiations process, discussions were initiated about the future of all security services – police, defence and intelligence – including security components of the liberation movement; and
4. 1994 to the current period, which saw the establishment of post-apartheid intelligence services and their attempts to execute a new role within the context of a new constitutional and political dispensation.

1910 - 1969

Modern South Africa's history of official secrecy and secret service can be traced back to the formation of the Union of South Africa in 1910 through the South Africa Act, 1909, which was passed by the British parliament. The unification of the two former Boer Republics (Transvaal and the Orange Free State) with the British-controlled Cape and Natal colonies was preceded by a national convention which sought to find agreement on how whites could co-exist in South Africa while excluding blacks from the political mainstream.

The consolidation of white political power was characterised by the establishment of security institutions that unified former components of the various colonies and Boer Republics. The Union Defence Force (UDF) and the South African Police (SAP), formed shortly after Union, were faced with the task of integrating disparate security cultures and moulding them into one in the context of the unfolding racial exclusion that was to characterise South Africa for most of the twentieth century. Through these institutions, the system of state secrecy had an early beginning (Seegers, 1986).

During this period, the intelligence services concentrated largely upon the protection of the colonial regime, while also ensuring that potential sources of anti-colonial resistance were identified and dealt with early. At the same time, between 1910 and 1920, the attention of the British police was also drawn to the activities of the British Communist Party and leftists in the labour movement, whilst the SAP focused on Bolsheviks in the South African trade union movement. London and Pretoria shared information supplied by informers.

South Africa's foreign relations in the post-World War II period were a response to the country's increasingly isolated position. The role of information officers posted abroad by the State Information Office was to combat hostile propaganda (Geldenhuys, 1984). The number of information offices abroad totalled fourteen by 1953; several bureaucratic restructurings resulted in the establishment of the South African Information Service in 1957. The role of the Information

Service was to influence foreign opinion in favour of South Africa's domestic and foreign policies. Africa itself was not a high priority, with only one office, in Salisbury in Southern Rhodesia (Geldenhuys, 1984).

The National Party's ascent to power was marked by policies and legislative measures to enforce racial separation and white privilege in all walks of life (Grundy, 1986; Bindman, 1988). The system of apartheid needed strong measures to ensure compliance in a black population that was increasingly defiant; the period after 1948 saw the establishment of the security services and a rash of legislative measures designed to enforce apartheid (Bindman, 1988).

The Security Branch of the South African Police was established in 1947. Drawn from the detective service of the South African Police, the Branch acted as an elite political police. In its internal security function, it was engaged primarily in tactical intelligence activity. Intelligence was gathered mainly about political opponents of apartheid and aimed at achieving short- and medium-term objectives such as detentions, prosecutions and imprisonment. The laws introduced by the National Party government included many provisions intended to suppress freedom of expression and political association².

Increased resistance to apartheid led to further repression; in 1961, the banning of the African National Congress (ANC) resulted in the organisation's remaining leadership retreating into exile to consolidate the organisation (Davidson, 1976). The radicalisation of liberation politics also saw the government resorting to more complex measures in their efforts to coordinate its intelligence efforts. Intelligence coordination came under scrutiny and the State Security Committee was replaced by a State Security Advisory Council (SSAC). The latter had a secretariat consisting of members of the intelligence community and was known as the Intelligence Coordination Division (ICD). With the exception of the Director, the ICD was composed of non-permanent

members who were dependent on departmental members for basic intelligence (National Intelligence Service, 1994).

1969 - 1990

1969 was a watershed year in that it saw the formation of the Bureau for State Security (BOSS). Cabinet saw the need to be informed about security matters; it initially proposed that BOSS would also control the Security Police and Defence Force Intelligence. The idea of a new, central intelligence organisation was not met with much enthusiasm by the departmental intelligence services, which feared that it would encroach on their mandates (National Intelligence Service, 1994).

The functions of BOSS were:

- to collect, evaluate, correlate and interpret national security intelligence for the purpose of defining and identifying any threat or potential threat to the security of the Republic;
- to prepare and interpret for the State Security Council (SSC) a national intelligence estimate concerning the security of the Republic;
- to formulate a policy relating to national security intelligence for the approval of the SSC;
- to coordinate the flow of intelligence between different government departments; and
- to make recommendations to the SSC on intelligence matters (Security Intelligence and State Security Council Act, 1972).

To facilitate resource allocation to BOSS, the Security Services Special Account Act, 1969 authorised the creation of an account for the control and utilisation of funds for services of a confidential nature and such expenses connected with the Bureau for State Security. From the time of its establishment in 1969 through to the 1970s, BOSS achieved notoriety for its heavy-handed and intimidating tactics, including harassment of journalists and editors, blatant surveillance of political meetings, tapping of telephones and opening of mail of opponents

BOSS operated domestically and abroad and came to play a significant role in South Africa's foreign relations. Former officials of the Bureau admit that a large part of their operational effort was aimed at ending South Africa's isolation abroad; to this end, operatives were deployed both inside the country and abroad (National Intelligence Service, 1994).

Apart from BOSS, the other elements of the statutory intelligence community and the state's secrecy system during this period were the Security Branch of the South African Police and the Division of Military Intelligence (DMI) of the South African Defence Force (SADF). The 1970s saw the rise of worker and community resistance to apartheid and more repression by security forces. The role of the Security Branch of the SAP was to monitor resistance through the coordination of an extensive network of informers in anti-apartheid groups, along with detention, harassment and surveillance. Secret files were kept by the Security Branch on many of these opponents (Broden & Shearing, 1993).

The most striking feature of the South African Defence Force's (SADF) Military Intelligence structures was the extent to which they engaged in domestic and cross-territorial attacks on anti-apartheid activists, many of whom were in exile in banned political organizations. In South Africa's case, the 'enemy' presented itself in the form of the frontline states of the Southern African region, which bore a three-fold policy: economic domination, sponsorship of counterrevolutionary movements - Renamo in Mozambique and UNITA in Angola - and regular strikes on ANC bases (Davidson, 1976; Cawthra, 1986).

Following the Soweto uprisings of 1976, which led to unprecedented resistance and increased South Africa's isolation, led the regime to review their security strategy. The apartheid government's 1977 White Paper on Defence presented the role of the defence establishment as being to uphold the right of self-determination of the 'White Nation' (Cawthra, 1986; Grundy, 1986).

The intelligence services of the Transkei Intelligence Services, the Bophutatswana National Intelligence Service and the Venda National

Intelligence Service were modelled - in law at least - on the apartheid government's own National Intelligence Service, but staffed by "citizens" of the respective bantustans. Like the mainstream white services, the bantustan services focused on frustrating the political opposition by spying on members of the oppressed communities.

South African society became increasingly militarised in the 1970s and 1980s. Among the more notorious security institutions was the Civil Cooperation Bureau (CCB), an offshoot of the Special Forces, which engaged in an extensive political assassination campaign (Cawthra, 1986). At the height of apartheid during these two decades, security policy and strategy were coordinated at the national level by the State Security Council (SSC) and a Cabinet committee chaired by the country's State President and consisting of Ministers responsible for the country's security services. Significantly, the heads of the intelligence services also served on the SSC, giving them tremendous influence in national decision-making³.

There are very few surviving records of the intelligence services' activities under apartheid. In testimony before the Truth and Reconciliation Commission (TRC), former officials of the intelligence services admitted that the state had destroyed approximately 44 tons of records in the months preceding the country's first democratic elections. A massive operation saw thousands of intelligence and other department employees shredding and burning all evidence that could give the ANC-led government insight into the methods, informants and operations of the apartheid intelligence structures. The TRC Final Report notes that among the records of the former regime that could not be traced, were the records of the National Security Management System, a substructure of the State Security Council (Truth and Reconciliation Commission Report, 1998).

In summary, all the above-mentioned components of the statutory intelligence community - the civilian National Intelligence Service (NIS) and its predecessor, BOSS, the Security Branch of the SAP, the Division Military

Intelligence of the SADF and the satellite intelligence services of the TBVC states - coalesced to ensure the maintenance of apartheid. This is not to deny that there were contradictions between these role-players from time to time, or even that apartheid was homogeneous and interest-free over the years. At times, the rivalry between military intelligence, the Security Branch and the NIS was quite stark. But collectively, these agencies wielded considerable power.

1990 - 1994

The transition to a new political settlement was characterised by the transformation of many institutions, including the intelligence services. The mid-1980s to early 1990s, was an exceptionally violent period in South Africa's history (Moss & Obery, 1992). The response to protests was a show of force by security forces and the South African state: detentions without trial, prosecutions and imprisonment under anti-terrorism and internal security legislation, political assassinations by apartheid hit squads and security force instigation of "black-on-black" violence were the background against which very tentative and fragile overtures were made to explore negotiations between Pretoria and the exiled ANC (Collinge, 1992). South Africa's President De Klerk's lifting of the ban on the ANC, the PAC, the Communist Party and other proscribed organisations took observers, including the ANC, by surprise. It was followed swiftly by the release from prison of Nelson Mandela and other high profile political prisoners. These conditions led to the return of exiled ANC leaders and paved the way for negotiations (Haysom, 1992). The government and ANC signed the historic Groote Schuur Minute in May 1990, expressing "a common commitment towards the resolution of the existing climate of violence and intimidation from whatever quarter, as well as a commitment to stability and to a peaceful process of negotiations" (ISSUP 1992:17)

Within government, a change in the philosophy and official discourse around security began to take hold in the early 1990s. At a meeting of the country's top 500 police officers shortly before the lifting of the ANC ban, De Klerk

attempted to impress upon them their new responsibilities and urged them to leave politics to the politicians (Nathan & Phillips, 1992).

The transition to a new intelligence dispensation was part of a more generalised process of security sector transformation that had its genesis in the negotiations for a new political dispensation. The Convention for a Democratic South Africa (CODESA) was an important multiparty forum convened in 1991 and again in 1992. It debated the conditions for creating moving towards South Africa's first democratic elections. One of the CODESA working groups was charged with making recommendations on the creation of a climate for free and fair political activity. It addressed a range of concerns, including the return of exiles and release of political prisoners, repeal of security legislation and other repressive laws and the future of the security forces (Friedman, 1993). The final report of the working group included the following recommendations: that the security forces be subject to the supremacy of the Constitution, that they be politically non-partisan and respect human rights, non-racialism and democracy; and that they strive to be representative of the society as a whole.

The direct role of intelligence structures both in the negotiations process and in the creation of a new intelligence dispensation was significant. Officials on both sides were involved in designing a future intelligence dispensation (O'Brien, 1996).

Senior ANC members say that the ruling government had at first resisted the idea of negotiating a new intelligence dispensation on the grounds that intelligence issues could not be discussed in open political forums. They offered, it is said, to simply absorb members of the liberation movements and the TBVC states' intelligence structure into the NIS. This manoeuvre was rejected by the ANC; the political players, including the intelligence components, went on to negotiate a new intelligence dispensation together.

Agreement was eventually reached under which the intelligence services of the apartheid government were to remain intact – at least during the transition - as were those of the bantustan states and liberation movements. The intelligence services continued to serve their principals with information during this critical period, but were bound by political agreement to begin crafting a single intelligence framework for the future. The leaders of the intelligence structures were unavoidably drawn into negotiating their common future under the umbrella of a Joint Coordinating Intelligence Committee (JCIC), whose function was to provide regular intelligence estimates concerning the security situation in the country during the run-up to the elections. The JCIC played a crucial role in the election run-up by ensuring that all factors that could derail the process were duly monitored and reported.

The fact that a degree of cooperation existed should not detract from the reality that the non-statutory and statutory intelligence services were on opposite sides of a political divide in the critical period leading to the country's first democratic elections. In spite of the formal cooperation, secret information was a contested area in the political negotiations that preceded the country's first democratic elections. Both the National Party government and its political adversaries, particularly the ANC, were aware of the powerful leverage of institutions charged with intelligence responsibility and continued their intelligence offensives throughout the negotiations period in order to be aware of the activities and strategies of the other side.

The Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) came into effect on 27 April 1994, the date of the country's first democratic and non-racial elections. It contained a new feature in South African politics: a Bill of Rights, which guaranteed the fundamental rights of life, equality before the law, privacy, freedom of expression, association and movement, access to courts and administrative justice and significantly, the public right of access to information.

1994 to the present

Although there was no direct reference to intelligence services in the 1993 Constitution, it provided the context in which to locate police and armed forces reform and established a framework for civil-military relations in a democracy. It authorised the defence force “defend and protect the Republic, its territorial integrity and its people in accordance with the Constitution and the principles of international law regulating the use of force” (RSA Constitution, 1996, section 200(2)). Like other sectors of the security services, the defence force was required to be politically non-partisan and function within the ambit of the law, and subject to parliamentary oversight and accountability.

A new Constitution delineating the role of the intelligence services came several years later, after the services had in fact been established. Section 198 of the 1996 Constitution spelt out the principles of a new security dispensation and declared that the security services (intelligence services, armed forces and the police) must be structured and regulated by national legislation. Further, it required that the security services must act, and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic. Moreover, no member of a security service may obey a manifestly illegal order. In the words of the Constitution:

‘Neither the security services, nor any of their members, may, in the performance of their functions-

- (a) prejudice a political party interest that is legitimate in terms of the Constitution; or
- (b) further, in a partisan manner, any interest of a political party.

To give effect to the principles of transparency and accountability, multiparty parliamentary committees must have oversight of all security services in a manner determined by national legislation or the rules and orders of Parliament.’⁴

Section 210 of the 1996 Constitution spelt out principles for the functioning of the intelligence services:

‘National legislation must regulate the objects, powers and functions of the intelligence services, including any intelligence division of the defence force or police service, and must provide for-

- (a) the co-ordination of all intelligence services; and
- (b) civilian monitoring of the activities of those services by an Inspector appointed by the President, as head of the national executive, and approved by a resolution adopted by the National Assembly with a supporting vote of at least two-thirds of its members.’⁵

All of this is in addition to Chapter 9 of the constitution which establishes transparency and good governance across the public services.

By the time the country’s first democratic elections were held in April 1994, intelligence components of the statutory and non-statutory forces, at least at leadership level, were already in deep discussion about their agreed amalgamation. The White Paper on Intelligence, adopted by Parliament in 1994, warned against the intelligence services adopting a militaristic approach to security, as was the case under apartheid, when “emphasis was placed on the ability of the state to secure its physical survival, territorial integrity and independence, as well as its ability to maintain law and order within its boundaries” (RSA, White Paper on Intelligence, 1994). It further signalled that:

“...the main threats to the well-being of individuals and the interests of nations across the world do not primarily come from a neighbouring army, but from other internal and external challenges such as economic collapse, overpopulation, mass migration, ethnic rivalry, political oppression, terrorism, crime and disease” (RSA, White Paper on Intelligence, 1994).

The intelligence services would be governed by principles that are in sharp contrast to those that governed intelligence under apartheid. The intelligence services are now grounded on the following principles:

- the primary authority of democratic institutions of society;
- subordination to the rule of law;
- compliance with democratic values such as the respect for human rights;
- political neutrality;
- accountability and parliamentary oversight;
- maintenance of a fair balance between secrecy and transparency;
- separation of intelligence from policy-making; and
- an ethical code of conduct to govern the performance and activities of individual members of the intelligence services (RSA, White Paper on Intelligence, 1994).

The Intelligence Services Act, 1994 (Act 38 of 1994), provided for the amalgamation of the statutory and non-statutory intelligence services into two civilian intelligence departments: a foreign intelligence department responsible for external collection of intelligence about threats emanating from abroad and a domestic department focused on internal threats to security. The domestic department would also hold the counterintelligence mandate and would ensure that foreign agents did not penetrate the South African intelligence machinery (Africa, 1994).

The National Strategic Intelligence Act, 1994 (Act 39 of 1994), provided an intelligence coordinating mechanism. Intelligence inputs from the two civilian departments would be integrated with inputs from the intelligence divisions of the South African Police Service and the South African National Defence Force, in order to advise the government on threats and potential threats to the security of the country and its citizens (Africa, 1994).

The Intelligence Services Oversight Act, 1994 (Act 40 of 1994) provided for a multi-party parliamentary oversight committee with the authority to receive reports, make recommendations, order investigations and conduct hearings

on intelligence and national security matters and an Inspector General to investigate complaints about the intelligence services. The Committee would also prepare and submit reports to Parliament on the performance of its duties and functions (Africa, 1994).

Assessment of the post -1994 intelligence dispensation

There are more yardsticks to measure the extent and significant of change than this paper can accommodate. In keeping with the central argument – that whilst the gains of the post-apartheid period are significant – public vigilance and policy rigour are necessary to ensure that accountability is entrenched - only a few of the key issues will be addressed.

Legitimacy of the post-1994 services

The amalgamation of six ideologically and mission-disparate intelligence structures was a challenging task. The process brought together two non-state structures (the ANC's Department of Intelligence and Security (DIS) and the PAC's Pan Africanist Security Service (PASS), with four statutory structures of the apartheid era. These were the National Intelligence Service (NIS), the Transkei Intelligence Service (TIS), the Boputhatswana Intelligence and Security Service (BIIS), and the Venda National Intelligence Service (VNIS). In the case of the ANC and the PAC, the members who were absorbed had either been members of underground intelligence units operating inside the country, or had been in exiled structures. A personnel register of such individual was compiled, to ensure an orderly integration into state structures. Many of these individuals were also subject to the processes of demobilisation from active involvement in the underground and exiled structures.

After April 1994, whilst the legislation for the establishment of the new intelligence structures was being debated in Parliament, preparatory work was undertaken. Under political direction, a number of working groups considered organisational placements of the officers, the organisational design of the new services, what to do with the facilities and assets of the component structures,

and so on. By the time the new intelligence laws were passed, agreements on how the intelligence services should function were already in place. The work of addressing the country's commonly defined security threats could begin in earnest.

One of the fundamental ways in which the post-apartheid intelligence dispensation differs from the apartheid legacy was that of its legitimacy. The services are established in terms of the Constitution, which lays the basis for their legislative framework. For example, it is a constitutional imperative that there be multi-party oversight over the intelligence services.

Lending further credibility and legitimacy was that the services in their composition were racially representative of the country's population. Under apartheid, the senior leadership of the security forces had been largely white. This has changed, and even then, not without policy intervention. One of the earliest policy measures of the post-apartheid government was affirmative action or employment equity as it was known in the South African public service. In addition, in order to change the skewed demographic composition of the public service, the government offered incentives to serving officials who wished to take early retirement. Many intelligence officers who had served under the apartheid government took up the offer of these voluntary severance packages. This opened up opportunities, particularly at management levels, which could be filled by persons of colour. To some extent, this heightened the legitimacy of the services in the eyes of the general population.

Embedded in the more balanced racial representation of the services, has been an element of political inclusion. Notwithstanding the principle of political non-partisanship that decision makers have said should be a principle in managing the services, the truth is that politics has always been a step away from their doorstep. The senior management appointed to head the intelligence services under the government of national unity (GNU) in the early post-apartheid period, was a reflection of the political compromises of the negotiations process. The first Director-General of the NIA was Sizakele

Sigxashe, a former senior leader of the ANC's DIS, whilst the first Director-General of the SASS was Mike Louw, who had been Director-General in the apartheid-era NIS. The chain of command in the SANDF was Joe Modise, a former ANC military commander as Minister of Defence, with Lieutenant-General Dirk Verbeek, a former South African Defence Force officer as Chief of Staff Intelligence. In the South African Police Service, Divisional Commissioner Grove in consultation with National Commissioner Fivaz, both apartheid-era policemen, reported to a Minister for Safety and Security – Sydney Mafumadi – with an ANC background (O'Brien, 1996).

The apportioning of posts in this way helped to allay whatever tensions that might otherwise have caused dysfunction in the ranks. Over the past fifteen years, however, the top positions in the intelligence services have tended to be filled by cadres of the former liberation movements. Some would argue that this is unsurprising given the unique relations of trust that must exist between Ministers and their senior officials. Moreover, the claim is made that the next level of management – increasing is reflective of appointments for reasons of skill and competence. More encouragingly, a large number of recruits over the past ten years have little political baggage, suggesting that non-partisanship in the long run, can indeed prevail.

Intelligence and politics

In spite of the principle of non-partisanship inspiring their functioning, in truth the intelligence services sit very close to the seat of political power, and the possibility of abuse of the services for politically inspired objectives is always a danger. The heads of the services, and persons in the senior command are appointed by the President of the country. Because they are relied upon by the President to brief him on security threats, they wield significant influence. Some of the scandals that beset the intelligence services under the new dispensation were the product of political differences at the top. This affected the quality of intelligence provided to government. One of these incidents was the hand delivery of a classified intelligence report to President Mandela by the Chief of Defence Intelligence. The report had bypassed NICOC

structures and claimed that senior military officers with an ANC background were plotting a coup. A judicial team appointed to evaluate the report dismissed it as lacking credibility and the chief of Defence Intelligence was relieved of his post (Africa & Mlombile, 2001).

More recent developments have shown that intelligence scandals that have their roots in political conflicts are a continuing risk to the integrity of the intelligence services even today. Between 2005 and 2008, two episodes highlighted this risk. The first – the so-called hoax e-mail scandal - saw senior intelligence officers suspended, and others dismissed for their supposed role in the alleged falsification of evidence purporting conspiracies in the ruling ANC. Another scandal arose from the “Browse Mole Report”, prepared by the Directorate of Special Operations (DSO). Even though not an intelligence agency, the DSO (or “Scorpions” as it was popularly known, before being disbanded by government), led an operation using intrusive methods which led it to make claims that certain African governments - including those of Libya and Angola - were funding a conspiracy by the Deputy President of the ANC, Jacob Zuma, against the government headed by President Thabo Mbeki.⁶

Both incidents were subjected to official enquiries. However, the results only fuelled tensions in the security sector and generated political conflict. The former Director-General of the NIA was charged but acquitted in the “hoax e-mail report” saga. Throughout the episode, he vowed that he would fight to defend his reputation and honour and appeared to have been vindicated when he was acquitted of the charges. In an uncomfortable side show, the ruling party conducted its own investigation into the e-mail saga. This blurring of the lines between state and party business left many South Africans confused, and with a sense of trepidation that state institutions served at the behest of the ruling party.

In the Browse Mole Report saga, the NIA investigations into the source of the claims led them to DSO investigators. The JSCI, on receiving a report on the NIA investigation, condemned the DSO, saying that its reckless reporting had

jeopardised national security. Moreover, they questioned why the DSO was engaged in intelligence activity – outside of its legal mandate – and what right it had to use intrusive intelligence methods. Given the subject matter of the Browse Mole Report, it appeared that yet another security organ had been caught up in political conflict.

These incidents have done much to damage the legitimacy and credibility of the security services in general, and the intelligence services in particular. Fifteen years into democracy, it appears that they are not sufficiently insulated from political interference and abuse. All the more worrying is that in the opaque world of intelligence, it is difficult to discern who is responsible for possible abuses: is it the Executive, who tasks the intelligence services to serve their own interests, or elements in the services, who violate their undertaking to serve impartially and only in the broader national interest? What is clear is that a more rigorous system of checks and balances is needed to prevent a repeat of the sorry incidents of the past few years.

Scope and coverage of the intelligence services

The civilian intelligence services under the new political dispensation were to mirror their primary statutory predecessor, the NIS in one important respect: relatively small, even elite structures - analysts guessed that they numbered no more than three to four thousand - were to have no executive powers and concentrate on giving strategic advice. The mandates of the domestic intelligence service, the National Intelligence Agency (NIA) and the foreign intelligence-focused South African Secret Service (SASS) have been the subject of ongoing interpretation by the Executive and the intelligence services. The founding Acts of these two structures do not prescribe the areas around which intelligence should be gathered. Instead, services are required to gather intelligence on “threats to security”. This broad legal formulation has proven to be a double-edged sword for the services. On the one hand, it allows them flexibility and adaptability to changing security conditions. On the other hand, it carries the risk of them being unfocussed and possibly ineffective in their role. In reality, the areas that the services have focused on over the years have

been varied: in the earliest days of NIA's existence, perceived threats to security that occupied their attention included politically-motivated violence (particularly between the ANC and its rival, the Inkatha Freedom Party). During Parliamentary budget votes, some of the security concerns of the intelligence services are brought to public attention. For example, the public learned through Parliament that the intelligence services had provided intelligence about the instigators of a terror campaign in the Western Cape between 2001 and 2004 which led to the arrest and prosecution of those involved.

After the terrorist attacks of 11 September 2001 on United States (US) soil, many countries felt the pressure to respond or to align themselves with the US. News reports and Hansard debates reflect that the issue of global terrorism was high on the South African intelligence services' agenda. Several Western governments expressed the view that South Africa's porous borders were a cause for concern and claimed to have intelligence that South Africa was being used as a transit route, and in some cases, as a safe haven for terror groups. South Africa's intelligence services were naturally drawn into closer cooperation with Western intelligence agencies.

From about 2004 – after South Africa's third democratic elections - a number of factors began to surface sharply in the domestic security environment which caught the attention of the domestic intelligence services. Rising unemployment, a steep increase in illegal migration from neighbouring territories and protests against inadequate services delivery to the poor contributed to growing instability across the country. These issues also caught the attention of the NIA. When it appeared that tensions were flaring between rival political groups vying for access to resources, the services were required to monitor these developments as well.

Violence emanating from old political rivalry has tended to flare up around each general election; over time, violent protests against poor service delivery has also received attention from the NIA. Corruption has been another matter receiving attention, especially as rising levels have come to cause great alarm to government.

The NIA's ability to address all these tasks over the years is attributable to the expansive intelligence gathering mandate under which it functions. At the same time, it plays another role: national counter-intelligence responsibility. NIA maintains that it has a considerable counter-espionage capacity and that in the post-apartheid period, South Africa has been flooded with foreign spies. The fact that no foreign spies are known to have been charged in South Africa makes it difficult to verify this claim. However, South Africa does not have a modern law expressly criminalising espionage, a gap which recently when the Protection of Information Act, 1982, came under parliamentary review in an effort to align it with the country's Promotion of Access to Information Act, 2000.

Expansion of the intelligence services

The civilian intelligence services began in 1995 with a modest architecture: two agencies (NIA and SASS) and a coordinating structure. From the year 2002, structures of the intelligence services expanded through further legislative amendments. Through the Intelligence Services Act, 2002, the South African National Intelligence Academy (SANAI) was established, along with a statutory advisory board on training – the Ministerial Advisory Committee on Training. The mandate of the SANAI was to provide career training for cadets and intelligence officers. The Intelligence Services Act, 2002 also provided for an Intelligence Services Council of Conditions of Service (ISC), which was charged with advising the Minister on conditions of service for intelligence services employees.

The Communications Security (Pty) Ltd Act, 2002 led to the establishment of COMSEC, a state-owned company charged with the streamlined procurement and standard-setting for communications-related equipment in government. The Regulation of Interception of Communications and Provision of Communications Related Information Act, 2002, established the Office for Interception Centres (OIC) Subject to judicial approval, the OIC was to be the only structure authorised to engage in legal interception of domestic communications. A National Communications Centre (NCC) was also

established to effect signals interceptions. The NCC was to operate under the auspices of the NIA. This was to cause controversy later, particularly because NCC's satellite surveillance capacities enabled it to invade the privacy of citizens and others, without proper oversight and controls.

The expansion of the intelligence services took place under the leadership of Minister Lindiwe Sisulu, herself a former intelligence operative of the ANC whilst the movement operated underground and from exile. Sisulu, who succeeded Joe Nhlanhla, who had obstinately held out on his principles in the amalgamation negotiations, launched a vigorous campaign for more resources for the intelligence services.⁷ She often said that she wanted to place intelligence at the centre of government; she was successful in gaining an increased share of the budget, though this remained miniscule in relation to other line department budgets and in relation to the budgets of the police and the military.

The expansion of the intelligence services drew mixed reaction from other sectors of government, particularly the National Treasury, which questioned the need for the entities introduced by Sisulu. When he was appointed Minister for Intelligence in 2004, Ronnie Kasrils moved quickly to put a stop to further expansion and to redress the ratio between personnel, capital and operational expenditure. Nevertheless, the legislative framework for these entities had been approved, and there was a concurrent pressure from the JSCI that they be established and begin functioning.

The establishment of these entities has given rise to further recruitment and therefore the size of the intelligence service. A further set of professional skills has thereby come to be incorporated into the intelligence services, deepening the level of skill and sophistication. At the same time, the services are faced with performing their functions alongside those of departments who must meet pressing demands for service delivery. Balancing operational and personnel costs, continually right-sizing, and ensuring the availability of appropriate skills remain an ongoing challenge.

A thorough assessment of the performance of the intelligence services is difficult because of the restrictions placed on the disclosure of information.⁸ There is however, an element of routine to the work of both NIA and SASS. For example, the NIA, which has the national counterintelligence responsibility, is responsible for the vetting and issuing of security clearances of government employees who have access to sensitive information.⁹ NIA is also required to ensure that standards of information security are adhered to in all government departments.

Coordination of the work of intelligence services is effected through the National Intelligence Coordinating Committee (NICOC). Like the NIA and SASS, NICOC is headed by a Director-General (the highest South African civil service level) Coordinator for Intelligence. The Coordinator receives, evaluates and integrates intelligence from all the intelligence-gathering components of the state, including the Crime Intelligence Division of the South African Police (SAP), the Defence Intelligence Division of the South African National Defence Force (SANDF) and the NIA and SASS. In line with its legislative mandate, the NICOC developed the practice of submitting a National Intelligence Estimate to the Executive on an annual basis, combining the inputs of the different agencies. This informed the annual priority-setting process of the Cabinet. It also assisted in focusing intelligence services on its priorities for the year ahead and distributing labour between components in an equitable way.

The law has been silent on NICOC's responsibility to foster intelligence cooperation in operational terms. Thus, the mechanisms for cooperative gathering of intelligence are left to the discretion of the leadership of these structures. From the point of view of regulatory consistency, this is problematic; it may result in missed opportunities and incomplete assessments. The parliamentary oversight committee has on occasion lamented the fact that there are inadequate regulations for the country's system of intelligence coordination.

Oversight of the SA intelligence services

One of the features of the intelligence dispensation, glaringly absent from the pre-1994 period, had been oversight, most notably parliamentary oversight. Today, several bodies provide oversight of the intelligence services. The Minister for Intelligence Services has political responsibility for the services and is meant to provide the policy framework within which the activities are located. The Minister is accountable to Parliament, and like all Ministers must table his or her budget vote for debate annually. The conditions of service of intelligence officers under the authority of the Minister are spelt out in the Intelligence Services Act; intelligence officers are therefore not subject to the Public Service Act, 1994. Nevertheless, the Minister is expected to liaise closely with the Ministers of Public Service and Administration to ensure that the spirit of reforms introduced more widely in the public service are reflected in the intelligence services' dispensation.

The Joint Standing Committee on Intelligence (JSCI) is the multi-party parliamentary body that has the role of keeping the intelligence services in check. There are several features of the parliamentary oversight system which beg scrutiny. One is the formula for the composition of the JSCI. Political party representation in the JSCI is proportional, with the result that the ruling party holds the majority of places, with several of the smaller parties given only limited representation. In itself, this should not be a problem if there is consensus on the goals of the Committee's functions, but problems could arise if members of Parliament act more out of party loyalty, rather than hold the executive and the services they lead to account.

Another issue is the method of appointment of the JSCI. Unlike other select committees of Parliament, where parties have a direct say in who will represent them, members of the JSCI are appointed by the President, following nomination by their political parties and subject to their meeting security clearance requirements. The Executive has argued strongly in favour of such an arrangement on the grounds that such caution is necessary in the interests of national security. In isolated cases, the services have warned that prospective

candidates did not meet the criteria, leading the parties concerned to withdraw their candidacies.

With these reservations, the powers of the JSCI are considerable. By law, they have access to intelligence, information and documents in the possession or under the control of a service, if such access is necessary for the performance of their functions. The only condition is that such information and records must be handled in accordance with security regulations. The law however, draws a line when it comes to the names or identities of service members, sources or methods of intelligence gathering. The services are not obliged to disclose these details to the Committee. In fact, the Committee functions within the bounds of secrecy and treads a fine balance of being publicly accountable, satisfying Parliament that services are operating legally and ensuring that their impartiality has not been impaired.

It took some time to develop expertise in the JSCI; this process tended to be disrupted by changes in administration. There has also been the reality that some members stay in their positions for only a single term of elected office. It takes time for parliamentarians to achieve a level of understanding of complex issues of budgeting, security sector structures and intelligence operations. and structures.

To extend the oversight function, the Intelligence Services Oversight Act, first introduced in 1994, also provided for the appointment of an Inspector- or Inspectors-General, responsible for monitoring the services' compliance with their own policies, reviewing services activities and performing all functions designated by the Minister concerned. The Inspector-General is nominated by the oversight committee (JSCI), and approved with a 75 percent majority by a joint sitting of both Houses of Parliament. The Inspector-General is expected to compile for the Minister reports of any unlawful activities or significant intelligence failures reported by the heads of the intelligence services. With even more access to information than the JSCI, the Inspector-General has virtually unfettered access to information held by the services.

In recent years, Inspector-General (IG) Zolile Ngcakani has had to address several highly controversial issues. In 2005, the Minister directed him to investigate allegations that NIA conducted illegal intelligence operations against certain prominent members of society. In addition, the IG was drawn into investigating claims surrounding a related hoax e-mail scandal emanating from the NIA. The IG office was also a critical player in criminal investigations that transpired against senior officials of the NIA. Among charges laid was the failure to disclose information to the IG as provided for in the Intelligence Services Oversight Act. Another charge of fraud related to the falsification of intelligence provided to the President. These long drawn-out cases tested the capacity of the IG and state. The matter was not enabled, as it became evident that what was at issue behind the intrigue was a power struggle within the ruling party, the ANC. In the end, the charges were either withdrawn or the accused acquitted. The existence of the IG office had proven itself to be a necessary and important oversight instrument. This institution has particular leverage because it has the power to investigate all aspects, including operational matters. It also has the right to demand access to classified information, if this is needed for it to conduct its work. These powers were in fact invoked in the matters outlined above, enabling the IG to reach his conclusions. Those who were the subject of the IG's investigations raised concerns that his office was being used – by the Minister – to prosecute a political agenda. The incidents provided a basis for learning, and in fact have been the subject of the recent report of a Ministerial Commission reviewing the constitutionality of the operations of the intelligence services.¹⁰

Given the history of apartheid's covertly-funded operations, financial accountability has been a major concern under the new intelligence dispensation. Some insight is gained into the financial accountability of the services through a study of annual reports of the Auditor-General. The RSA Constitution, 1996 established the Auditor General's responsibility to audit and report on the accounts, financial statements and financial management of all national and provincial departments, municipalities and other institutions required by national or provincial law to be thus audited and report to any

legislature that has a direct interest in the findings. In line with the principle of transparency, the Constitution explicitly requires that all Auditor-General reports must be made public. For 1996-1997, the Auditor-General reported that although the financial statements were not being published for “strategic and security reasons”, they were, in his opinion, a fair reflection of the financial position of the institutions concerned. Nevertheless, he made a number of observations about intelligence financial statements and accounting practices, many of them legacy issues from the apartheid era. They include: the need for improved controls over the human sources payments, the civilian intelligence services’ failure to compile an assets register, lack of financial controls in the merger of the security machinery into police and intelligence agencies and the lack of an appointment of an Inspector-General (RSA, Report of the Auditor-General 1996/1997). The same concerns were repeated in the 1997/1998 Report of the Auditor-General, and in the next. Although the Auditor-General reports indicated slow progress in attending to some of the concerns, the relationship between that office and the respective intelligence departments was dynamic and revealed, at least, a sense of accountability on the part of the services.

Another level of oversight is that over intelligence operations. The intelligence services operate within the framework of laws spelling out their powers, including the powers to intrude privacy. The Regulation of Interception of Communications and Prohibition of Monitoring Act, 2002, a revised version of an earlier act, spells out the procedures that must be followed by state agencies which wish to undertake intrusive monitoring (surveillance) of communications. All intrusive surveillance must be approved by a specially designated judge after careful and thorough motivation. The warrants thus issued are for limited durations. The monitoring of communications outside of these parameters is strictly forbidden. In the cases investigated by the IG, it emerged that the use of satellite intercepts, a capacity South Africa does have, was not clearly circumscribed and regulated. The Minister therefore undertook to have legislation debated and passed in Parliament. However, this matter has not been concluded by Parliament.

Lessons of the South African experience

Several factors distinguish South Africa's post-apartheid intelligence services from those existing under apartheid. The first is the difference between the political systems that these services have served. Prior to 1994, the intelligence services operated within the context of a minority white regime agenda. Post-1994, the intelligence services were required to serve under a legitimate constitution. The contrast between the values of the intelligence services under the new dispensation, as opposed to the highly politicised and instrumentalist role that they played under apartheid could not be more pronounced.

Nevertheless, the apartheid-era and liberation movement representatives involved in intelligence were able to achieve consensus on how to manage the merging of apartheid and liberation intelligence entities. In the talks about a new dispensation, ANC negotiators argued that given the consequences of extensive and unchecked powers of intelligence services under apartheid, the restructuring of the intelligence services was a vital element in the transformation of the security forces, (Africa & Mlombile, 2001).

The South African intelligence services were formally established by the 1994 Intelligence Services Act that required the incorporation of members and assets of six former disparate entities into two services - the National Intelligence Agency and the South African Secret Service. A preceding process had placed them under a transitional political authority charged with ushering in the new democracy through openly contested elections. This transitional authority was mandated to explore the principles that would govern a new intelligence dispensation and the form it would assume. The fact that consensus was reached on these questions should not be underestimated. An enormous amount of political will, pragmatism and even compromise, were required, in all participating constituencies to make the new dispensation a working reality. Fortunately, under the transitional arrangements of the TEC, the intelligence components were forced to become accustomed to the idea that they would be subject to a single civilian leadership under a new political dispensation.

The entrenchment of democratic principles that emerged from the negotiations, the Transitional Executive Council, the 1993 and 1996 Constitutions and legislation establishing the intelligence dispensation created the basis for a new culture of accountability and transparency over intelligence. The new services faced many challenges but in the first five years of the new dispensation, oversight bodies appeared to be satisfied with the services' performance.

The fact that the South African transition involved the wholesale rewriting of the country's Constitution was a tremendous opportunity. It was not surprising, however, that in spite of all the efforts at alignment with the democratic overtones in the Constitution, the new intelligence services initially faced suspicion and derision from the public.

The legacy of the intelligence services under apartheid and the sometimes notorious role of the security elements in the liberation movements had given a bad name to intelligence. Periodic public relations efforts were not always able to convince the public that the services were acting within the framework of the law.

There were substantial features of the new dispensation that were positive. Oversight structures such as the JSCI and Auditor-General were able to demonstrate to the public both the strengths and weaknesses of the intelligence services. There was improved accountability of the responsible Minister in Parliament and the services were, for the first time ever, united about the nature of the enemy the country faced. Events in recent years however, sound warning bells that controls over intelligence operations may not be as sound as they should be, and that there are gaps in the legal framework, occasioned, *inter alia*, by increasingly sophisticated technology, that need to be addressed.

The intelligence sector in South Africa still faces many of the challenges faced during the transition period, albeit within a more democratic and developed institutional framework. Events of the recent years show that even under a post-apartheid government, there must be vigilance against excess by state

institutions to avoid intelligence services becoming embroiled in political battles. Yet it must be remembered that it is the political authorities who create the space for intelligence services to operate. Implicitly, they must take responsibility for any deviations from the rule of law that take place. In this regard, effective and robust multi-party and independent oversight is imperative. South Africa should certainly reflect on how to build on its very promising foundations.

But probably the greatest challenge today concerns not just the intelligence services, or even the broader security sector, but all of South Africa. As established as the new intelligence dispensation is, it still operates within a government and society that face social and economic challenges. It can be said a security sector and its intelligence component are as healthy, accountable and effective as the government they serve. More work remains to be done in South Africa.

Conclusion

The paper evaluates governance of the South African intelligence services over the past century and reflects on the interests that these services have served. During the colonial period and apartheid, the role of intelligence was to protect white minority interests. An opening of the political space in the 1990 saw the intelligence agencies of the apartheid system and the liberation movements converging in the interests of a national agenda. The relationship between these two former opponents survived a complex amalgamation which was part of the political transition of the 1990s. Since 1994, the intelligence services have undergone significant changes, but have also been constrained by the contradictions of the post-conflict situation. Moreover, they need to confront choices that strike a balance between secrecy and accountability. Such choices face intelligence services in even the most mature democracies. The question today is whether oversight institutions of the post-apartheid era and the constitutional framework under which the services operate are effective, resilient and resistant to abuse and add value within the context of South Africa's many security challenges. The paper concludes that whilst there have been

encouraging signs, there is still room for much improvement in the performance and accountability of the intelligence services.

Footnotes

- ¹ This was the name given to the measures taken to merge the state's intelligence structures and the intelligence wings of the liberation movement, in terms of agreements forged during South Africa's transition.
- ² They included the Suppression of Communism Act, 1950; the Internal Security Act, 1950; the Public Safety Act, 1953; the Riotous Assemblies Act, 1956; the Defence Act, 1957; and the Police Act, 1958.
- ³ More legislation aimed at consolidating secrecy and state security was also passed during this time. The effect of such legislation was to tighten control over information and further restrict opposition to the policies of the government at the time. The Protection of Information Act, 1984 for example was passed. It repealed the Official Secrets Act, 1956, the Official Secrets Amendment Act, 1956, section 27 C of the Police Act, 1958, sections 10, 11 and 12 of the General Law Amendment Act, 1969, and section 10 of the General Law Amendment Act, 1972.
- ⁴ Constitution of the RSA, 1996, section 199
- ⁵ Constitution of the RSA, 1996, section 210
- ⁶ These allegations were the subject of several SA media reports. Parliament's JSCI summoned the intelligence services for a report on the matter, and strongly condemned the DSO's actions and reports in this regard, as undermining 'national security'.
- ⁷ Sisulu, it should be noted also served as the first chairperson of the intelligence oversight committee, the JSCI.
- ⁹ The criteria for the issuing of security clearances are under consideration by the Cabinet, following concerns that they may be in violation of the constitutional right to privacy.
- ¹⁰ The three-person Commission finalized their report and handed it to Ronnie Kasrils, the Minister. However, he was one of the Ministers who resigned in protest when president Mbeki was dramatically removed from office by the ANC in 2008, leaving the fate of the report in the balance. The caretaker Minister, Siyabonga Cwele did not comment publicly on the report during his short term in the run-up to the next general election.

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Changing the Intelligence Dynamics in Africa: The Ghana Experience

Johnny Kwadjo

Introduction

The promotion of good governance through the reform of the security sector continues to engage the African development agenda almost two decades after the Cold War. In both post-conflict and stable countries, security sector reform (SSR) has increasingly become part and parcel of the drive towards political stability and democratization in Africa. However, one important but silent aspect of this SSR process has been intelligence reform.

Where reforms have been initiated, these have been the result of preconditions set for donor assistance, pressure from civil society organizations, political parties and pro-democracy movements at home and abroad, or the realization that the old structures and institutions have not responded to new security demands. Whatever the particular combination of factors have instigated these reforms, they have generally involved:

- A process of transforming post-colonial police investigative agencies into effective information gathering and processing agencies;
- Making them autonomous from either the police force or the military; and
- Bringing them under legal existence, including subjecting them to the tenets of the rule of law and oversight procedures.

As a consequence of these actions, the aim has been to transform political tools into functioning intelligence systems subject to the rule of law.

This paper explores some of the critical challenges of the Ghana experience in intelligence reform and how these challenges were managed in the reform process. It looks at the experience of Ghanaian intelligence reforms as part of the broader security sector reform agenda. The post-conflict conditions of Sierra Leone or Liberia provide some relatively clear paths of intelligence reform as part of integrated SSR approaches. The post-apartheid negotiations and arrangements provide another specific set of circumstances under which South Africa arrived at very developed intelligence reforms as part of its broader security sector transformation. However, Ghana's security transformation was not driven by post-conflict or negotiated settlement, but by specific political, economic and security conditions in the country from 1981 to 2000.

The Ghana situation

On December 13, 2006, Ghana's Minister for National Security, Mr Francis Poku, stood on the floor of the country's Parliament to defend his requests for financial appropriations and budgetary allocations for the country's intelligence services for the ensuing year. His requests were met with howls of criticism by members of the opposition parties, who accused the intelligence agencies of "rushing to follow false leads and ended up harassing innocent people without doing proper and thorough analysis of information received".¹ Critics also cited the "need to strengthen security at the regional and district levels by ensuring that officials at local government levels desist from meddling in various conflicts including those on chieftaincy."²

The Minister, for his part, argued that "the Ministry of National Security is approaching the issue of national security on a non-partisan basis and is, therefore, committed to taking on board pieces of advice from all, including political parties, in order to secure the nation," adding that "we fully subscribe to the rule of law and good governance."³ Media reports also noted that "...some MPs expressed worries over the instability in the country created by the recent

cocaine scandal and increase in armed robbery cases and said the money allocated to the Ministry was inadequate and called for more resources. They also touched on the need to enhance security around MPs and other important personalities such as the Justice Minister and Chief Justice, especially in the wake of the many cocaine cases before the courts.”⁴

This episode in Ghana’s Parliamentary history was important to the consolidation process of Ghana’s intelligence reforms encompassed by the Security and Intelligence Agencies Act (Act 526) of 1996, parts of which aimed to make Ghanaian intelligence accountable to Parliament. Section 32 of the Act states:

“There shall be provided by Parliament from the Consolidated Fund such monies as may be required for the expenses of the Council and the Intelligence Agencies.”⁵

The fact that the request for funds on behalf of Ghana’s hitherto secretive intelligence agencies was being made in open Parliament and in public by Ghana’s Minister for an integrated National Security Ministry provides an indication of both how far the country’s intelligence reform process, especially the requirements for oversight, has advanced since its modest beginnings in the early 1980’s. It also indicates the extent of the integration of the intelligence services into the overall national security systems and budgets of the country. Furthermore, it provides an insight into the wishes and demands of the Parliamentarians regarding the functions of intelligence, in particular, the prohibition of local officials meddling in local conflicts and the drug trade.⁶

Given the history of extensive military involvement in politics and resulting instability in Ghana up to the early 1980s, the fact that the Intelligence Law is now accepted and adhered to by all parties demonstrates the symbiotic relationship between a functioning security system – including intelligence – and ongoing democratic development. The acceptance by Ghana’s leaders of the link between a functioning security system and democratic development

has resulted in peaceful elections in 2000, continuing peaceful transfers of power between governments and the creation of a legal framework that keeps security services out of politics.

How did Ghana's intelligence reform get to this point? Clearly, Ghana's intelligence reform process was not a one-off act resulting from a grand agreement between contending parties. Rather, it was the result of an incremental, but deliberate effort of institution building, personnel development and appropriate legislation.

The historical and political context

In analysing the evolution of intelligence reform in Ghana, it is useful to understand the authoritarian colonial and post-colonial legacies from which the country's security forces and intelligence agencies evolved. Ghana's post-colonial political development was characterized by systemic instability and a succession of military coups and dictatorial regimes that inhibited the sustained development of lasting democratic institutions.⁷ It was not until the period between 1981 and 2000, when a combination of donor pressure and local democracy advocacy groups created the enabling environment for a security sector and an intelligence reform process that authorities began to enact changes in the security system.

Intelligence under colonialism

The development of intelligence activity in Ghana is generally traced to the seminal events of the February 1948 riots⁸, which caught the British colonial authorities by surprise and created the urgent necessity for the establishment of an intelligence capability.⁹ The Commissioner of Police had actually sanctioned the ex-servicemen's demonstration and had done so because he was "satisfied that untoward incidents arising from this large assembly of men were improbable."¹⁰

The basic purpose of the colonial intelligence capability was to obtain "a continuous supply of political information carefully collected from every part

of the Gold Coast... about any groups or individuals taking part in subversive activities”.¹¹ The Police Criminal Investigations Department (CID) concentrated its attention on crime investigations; the Special Branch (SB) concerned itself with the collection of security and political intelligence on perceived enemies of the regime.

Regime protection remained at the core of domestic intelligence activity throughout the colonial and post-colonial periods. Domestic intelligence in the pre-reform period remained with the SB of the Ghana Police Service and continued to exhibit the characteristics of the colonial police culture, including heavy-handedness, politicisation and control. It was this excessive police behaviour that became the subject of reform in Ghana in the early 1980s and resulted in the removal of basic intelligence functions from the SB and into a separate accountable agency, the Bureau of National Investigations (BNI). The remainder of the SB was added to the CID to expand its criminal investigation capacity.

Post- independence and overseas intelligence

Kwame Nkrumah inherited this colonial police service and, whilst he struggled to reform it, he ultimately failed to do so. However, he did sow the seeds for an overseas intelligence capability to use in the pursuit of Ghana's foreign policy. The Foreign Service Research Bureau (FSRB) was founded in 1958 to support the government's strategic vision of radical Pan-Africanism. The Cold War and Nkrumah's vigorous attempt at "positive neutrality" involving an equal association with Soviet and Chinese as well as British and American leaders meant that Ghana needed reliable intelligence and counter-intelligence capability to maintain its independence. Technically, the FRSB was under the administrative control of the Ghana Foreign Ministry, which posted its officials abroad under the cover of regular Ghanaian diplomats. However, operational control was retained by the Office of the President at Flagstaff House, where collection tasks were distributed and agent reports were presented¹². However, as intelligence tasks became more complex (as a result of increasing Western opposition to Nkrumah's strategic objectives), the regime carved out an elite

corps from the Foreign Ministry's Research Bureau to form the African Affairs Secretariat, which came under the administrative and operational control of the President's office.

The impact of the first Ghana coup on intelligence

The 1966 coup against Ghana's first elected government had a tremendous impact on the evolution of its intelligence infrastructure. In particular, the failure of the external and internal agencies to work together led to a wider failure to uncover the coup plot. The regime protection role of the SB did not extend to the effective collection and use of information that could have led to early warning of a coup, whilst external intelligence remained completely separated from the system.

Most significant, however, was the fact that among the coup plotters were the Commissioner and Deputy Commissioner (Head of CID) of Police and the Head of the SB. The key role played by the intelligence agencies in the coup was recognized in the new National Liberation Council (NLC), where posts were divided equally between the army and police. This spectre of concentration of power has haunted intelligence agencies ever since and was not lost on the military. In 1967, the military regime added a Military Intelligence Unit (MIU) to the range of intelligence institutions in order to provide regime protection.

At the same time, the NLC regime disbanded the African Affairs Secretariat, dismissed several of its officers and re-integrated the rest into the FRSB at the Foreign Ministry. The political view that Nkrumah had dissipated Ghana's resources on "foreign adventures" ensured that future governments would avoid not only Nkrumah's radical Pan-African policies but also any further attempts to design an independent strategic foreign and defense policy (with the accompanying intelligence capability) for the country.¹³

This set the pattern for foreign intelligence up until the 1980s, when successive regimes changed the location of the FRSB. At the same time, the rationale of regime protection became the critical driver in the development of Ghana's

intelligence agencies, along with increasing politicisation and the view that the route to civilian power lay in the hands of the intelligence agencies themselves.

Intelligence and regime security

The first *coup d'état* in February 1966 not only initiated a succession of coups,¹⁴ but also underlined the critical role played by the security services, including intelligence agencies, in regime survival and political stability in Ghana. This raises a critical question: Which was worse: repeated acts of conspiracy to overthrow the state perpetrated by elements in the security agencies or the persistent failure of the security establishment to thwart these coups?

In a particularly telling example of the importance of intelligence in regime security, the government of the second Republic placed the regime's security under the MIU, then headed by Colonel Acheampong, a friend of the Prime Minister. Acheampong promptly staged his own coup against the Prime Minister, promoted himself to the rank of a General and made himself Head of State and Chairman of a National Redemption Council (NRC) from 1972 to 1978.

This action by the head of the MIU drew national attention and generated several internal struggles for control by various factions within the Ghana military. Acheampong's regime was removed in a palace coup in July 1978 by its Chief of Defence Staff, Lt. General Akuffo, who also declared himself Head of State and Chairman of a new Supreme Military Council (SMC). He lasted until June 1979.

So severe were the internal problems created by these struggles within the Ghana military that in June 1979 a major uprising by junior officers and enlisted men overthrew the entire senior military hierarchy and established an Armed Forces Revolutionary Council (AFRC), comprised of junior officers, non-commissioned officers and order ranks and chaired by Fl. Lt. Rawlings, who

held power for three months before ceding to the elected civilian government of Dr. Hilla Limann in September 1979.

But no sooner did Rawlings cede to the new civilian government than the MIU, with SB assistance, began a campaign of intimidation against Rawlings and his associates. The Ghanaian public was therefore quite surprised to hear in late December 1981 that Rawlings and his associates had overthrown the government once again and established a new Provisional National Defence Council (PNDC) despite the “Japanese surveillance” apparently mounted against him by the MIU and the SB. Clearly whatever these agencies were doing, they were not acting as effective intelligence agencies. By this time, the MIU had lost all credibility; as a result of Rawlings coups, the remaining intelligence architecture effectively collapsed. Not surprisingly, one of the first acts of the new Rawlings regime was to disband the MIU.

Eboe Hutchful summarises the increasing ineffectiveness of the security services well when he states:

“Since 1966 every successful coup has involved, firstly, a minimum of troops and secondly, little or no resistance from the military establishment. No sooner has a coup commenced than commanders disappear, troops lay down their arms, and the military establishment capitulates. In April 1967 three lieutenants and 120 men overran the military establishment in Accra, the coup fizzling out on its own when the rebels ran out of ammunition. This scenario has since been repeated with minor variations. The *reductio ad absurdum* of this pattern occurred in the December 31, 1981 coup when 12 men were able to take Accra with no resistance from the Army”.¹⁵

Rebuilding intelligence and oversight structures

Following the collapse of the intelligence apparatus after the 1981 coup,¹⁶ a gradual process of rebuilding intelligence capability began in April 1982, when a committee chaired by the National Security Adviser, retired Captain Kojo Tsikata, who was a close colleague of the new Head of State Rawlings, carved

out a new internal intelligence agency from the old SB to form the Bureau of National Investigations (BNI).

This process separated intelligence activity from normal police investigative activities and finally saw the end of the SB. Young university graduates with various relevant specialisations and “A” level holders were recruited and trained in more modern methods of intelligence collection, analysis and communication methods, working together with old operatives transferred from the SB.

The MIU was dissolved and intelligence activity in the military transferred to the BNI. The new agency was made independent of both the police service and the military, but controlled by the Office of the President through the Office of the National Security Adviser. The nerve center for national security and intelligence was also transferred from the Special Services Division in the President’s office to the new offices of the National Security Adviser (who was also the Provisional National Defence Council (PNDC) member responsible for National Security and Foreign Affairs). This office became the Secretariat of the National Security Council (NSC).

As a result of this change, members of the intelligence services no longer carried police rank. Members of the internal service carry normal public service designations, while those of the external service carried normal Foreign Service designations. Members of the new Defence Intelligence, however, carried their respective military ranks.

Naturally this transition did not take place as smoothly as might have been wished; at first, there was almost total confusion in the area of personnel changes. As Kofi Quantson, the Director of the newly-established BNI, stated:

“When I assumed duty as the Director of the BNI, I inherited a battered, tattered and dispirited system that was under deep suspicion. Some (officials) were being blamed for the calamity that had befallen the organization and were said to be responsible for the operational excesses that antagonized sections of the

public, including Flt.-Lt. J.J. Rawlings and Capt. Kojo Tsikata.”¹⁷ Quantson further revealed that “..there was that other serious unforeseen development. And that had to do with the new people being recruited to replace those of the “old guard” who were on their way out either on orders or voluntarily. Obviously there developed that “Old Hands/New Hands” mentality. The new hands had total distrust for the old hands, reasoning that as part of the old establishment they could not be loyal to the new government.”¹⁸ But through systematic joint training programmes and the continuous inculcation of professionalism among old and new personnel, a more effective agency was developed over time.

Training and technology in the intelligence field became much more advanced, emphasizing better techniques for gathering information and improved analysis of data, as well as a more effective communication of the processed end product. Above all, unlike the past, when intelligence services entrance criteria were based on criteria specific to the police service, foreign service or the military, intelligence services entrance criteria were now unified.¹⁹

As part of the reform process, qualification for recruitment into all branches of intelligence is now based on a minimum of a University degree and/or required professional training. Basic training for all branches is now unified, enabling administrators to post successful candidates to either domestic, external or counter-intelligence duties depending on their post-basic training aptitudes. However, once inducted into a particular department, training specific to each department is now required. Core activities across all services are now centered on collection, analysis and communication of information.

The National Security Council (NSC) Secretariat has become the collating center for reports from both internal and external intelligence agencies. Reports from other security services are forwarded there for analysis and integration into regular security appraisal reports for consideration by the NSC. The NSC Secretariat also hosts regular meetings of a Joint Intelligence Committee (JIC) attended by the heads of the Intelligence Agencies, the Commissioners of Police

in charge of operations and the CID and senior analysts from the NSC Secretariat itself. The heads of Customs, Immigration and the Prison Service are also invited to these meetings from time to time. The National Security Coordinator, the most senior officer after the National Security Adviser, chairs these JIC meetings.

These slow, but systematic changes leading to a more coherent national security framework began to take place only when the government began to feel more secure about its control over the general security situation and able to end its previous excessive recourse to secrecy. These changes also laid an important foundation for the future development of an oversight framework.

The role of civil society in the furtherance of an oversight framework

At the same time as administrative and institutional advances were proceeding within the security sector itself, a parallel development was occurring outside this process. In particular, throughout the Rawlings regime, pro-democracy groups and civil-society organizations in Ghana waged a campaign for SSR. The proliferation of private newspapers (such as the *Free Press* and the *Ghanaian Chronicle*) and radio stations enabled such organizations as the Movement for Freedom and Justice, the Trades Union Congress, the National Union of Ghana Students and the Ghana Bar Association to mount campaigns and demonstrations that greatly aided these developments.

Thus, in 1990, when the National Commission on Democracy, at the prompting of the PNDC, organized fora in all 10 regions of the country, Ghanaians demanded not only multi-party government but also institutional changes to make violent and illegal attempts to overthrow future constitutional governments impossible within the norms of rule of law, civil accountability and protection of human rights.²⁰ These nascent demands for reforms and more effective regulation of the security sector became part of a broader demand for institutional transformations to be addressed in the new Constitution, which include very detailed provisions for the management of the nation's security structures.²¹

The new regulatory and statutory framework

Although its establishment by executive decision in 1958 was never formalized through any legislative instrument, the existence of the Research Bureau was now formally recognized for the first time by Article 83 of the 1992 Constitution, which listed “The Director of External Intelligence” among the membership of the National Security Council. Subsequently, Act 526 (1996) clearly defined the legal status of the Bureau, mandating its continued existence as the ‘External Intelligence Agency’ of the State. Placement of the department under the National Security Council, and thus under the Minister of National Security, formally legalized the *de facto* distinct character of the Reserch Bureau as an entity separate from the Ministry of Foreign Affairs.

In addition to Chapters 15, 16 and 17, where specific provisions were made for the Police Service, Prisons Service and the Armed Forces of Ghana respectively, the Constitution established (Article 83, under the Executive) a National Security Council as the framework for managing overall security concerns.

Importantly, by including the Directors of External Intelligence, Internal Intelligence and Military Intelligence within the membership of the National Security Council and therefore, under the purview of the Constitution, intelligence agencies were stripped of their traditional anonymity and rendered subject to the law, like all other institutions of the state.²² This was reinforced by Article 85, which stated quite categorically that:

“No agency, establishment or other organization concerned with national security shall be established except as provided for under this constitution.”²³

This provision was, of course, intended to remove any possible doubts about the permissibility of creating shadow intelligence or paramilitary organs not subject to the laws of the land or the accountability of the Government. At the same time, in addition to a number of other provisions guaranteeing the rights and freedoms of Ghanaians, especially freedom from arbitrary arrest, torture

and illegal detentions, the Constitution established a Commission on Human Rights and Administrative Justice. The core functions of this agency include:

- (a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer (including intelligence officials) in the exercise of his official duties;
- (b) to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the Armed Forces, the Police Service and the Prisons Service in so far as complaints relate to the failure to achieve a balanced structuring of those services or equal access by all to the recruitment of those services or fair administration in relation to those service;
- (c) to investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under this Constitution.
- (d) to take appropriate action to call for the remedying, correction and reversal of instances specified in paragraphs (a), (b) and (c) of this clause ...”²⁴

Thus, the previous experience of Ghana has informed a meticulous approach to the establishment of regulatory oversight and constitutional provisions - at least in law.

Notwithstanding these elaborate constitutional provisions, oversight of intelligence did not improve automatically. One reason for this is the nature of the evolution of Ghanaian politics following the promulgation of the 1992 constitution. Another is the political opposition to the PNDC, which had mobilized a good portion of the civil society organizations behind it and had become fixated on the single issue of getting the PNDC out of power and taking over the governance of the country. This strategy left the opposition with very little time to work on the new, more liberal constitution, or develop meaningful opposition in terms of scrutiny of the security sector.

The PNDC, on the other hand, refused to disappear, but instead reorganized itself into a new political party, which challenged the opposition New Patriotic Party (NPP) in the 1992 Presidential elections. When the main opposition NPP candidate was defeated in the Presidential elections, they simply boycotted the 1992 parliamentary elections. This resulted in a virtual one-party parliament between 1992 and the elections in 1996.

Parliamentary scrutiny, however, was expected to become the central pillar of oversight. Thus, the absence of a vigorous opposition party in Parliament denied the country an early opportunity to begin the process of working out the new dispensations brought about by the Constitution. Whilst the new national security framework was quickly becoming the real focal point of national security decision-making, it continued to lack the coherence expected by the Constitution. Turf wars amongst the various NSC agencies resulted in resistance to the idea of submerging sectional interests under a broader, national vision and paralysed the effectiveness of the NSC in its early stages. This was particularly true of the increasingly powerful Ministry of Foreign Affairs, which resisted the submerging of foreign policy decisions into the broader NSC framework.

At the same time, whilst the 1969 Constitution, for example, had made no provision for representation of the security services on the NSC, in the 1992 Constitution over half of the 17 statutory members were drawn from the services. This was significant, given the growing prominence of the NSC in national security management and the implications of this for civil control of the security sector.

The real difficulty with oversight, however, was the lack of a clear and comprehensive policy guideline providing a strategic outlook for Ghana's security services. Such lack of clarity could hamper oversight activities; with no definition of national security in place, institutions could have political 'wriggle room' in any oversight situation.

There may well be several reasons for this failure of successive Ghanaian governments to articulate a well-defined national security policy. But one of the most enduring appears to be the fact that following the backlash against Nkrumah's alleged "waste" of precious national resources on "foreign adventures", subsequent regimes no longer attempted "independent foreign and military policies". Under the PNDC/NDC, for example, Ghana's options were constrained by the economic stringency which dependence upon international financial institutions and donors imposed. The fact that the NPP government has not been able to consider a national security policy framework either would suggest that economic dependency results in political dependence on the benefactor partners as well. Such dependence simply does not engender a significantly independent, or at least significantly different,²⁵ foreign and defence policy worthy of a policy statement.

Notwithstanding these difficulties, in 1996 the second Presidential and Parliamentary elections under the 1992 Constitution were held, this time with the full participation of the main opposition party. There were growing pressures for greater transparency and accountability of government in general and of security services in particular. Demands for Parliamentary and civil society oversight over the activities of the military and intelligence agencies have now become a common feature of public debate in Ghana.

Toward a new governance framework: The Security and Intelligence Agencies Act (Act 526) of 1996

The response of the NDC government to these demands for SSR, as well as to the evident vacuum in coordination created by the lack of a strategic plan for the security sector, initiated a number of processes leading to the passage of the Security and Intelligence Agencies Act of 1996 (Act 526). According to the Deputy Minister of Justice and Attorney General, who presented the Draft Bill to Parliament:

“..the purpose of Security and Intelligence Agencies Bill is to incorporate into an Act of Parliament the constitutional provisions on the National Security Council and to make fuller provisions for the operation of the National Security Council. The Bill also seeks to provide a clear legislative framework for the operation of the security and intelligence services in the country.

Mr. Speaker, it would be realised that even though previous Constitutions have made provision for the establishment of the National Security Council, and there have been in existence some security and intelligence services in this country, these have not formed the basis of legislation. Consequently, most of the security services operated as secret organisations or agencies.

*This was for a good cause in that epoch. Now the world trend is to ensure that there is transparency in the operations of security and intelligence agencies throughout the country, and to make them more democratic and accountable to Parliament. Consequently, the trend is to put in legislative form the rules and regulations governing intelligence and security agencies. Thus for the first time we are bringing a Bill which would give legal force to security and intelligence agencies which had existed in this country for quite some time now”.*²⁶

As a result of this legislation, for the first time, control and administration of the BNI, the Research Department and Military Intelligence was brought under one body – the NSC, in order to enhance their effectiveness.²⁷ This new provision, again for the first time, established a homogeneous, centralized intelligence service. The NSC Secretariat therefore became the “one-stop” office for the control and administration of all three agencies.

Section 12 (1) of the Act re-stated the functions of intelligence agencies as follows:

- (a) Collect, analyse, retain and disseminate as appropriate information and intelligence respecting activities that may constitute threats to the security of the State and the government of Ghana;
- (b) Safeguard the economic well-being of the State against threats posed by the acts or omissions of persons or organizations both inside and outside the country;
- (c) Protect the State against threats of espionage, sabotage, terrorism, hijacking, piracy, drug trafficking and similar offence; and
- (d) Perform such other functions as may be directed by the President or the Council.²⁸

Parliamentary Oversight

Among the various means by which the 1996 Act sought to provide for oversight of the intelligence agencies by Parliament is the provision in Section 17(2), which states that:

*“The Minister assigned responsibility for (the Intelligence Agencies) shall in respect of each year submit a report to Parliament on the Intelligence Agencies”.*²⁹

The original intent of this section may be gleaned from the parliamentary debates on the Bill. According to the Deputy Minister for Justice, in a debate during the second reading of the Bill:

“We have been torn between whether we should have a national security adviser who may not be a Minister of State or we should have a Minister

who will be responsible [to Parliament]. At the end of the day it has been thought that once the security agencies will ultimately be answerable to parliament, then a Minister should have the responsibility for the security agencies.”³⁰

This argument is of particular importance because while the National Security Adviser is an adviser to the President and cannot be summoned before Parliament without the President’s authorization, the Minister of State is available to Parliament to answer routine questions regularly. This distinction is important for the purposes of acknowledging Parliament’s rights of oversight. In fulfilling this requirement, the Minister presents his Annual Report to the Speaker of Parliament who, in turn, submits it to the appropriate parliamentary sub-committee for consideration. The report is then brought to the floor of the House with the recommendations of the sub-committee for further debate and approval. The fact that opposition political parties were represented on the parliamentary sub-committee as well as in the House itself, enabled all parties to be involved in the consideration of national security issues and hopefully the development, in time, of a more bi-partisan consensus over security matters.

In practice, however, continuing mutual suspicions between the government and opposition Members of Parliament robbed the report of much of its potential to create consensus. For opposition members, an attempt by the NDC government to appear transparent could not possibly be genuine. (Trust is at a premium in a political system where secretive intelligence agencies have historically played such a political role controlling the general population.)

The intelligence agencies themselves, on the other hand, distrusted all MPs and were unwilling to share sensitive information with them, or even, at times, any information at all. More broadly, many wondered whether intelligence material which may contain information sometimes obtained clandestinely should be placed in the public domain, with attendant risks of exposure of sensitive and confidential sources and methods.

A workable balance has developed over time. The Minister's report to Parliament includes important information on the tasks of the intelligence agencies in general, what activities were carried out during the period under review and with what results and agency projections of the anticipated national and international security situation in the coming year. The Annual Report, however, excludes operational issues or details and (naturally) any reference to intelligence sources and methods. In addition, the Minister's briefings take place under confidential conditions depending on the degree of sensitive materials contained in the report.

This position was supported by several provisions of the Law, including Section 37 (1), which bars disclosure of confidential information likely to damage state security and unauthorized public exposure of secret sources and methods.

Another means by which the law has sought to provide parliamentary oversight and accountability of intelligence agencies is the requirement in Section 32 providing that budgets of the intelligence agencies should be approved by Parliament. In practice, this is fulfilled by the presentation of Budgetary Estimates to Parliament, which provides the Legislature with the means to influence not only expenditure but also (in theory) subject matter and intelligence operations.

The National Security Coordinator, who is the professional Head of the National Security Council Secretariat, is subsequently enjoined by Section 33 (1) to "keep books of account and proper records in relation to them". These books of account "shall be audited by the Auditor-General each financial year". By this provision, the Auditor-General's Department has also come to be associated with oversight.

Other significant oversight innovations are contained in Part V of the Law under the heading of "Complaints Tribunal and Warrants", which states in Section 21 (1):

“A person who is aggrieved by any omission or commission of an intelligence Agency may submit a written or oral complaint to the Director of the intelligence Agency concerned”.

And if:

... ”dissatisfied with the action taken by the Director, submit a written complaint to the Chief Justice who shall refer the complaint to the Tribunal of three persons to examine and determine the issues raised in the complaint within a period of 60 days.”³¹

Finally, the legislation requires directors of intelligence agencies to apply to the courts for the issue of warrants authorizing certain types of surveillance, such as the use of telephone taps.

Coping with the new legal and political environment

When Act 526 was passed in 1996, it was heralded as providing important new methods by which the intelligence agencies were to be regulated and how they were expected to conduct their relationships with other security sector agencies, executive departments, the judiciary; and above all, with the legislature and its committees. It also opened the way to the involvement of civil society in their activities.

However, not all in the intelligence agencies welcomed the new legislation. For many, the prospect of strengthening parliamentary scrutiny of their activities was inconsistent with the activities of a ‘secret’ organisation. Legislating oversight of activities of intelligence agencies, especially in the kind of detail contained in Act 526, could only undermine the operational activities of the agencies.

On the other hand, some intelligence officers saw in the law a long-sought opportunity to provide a legal basis for previously unregulated activities and therefore long-term stability and autonomy for intelligence structures. There are important advantages of such a legal basis. First, security of tenure for

intelligence personnel is now guaranteed. Second, the historically high turnover of officials in the service, especially as a result of changes of government, can be avoided once intelligence agencies are legally designated as institutions of the state, rather than operated as political servants of the government of the day.

In addition, the requirement in Section 13 (2) that the President appoint agency directors in consultation with the Public Services Commission provides a recruitment regime which helps place agency personnel on a professional basis beyond simple political allegiance to the ruling party. The requirement in Section 14 (c) that the director of an intelligence agency should “pursue and ensure political party neutrality of his Intelligence Agency in the performance of its functions” was particularly welcomed by many of the younger agency staff as well as others.

These post-legislation debates were an indication of the difficulty that the agencies faced in adapting to the changing political climate. For a variety of reasons, the transition to constitutional rule and the change in the political climate deepened the sense of hiatus among the agencies. With the liberalisation of the political environment, there was a sudden de-emphasis on so-called dissident activities, thus changing the emphasis of intelligence activities away from monitoring and destabilizing of opposition forces deemed to be planning the overthrow of the government. Political opposition was now both open and legitimate. The restoration of formal multi-party activity and the declaration of a general amnesty for all political exiles enabled significant numbers of political exiles to return home, join political parties of their choice and engage in open opposition activity.

One new legal requirement has proved very difficult to put into practice. The requirement in Section 12(1) (d) states that intelligence agencies “Protect the State against the activities of persons, both nationals and non-nationals, intended to overthrow the government of Ghana or undermine the constitutional order through illegal political, military, industrial or other means or through any other unconstitutional method”. In other words, given the changes in the

political climate, the new law appears to be calling for agencies to perform precisely the traditional “regime protection” functions that they had performed before the new legislation clarified the non-political nature of intelligence agencies.

Given the extensive provisions in the Constitution guaranteeing the freedoms of speech, association, assembly and public demonstration, a critical question for the intelligence agencies became “at what point is a *political, industrial and even a military* manifestation *intended* to overthrow the government of Ghana or undermine the constitutional order?”

Interpretation differs among the services, but two broad strands can be discerned. On the one hand, the much older and generally more conservative officers from the ex-SB tradition tended to support the existing government’s view that the new legislation empowered agencies to intervene in political conflicts on the side of government under the pretext of preserving law and order. On the other hand, there were those who believed that political intervention by agencies against sections of civil society, the media, and opposition political parties on behalf of the political authorities could undermine the independence and integrity of the services as well as the reform process and place at risk the security of tenure of officers. The law was interpreted by the more progressive sections of agencies as an opportunity to upgrade their services to more universally accepted standards, following their increasing participation in international intelligence cooperation activities and liaison relations with the services of the more advanced countries.

Once again, this issue brought into sharp focus the underlying disagreement between elements from the erstwhile SB and those recruited in the post-1981 period, when the two were merged into the BNI.

Between 1996 and 1998, the media liberalisation policies had ensured that so-called ‘opposition activities’, such as workers demonstrations, student protests and agitation by political parties and civil society organisations, received much more effective coverage. A part of the critical (even anti-government) outlook of the new media was the persistent dissemination of the view that the security services were creatures of the incumbent government. Opponents of the NDC government were effectively utilising the tactic of emphasizing the historical antecedents of the regime in the erstwhile PNDC, a regime with authoritarian military origins, as their principal campaign tactics for obtaining political power.

The media’s approach in playing up the NDC’s alleged propensity to resort to similar abuses of human rights in the name of national security was to put the intelligence agencies on the defensive and further strengthen the hands of those officers who argued that the services needed to outgrow their reputation as government enforcers. To preserve their integrity and legitimacy, the agencies would have to be, and be seen to be, neutral of political factions. But these uncertainties sometimes paralysed the intelligence and security agencies: the attitude during these early years appeared to be “when in doubt, do nothing.”

Indeed, in an effort to clear up the ambiguities stemming from the new political environment, the Minister of State for National Security issued his *Policy Directives for the Intelligence Agencies* in 1998 in which he pointed out that:

“With the coming into being of the 1992 Constitution and the successful holding of the 1992 and 1996 elections, political pluralism and the legalisation of political opposition have been established. While on the one hand, this situation has channelled efforts at the illegal overthrow of the government into relatively peaceful political opposition, attempts at the illegal overthrow of the government cannot be ruled out. It will therefore be unwise to relax our infrastructure for discovering attempts at the illegal overthrow of the government.”³²

The “Directives” continued:

“Collection and analysis activities of the Intelligence Agencies should, therefore, aim at discovering the extent to which apparent political activities are being undertaken for illegal purposes and the extent to which apparent industrial strikes, demonstrations, etc., against the state are aimed at the illegal overthrow of the government”³³

Role of intelligence agencies at regional and district Local government levels

The 1996 Security and Intelligence Agencies Act has provided a potentially viable framework for the future development of the intelligence agencies as a significant component of ongoing SSR and the democratization processes in Ghana.

A particularly novel dimension of security sector legislation was the degree of decentralization of intelligence activity and accountability of the agencies to local governance structures that was facilitated by the Act. The establishment of Regional and District Security Councils and the membership of regional and district intelligence heads on these councils ensured that the activities of these agencies would be integrated into, and determined and controlled by, civilian political authorities at these subordinate governance levels.³⁴

One of the more immediate results of the law was that, from a level of about 6% in 1995, almost 42% of assistance requested of the agencies in 1999 came from the regions and districts. (This is compared to the previous situation where the vast majority of tasks assigned to regional and district intelligence officers came from Intelligence Headquarters in the capital of Accra.) As might be expected, this change has compelled agencies to devote human and material resources to the requirements of lower levels of government. Coordination with the rest of the security sector, indeed with the civilian interests represented on these Councils, also increased significantly.

One important consequence of this shift in need is the nature of the new tasks agencies find themselves performing. For example, the agencies have become increasingly involved with collecting, assessing and collating information on such issues as the nature and consequences of chieftaincy, land, ethnic and other related disputes, white-collar crime, cross-border arms trafficking, vehicle thefts, drug trafficking, money laundering and other criminal activities. These new activities created inevitable difficulties harmonizing agency involvement into areas that were previously exclusive to the police. However, in time, aspects of these problems that concerned intelligence came to be much better defined.

For example, today, while the CID handles investigations on chieftaincy and land disputes which become violent, intelligence agencies concern themselves more with the collection, collation and analysis of information with a view to predicting where these problems are likely to occur, whether they would lead to violent conflict, and what, if any, significant political or economic interests might lie behind them. Their findings are then placed at the disposal of the District Security Council, which usually then attempts arbitration and some form of pre-emptive conflict resolution. Even when these arbitration efforts fail, with resulting violence or damage to persons and/or property (as has often been the case), the resulting police investigations and prosecution are greatly aided by readily available intelligence dossiers on these issues.

Thus, an important contribution of Act 526 to internal conflict resolution efforts has been to initiate an integrated mechanism at district, regional and national levels for detecting and managing potential conflicts. In addition, the reporting mechanism by which district minutes, conclusions and reports are forwarded to Regional and National Councils on a regular basis has ensured that there is advance warning to the NSC about areas of potential conflict nationwide.

The experiences of the services since the new law came into force also indicate that even the most liberal legislative framework may not automatically translate into a more liberal security system if the law is not understood by citizens, civil society, members of government and, above all, by members of the security

services themselves. Between December 1996, when the Bill received Presidential assent, and early 1998, hardly anyone seemed to show much awareness of the new law. Indeed, even senior Members of Parliament interviewed at the time could not readily remember its basic stipulations. Many lawyers practicing in Ghana did not know anything about the law, and therefore could not utilise its provisions in the defense of their clients.

Moreover, during promotion interviews conducted for very senior members of the BNI and the Research Department between 1998 and 2000, although every one of the candidates knew about the existence of the law, fewer than half of them could readily recount specific provisions, let alone demonstrate assimilation of critical sections. Few seemed aware of the profound significance of its requirements on their profession. State of knowledge about the Act seemed once again to reflect the cleavage between the old guard of the service and the newer, often better educated and informed officers.

Nevertheless, by 1998 the reforms envisaged by the Act were beginning to assume a momentum of their own. A number of internal seminars were held in the RD, the BNI and the MI on the provisions of the now old “new law”, on more refined methods of information gathering, collation and analysis, as well as on more modern investigative methods, including the use of “elicitation” instead of “interrogation” of suspects. External intelligence capability was now being directed towards supporting Ghana’s economic interests while Military Intelligence, now renamed Defense Intelligence, was being directed towards a more sustained surveillance of Ghana’s borders, among other more relevant tasks.

Conclusion

The oversight process begins within the intelligence organization itself. It then extends outward to the other relevant bodies, institutions and civil society organizations. However, it is ultimately the responsibility of all citizens in a democracy to ensure oversight by being informed about established oversight processes, regulations and laws.

Ghana's experience fashioning an intelligence oversight mechanism clearly demonstrates that even after a considerable period of time this is still a work in progress. A democratic constitution will not, by itself, guarantee credible oversight of security services, including intelligence services. Continuing education and involvement of more citizens holds the promise for an even more stable oversight regime.

Nevertheless, a decade after the reform process, a different National Security Minister has used the law confidently and authoritatively in defence of his budget requests of Parliament. Ghana's intelligence agencies have used administrative, organizational and institutional reforms continuously in pursuit of their new objectives and under a new political regime. Such commitment to intelligence sector reform demonstrates the foresight involved in undertaking these reforms and the evident political stability that has accrued to Ghana as a result.

Like democratisation itself, SSR, especially intelligence sector reform, remains a continuous undertaking, even for the so-called stable countries in Africa. The only way to avoid reversal of even modest gains is to keep security reform processes constantly moving.

Footnotes

- ¹ Mr. Enoch Mensah, Deputy Minority Chief Whip in Parliamentary Debates in Hansard, 13 December 2006.
- ² Dr Benjamin Kunbuor, NDC-Lawra-Nandom, *ibid.*
- ³ National Security Minister, Mr. Francis Poku, *ibid.*
- ⁴ Ghana News Agency, General News of Wednesday, 13 December 2006.
- ⁵ The Security and Intelligence Agencies Act (Act 526) of 1996
- ⁶ Dr Benjamin Kunbuor, NDC-Lawra-Nandom in Hansard, Parliamentary debates of Wednesday, 13 December 2006.
- ⁷ The country's first coup d'état in February 1966 toppled Ghana's first post Independence government barely 9 years after Independence. This was followed by an intermittent succession of coups until the final Rawlings coup of 1981.
- ⁸ The unpreparedness of the police led to the shooting of a number of rioters in Accra, notably a group of second world war veterans, which set in train the events that eventually led to independence.
- ⁹ Austin, D. (1970). *Politics in Ghana, 1946-1960*. London: Oxford University Press
- ¹⁰ Richard Rathbone, *Political Intelligence and Policing in Ghana in the late 1940s and 1950s*. In *Policing and Decolonisation, Politics, Nationalism and the Police, 1917-65*, edited by David M. Anderson and David Killingray, Manchester University Press. 1992, p.84.
- ¹¹ *Ibid*
- ¹² Ghana Research Department Training Manual 2005
- ¹³ For example, although Ghanaian troops continued to be deployed for peace-keeping duties abroad, in places like the Lebanon, Kuwait, Bosnia Rwanda and the Democratic Republic of the Congo, these deployments were not the result of any strategic Foreign and Defense policy considerations on Ghana's part, but rather as paid agents of the United Nations and the strategic interests of the more powerful members of its Security Council.
- ¹⁴ These were:
 - The overthrow of the constitutionally elected 1969 Administration of Dr. Busia by Gen. Kutu Acheampong in 1972;
 - The forcible removal of the military regime of Gen. Acheampong in 1978 by Gen. Akuffo;
 - The June 4th military uprising of 1979 which toppled the Gen. Akuffo regime and brought Ft. Lt. Rawlings to power and helped inaugurate the constitutional civilian government of Dr. Hilla Limann in September 1979; and
 - The overthrow of the Limann regime in 1981 by Rawlings (once again).
- ¹⁵ Hutchful (1998) 'Institutional Decomposition and Junior Ranks' Political Action in Ghana', in Eboe Hutchful and Abdoulaye Bathily (eds), *The Military and Militarism in Africa*, Dakar: Codesria, 1998: 211-257 Co-editor (with Abdoulaye Bathily), Codesria Books, 1998
- ¹⁶ The Special Branch and (in particular) the Military Intelligence had been used to harass Rawlings and other 'subversives' before the coup, and the latter would bear the brunt of the attack during the coup. See Hutchful 1997 in 'Restructuring Civil-Military Relations and the collapse of Democracy in Ghana, 1979-81'; *African Affairs*, 96 (1997): 535-560.
- ¹⁷ Kofi B, Quantson, 2000, *Chapters From the Intelligence Sector*, Pg 212
- ¹⁸ *ibid.* Pg.213

- ¹⁹ Hitherto, basic qualifications for entry into the police service, and therefore into the Special Branch, were either a post-Middle School Certificate or post Secondary School Certificate depending on the position for which a candidate was being recruited. Basic qualification for entry into the Foreign Service, and therefore into the external intelligence agency, however, was at least a first University degree and a Diploma in international relations.
- ²⁰ See Justice Annan's 1990 Report of the National Commission on Democracy.
- ²¹ See preamble to the report of the Committee of Experts to submitted to the Consultative Assembly March 1992
- ²² Constitution of the Republic of Ghana, Art.83, clause (1) (g). (h). (i) Ghana Publishing Corporation, Tema, 1992
- ²³ Constitution of the Republic of Ghana, Art.85,
- ²⁴ Constitution of the Republic of Ghana, Chapter Eighteen; Art. 218, (a) (b) (c) (d)
- ²⁵ Different from the donor in this case.
- ²⁶ Martin Amidu in Hansard, Parliamentary Debates, Official Report, Fourth series, Vol.13 No. 21, 30 October, 1996, pages 713-714
- ²⁷ The BNI had, hither to been managed by the Ministry of Interior, the Research Department by the Ministry of Foreign Affairs and the Military Intelligence, by the Ministry of Defence.
- ²⁸ Security and Intelligence Agencies Act, 1996; Act 526. Government Printer, Assembly Press, Accra. GPC/A432/300/7/96 Pg.7
- ²⁹ *ibid* pg.8
- ³⁰ Hansard, 30th October, 1996.
- ³¹ Act 526 pgs, 9-10
- ³² Policy Directives for the Intelligence Agencies, June 1998, pg. 9
- ³³ *ibid.* pg. 10
- ³⁴ Act 526 Part II Sections 5 and 6 pg.5

The General Performance and Systems of Intelligence Bodies in the Great Lakes Region

Andrew Agaba and David Pulkol

Abstract

Today's security challenges in the Great Lakes region are very dynamic and unpredictable.- They have implications for global security and thus, require international co-operation. Some security challenges that pose danger to humans and the state are country-specific and reflect unique situations. Others threaten regional security in general and need to be confronted mutually and holistically. Regional threats include, but are not limited to, terrorism, climate change and environmental disasters such as earthquakes, floods and hurricanes, human and drug trafficking, hunger and disease, fraud, cybercrime and gun trafficking and trade. Since these security threats have taken on dynamic dimensions and now threaten the security of the entire region, responses must be of equal proportion. Moreover, security forces in the Great Lakes region have many weaknesses and contradictions, which may themselves be a source of threat. This calls for an overhaul of security sectors, repositioning and redirecting of security actors in order to meet the new challenges and increased, improved

oversight. This paper is an overview of the general performance of security intelligence actors within the region and indicates directions in which security sector reconstruction and reform should proceed.

Introduction

Since the eras of independence and the Cold War, security challenges within Africa have evolved away from security machineries engineered and equipped for 'regime survival'. The roles of both eastern and western blocs, who often used states as proxies for cold war conflicts, have also changed. While most African countries gained their sovereignty during the same period, each country has different stories of their transformations. The changes in security machinery and levels of security sector reform (SSR) within each country are very different. Some nations have made considerable strides reforming security forces; others are just beginning their reform processes. Thus, the question begs to be asked: Why are reforms in security provision and execution so different among countries?

The explanation can be found in the unique challenges and troubles that these countries have had to face. The post-colonial era in most countries was marked by protracted military regime control of state governments. These regimes hampered both the growth of democratic institutions and development of the environment required to reform security forces into professional public servants responsible for the protection of citizens. Instead, security forces became instruments through which regimes maintained their power. Many countries experienced successive military coups, with some governments lasting for as little as two months. Burundi, Uganda, Ghana, Nigeria and others experienced a high number of coups; Burundi, small as it is, is at the top of the list. Where there were no coups, civil wars occurred, rendering many countries and governments unable to fulfill their mandate to protect civilians. Today, conflict still rocks the African continent. There is currently armed conflict in Burundi, Rwanda (with militias coming in from the DRC), Somalia, Chad, Central Africa Republic, Uganda, Sudan and the Congo. Elsewhere on the continent, Sierra

Leone and Liberia are just recovering from vicious conflicts that inflicted enormous social and economic damage.

However, some countries recovered from the colonial legacy faster than others; they have made considerable gains in the democratisation and general security of states and their citizens. However, the democracy practiced in these countries has translated into single-party systems bent on stifling opposition groups. While these systems ensured state security, they politicised their intelligence services. At the same time, some of these countries have managed to become more democratic. After agitation by political opposition, civil society, citizens and development partners/donors, they have begun to entrench security services in the rule of law.

Some states emerging from conflict have begun to address security issues holistically. It is not uncommon to find security sector reform (SSR) programmes either in Disarmament, Demobilization and Reintegration (DDR) agreements or in transitional government programmes designed to transform, create, and nurture armed and unarmed security forces that would protect citizens' interests. SSR programmes started surfacing after the collapse of the Union of Soviet Socialist Republic (USSR) and the enormous conflicts that ensued in its breakaway states. Similar SSR programmes are underway in Liberia and Sierra Leone; the as yet un-signed agreement between the Lord's Resistance Army (LRA) and Government of Uganda (GoU) contains an entire section devoted to SSR.

It would appear that while SSR levels in various countries vary widely, SSR objectives are largely similar. Whilst it is true that some countries that have initiated reforms are diligently pursuing them, some 'infant' democracies are struggling to accept the need for reform. However, changes in both regional and worldwide security threats pose enormous challenges. They demand a shift in approach and an equal measure of preparation in order to counter them.

Ideally, intelligence organisations should serve as part of early warning systems (EWS) of states when setting and implementing policies that create or sustain safe and stable environments in which human security is enjoyed. However, intelligence organizations in most post-colonial African countries have been used to provide security for regimes, even those that lack legitimacy and rely on dictatorship for survival. Thus, reforms in the intelligence sector are an imperative if the African people, particularly in the Great Lakes Region (GLR), are to benefit from intelligence organisations that consume a large amount of public resources. This study examines the performance and systems of intelligence in the GLR, identifies shortcomings of these systems, suggests possible reasons for the shortcomings and recommends necessary improvements. The study, which is prefaced by a definition of intelligence and an overview of the GLR, also identifies entry points and a potential role for the African Security Sector Network (ASSN) to assist in the professionalisation of intelligence systems in the GLR states of Burundi, Democratic Republic of the Congo (DRC), Kenya, Rwanda, Uganda and Tanzania.

The context of intelligence in the GLR can only be understood within the framework of history and social anthropology of the region and in the context of the changing character of nation-states. Additionally, international factors (e.g., cultural and economic imperialism and international capitalism) have played key roles in the changing intelligence dynamics of the region. The role of international actors in developing and using the natural resources of the region has also made them key actors in the control of economic resources which have been, in part, the source of regional instability and insecurity. For example, the presence of extremely large quantities of rich mineral deposits in eastern DRC has put it at great risk and rendered DRC citizens extremely vulnerable to conflicts, warlords and mercenaries. In 2008, Uganda and Congo almost went to war over a border dispute as the two neighbors disagreed over ownership of a tiny island called Rukwanzi, which is said to contain enormous oil deposits. The case of the border dispute should have been foreseen by strategic intelligence units on both sides; the presence of foreign and diplomatic

entities by either government could have dealt with the situation before the escalation that led to the death of a foreign oil executive. This is a simple case that indicates the gaps that need to be filled within intelligence services in the region. There is need to cast aside paranoia and provide more cooperation and information sharing to reduce or deal with threats affecting neighbors. If a neighbor's house catches fire, how do you know the fire may not spread to your own house?

But ruling elites in Africa have not managed social relations and state affairs well, which failing has led to both human and state insecurities and state managers abandoning their primary responsibility to protect the people and preserve national values, norms and institutions. Linked to this is the use of state security machinery, including intelligence, to hold on to power and political opponents. As a way of maintaining their control, ruling political elites have routinely securitised the state by instilling fear in citizens and turning state institutions against them. The development of such oppressive states has driven citizens to live in fear of their governments, which, in turn, exercise political authority through institutions such as the military, the police and the intelligence service. Some individuals have reacted to this state of human insecurity by organizing opposition groups that resort to violence as means of articulating their grievances. Others are more extreme, forming freelance militias and bandit groups to control local resources. Usually, the state reacts to these violent challenges to its authority with more violence and further oppression.

Overview of intelligence systems in the Great Lakes Region

Since the early 1990s, the GLR has been convulsed by genocide, war, inter-state conflict and flawed democratic transitions which have led to the loss of millions of lives, exposed the population to displacement and suffering and generated the need for perpetual international humanitarian assistance. The GLR is composed of vast territories with porous borders that allow people, arms, criminal elements and insurgents to move freely. These circumstances,

compounded by social marginalisation, lack of justice, poor governance and in some cases natural disasters, create instability that undermines the very existence and function of the states in the region.

This situation is further complicated by the existence of common cultural ties, especially among communities that transcend national boundaries, lack of parameters that determine citizenry and irredentist expansionist tendencies that enhance or encourage acrimony and conflict between nations and ethnicities. This state of affairs can be traced to the nineteenth century 'Scramble for Africa', which led to indiscriminate partitioning of the continent without regard for traditional systems of government amongst various ethnic groups/communities. The GLR is a comparatively confined geographical area, with high population density and a history of interdependence. There are several intricate dynamics as well as direct and indirect connection between one conflict and another within the Region. It is thus necessary to conduct a thorough regional analysis in order to understand the actions of the different countries in the region. It is also necessary to analyse the history of conflicts in each country in order to seek effective intervention mechanisms for the entire region.

Conflict dynamics in the GLR are complex and involve a multiplicity of interlocking regional and international actors. The violent conflicts have tended to expand geographically with the epicenter of the conflicts shifting from one country to another. These conflicts have a dual character; although most have a distinct local and/or national anchorage, they are also fuelled by external interests and/or could be fueling other conflicts in the region. Socio-ethnic cleavages have also featured in most of GLR conflicts, masking, in some cases, their very personalized and exploitative nature. The inability to manage multi-ethnic societies has been compounded by the failure of political society to develop adequate rules for governing itself and exact accountability from its members. If intelligence agencies are supposed to enhance state security, how is it that most states in the GLR are characterized by endemic insecurity? This question can be addressed partially by posing the following theoretical considerations:

- a. Intelligence services of the countries in the region are not properly structured or managed to address the real and dynamic challenges facing the states;
- b. Intelligence services in the region are not operated as conflict prevention and resolution mechanisms; and
- c. Threats to human security in the GLR can best be comprehensively addressed with the input of intelligence agencies when they are organized as part of conflict prevention, management and resolution mechanism.

Growth of intelligence systems in the Great Lakes Region

Security agencies in the GLR, as elsewhere in Africa, have their origins in European colonial history and to a lesser extent in the Cold War era. The logic of colonial intelligence was to support regime protection by enhancing colonial state control. Colonial powers established state security based around police, intelligence and native courts to maintain local peace, but predominantly to maintain power over their colonies (and their subjects). The Cold War took these colonial institutions and re-ordered their external reliance based on political ideology. Resources followed alignment and functioning intelligence remained focused on protection of the Head of State and maintenance of post-colonial political regimes. In this way, intelligence agencies became politically-controlled institutions rather than institutions of the state *per se*.

Intelligence in the GLR can be categorized into the pre- and post-independence eras. Before World War I, the Germans governed the territories of Tanganyika, Rwanda and Burundi; the Belgians governed the Congo and later Rwanda and Burundi and the British governed the present-day Kenya, Uganda and Tanzania. Intelligence in this era was used to suppress pro-independence nationalistic movements, subjugate the “natives” of the territories and counter moves by fellow colonialists in neighbouring territories. This was also the case in the World War II campaigns in East Africa, which pitted the Germans against the British in Tanganyika. The British also faced the Italians in northern Kenya after the latter invaded and captured Ethiopia in 1938. During this era, intelligence was controlled with little or no regard to the “natives” of the

territories; intelligence agencies were extensions of the respective colonial offices. For instance, the Kenya Special Branch (whose operations were an extension of British External Intelligence) was constituted primarily to counteract activities of the Kenya Land Freedom Army (commonly referred to as the Mau Mau). The structures of such organizations, essentially created to maintain the status quo, were European-dominated with “natives” acting as informants and agents.

In the early years of post-independence, efforts were initiated to establish security agencies that would ensure the smooth transition from colonial to self-rule. In most countries in the region, intelligence, where it existed, remained intact. Most of the intelligence gathering was geared towards safeguarding the remaining interests of the departing colonialists and their mother countries. Up until the mid-sixties, foreign intelligence services such as the United States (US) Central Intelligence Agency (CIA) and British, Belgian and French intelligence agencies dominated the region, which was then seen as vulnerable to their arch-rivals, the communist KGB. These spy agencies were instruments of the policies adopted to contain communism in Africa. Examples include CIA and Belgian covert operations in the Congo against Patrice Lumumba of the *Movement National Congolese*. Lumumba’s nationalist politics did not endear him to the former colonial master and the US, which also wanted to use him as an example for other African leaders who had ideas of forging close ties to the East. Lumumba lost the premiership of the newly-independent Congo and was captured and assassinated by Katangese secessionists and Belgian agents. From 1965, Congo became a ‘client state’ and a western ally in the Cold War. In other instances, intelligence services failed to get their way with leaders like Tanzania’s Julius Nyerere, who adopted a socialist ideology and leaned towards such states as China and Cuba.

The early post-independence period also witnessed attempts by some regional leaders to entrench themselves in power, discarding foreign intelligence advice on the domestic front while asserting their say on matters of state sovereignty. For instance, leaders like Joseph Mobutu of Zaire asserted his authority to

serve his personal and western interests, as evidenced by assistance he gave the US and apartheid South Africa in support of Holden Roberto's *Frente Nacional de Libertação de Angola* (FNLA) and Jonas Savimbi's *União Nacional para a Independência Total de Angola* (UNITA) to challenge the pro-Soviet and Cuban-supported *Movimento Popular de Libertação de Angola* (MPLA). Mobutu was used as a CIA conduit of arms and other resources to UNITA combatants in Angola. Essentially, Mobutu's legitimacy as a ruler throughout his reign was based on his capacity to maintain friendly external relations with the so-called champions of 'the free world' in their fight against spread of communism in Africa.

It is in this post-independence era that some African states attempted to set up intelligence agencies by decree rather than through legislation. Even though these passed as intelligence units, in actual fact they were either extensions of the presidential guard or directorates of the police or the military. These were special purpose vehicles whose brief was to spy on real and perceived political opponents of the state. The 'intelligence units' were characterized by the brutality and torture they used on their victims, lack of training, expertise and institutional structures, opaque funding (resources were generally drawn directly from state houses or presidential palaces with little regard to accountability) and staffing based on loyalty and cronyism.

Several events during this era underscored the significance of the region to international intelligence agencies. The 1976 Entebbe hijacking in Uganda highlighted the region as a theatre of international insecurity, although the significance of the region as a battleground for the Cold War had come to the fore during the Congo Crisis of 1960. The Entebbe hijack ended with the rescue of the hostages after a raid by Israeli forces at Entebbe Airport. In December 1980, a Palestinian-linked group bombed the Norfolk Hotel in Nairobi in retribution for the logistical help Kenya had given the Israelis during the Entebbe rescue operation. These actions prompted a reinterpretation of intelligence operations in Kenya from mainly domestic to international operations. This resulted in the country collaborating with and receiving

assistance from US and Israeli intelligence services, as the interests of these countries increasingly became targets of terrorism. Towards the 1990s, some countries in the region set out to transform their intelligence services into formidable outfits, necessitated in part by the winds of democracy blowing through the region and the new global norms of good governance, transparency, accountability and responsibility.

Types of intelligence systems in the region

In order to distinguish among the various intelligence systems in the GLR, the following comparison describes current operations in Kenya, Uganda Tanzania, Rwanda, the Democratic Republic of Congo (DRC) and Burundi.

Kenya

Comparatively speaking, Kenya's intelligence system today is the most effective and democratically-responsive intelligence institution in the region. Its establishment and background dates back to colonial times. Following entrenchment of their interests in Kenya, the British took total control of its civil service and security machinery. The present Kenya civil service is still modeled on the lines of the British system in its heavy reliance on intelligence. The history of the National Security Intelligence Service (NSIS) dates back to 1953 when the British established the Special Branch as part of the machinery set up to suppress the Mau Mau uprising. The role of intelligence at that time was to protect the security of the white farmers by spying on the activities of African insurgents.

This practice continued after independence, during which time security machinery was used to spy on opponents such as Oginga Odinga, Kenya's first vice president, and on neighbouring countries, particularly those leanings towards communism and the East. The Kenyatta regime, in order to preserve its power, spent enormous resources to suppress perceived opponents through brutality, assassinations, detention and abuse of human rights. The West turned a blind eye because of Kenyatta's capitalist orientation and Kenya's perceived

importance in the Cold War. Amongst the victims of assassinations in which the police force's Special Branch was implicated were those of Pio Gama Pinto, Joseph Mboya, the ambitious Minister of Planning and J.M. Kariuki, a fiery politician from the Kikuyu Community in Central Province. The shocking, brutal murder of Kariuki in March 1974 led to the establishment of a Parliamentary Select Committee, whose investigations implicated the police and the Special Branch.

The end of the Cold War marked the beginning of democratisation that brought a new challenge to intelligence operations. The country has undertaken three elections since the advent of multi-party politics and the transitions have been smooth. Challenges of tribal clashes and terrorist threats in the nineties led to the realisation that the Directorate of Security Intelligence (the successor to the Special Branch) lacked adequate legal framework to deal with the threats. In 1998 the National Security Intelligence Service (NSIS, also referred to below as 'the Service') was created through an Act of Parliament, despite attempts by the ruling elite to sabotage the legislation. Chapter 2, Section 5(1) of the Act of Parliament that created the NSIS states that the objectives of the Service are to investigate, gather, evaluate, correlate, interpret, disseminate and store information whether from inside or outside Kenya. The purposes of such NSIS activities are:

- To detect and identify any threat or potential threat to Kenya;
- To advise the President and the Government of any threat or potential threat to the security of Kenya; and
- To take steps to protect the political, military and economic security interests of Kenya.

The Act also provides security vetting for persons who hold or may hold positions that require security clearance. The law prevents intelligence from engaging in purely partisan political pursuits.

The Act provides for seven NSIS divisions to execute the mandate to deal with threats to the country's security emanating from within and without. The

Act also provides for the Director General to serve not more than two five-year terms and to be accountable to Parliament. Currently, the Service has seven divisions: Internal, External, National Intelligence Academy, Administration, Operations, Analysis and Production, and Information and Communication Technology. Directors of each division are responsible to the Director General. In 2005, the NSIS was allotted 5.2 billion Kenyan shilling, or 1.02% of the government's total expenditures.¹

The Act strictly empowers the Service as the principal advisor to the President and government on security, political and economic threats and on opportunities from within and without. The External Division is also responsible for liaison services with other agencies, diplomatic matters of interest to the Service and external collaboration, particularly on crime intelligence. Since its inception in 1999, the Service has recruited its personnel from police, military and private sectors through the Public Service Commission. Service personnel are among the best remunerated public servants in the country, as a result of recommendations by a committee appointed by the President and headed by Pamela Mboya, Kenya's former representative to United Nations (UN) Habitat.

The NSIS has played a major role in the interdiction of organized crime in Kenya and the region. Its role has gained prominence in the campaign against terrorism, drug trafficking and conflict resolution in the greater Eastern Africa region. It maintains close ties to the US CIA, British MI6 and Israeli Mossad, which have provided training programmes for its personnel. When the Special Branch changed to NSIS, it had to re-orient itself in order to focus attention on new and emerging national security issues such as terrorism, organised crime, narcotics, economic crimes, money laundering and computer fraud. In the past 10 years, the NSIS, one of the most advanced intelligence organisations in the region, has established itself as a professional spy agency sufficiently equipped to meet the challenges of the new world.

Uganda

Post-independence intelligence in Uganda can be traced to the first Obote regime (1962-1971), which established the General Service Department that was used to depose the Kabaka and consolidate Milton Obote's power. Langi and Acholi tribesmen from the north (Obote's home region) largely staffed the service. Although it was organised to keep Obote in power, it failed to preempt Idi Amin's *coup d'état* in January 1971. Amin established the notorious State Research Bureau, which was infamous for its cruelty to citizens, disregard for human rights, and for the disappearance of government critics and the educated elite. After the disposal of Idi Amin, subsequent regimes used intelligence agencies as tools for survival, with dire consequences to the population. As a result of this sad history, the government of Yoweri Museveni, since coming to power in January 1986, has tried to entrench protection of the civilian population by intelligence agencies in the Constitution. In particular, Chapter 12, Article 218 of the Constitution of the Republic of Uganda gives the Parliament the power to "establish intelligence services and to "prescribe their composition, functions and procedures." This Article also bars establishment of an intelligence service "by the Government except by or under an Act of Parliament." Additionally, "all intelligence services" are expected "to observe and respect human rights and freedoms in the performance of their functions."

The current Uganda intelligence organizations - the External Security Organisation (ESO) and Internal Security Organisation (ISO) - were created by the Security Organizations Act of 1987 "to collect, receive and process internal and external intelligence data on the security of Uganda" and "to advise and recommend to the President or any other authority as the President may direct on what action should be taken in connection with that intelligence data." ESO is mandated to collect external intelligence, while ISO deals with internal matters. Each of these organisations is "headed by a Director General appointed by the President and directly responsible and accountable to the President."

Both agencies are restricted from taking “action directed against or affecting any person following intelligence gathered... unless that action has first been sanctioned by the President or such other authority as the President may direct; except that either of the Directors General may direct the police to arrest and detain, in relation to intelligence gathered, any person for not more than forty-eight hours pending a report by the Director General under section 3(b) and a decision by the President.” The Act also denies intelligence officers and employees the “power to arrest, detain or confine any person.” The penalty for “any officer or other employee of the organisations who arrests, detains or confines any person...or conducts himself or herself in a manner which is likely to bring either organisation or both into disrepute or contempt commits an offence...is...a term of imprisonment not exceeding ten years.” While unlawful sharing of information is punishable by “a period of imprisonment not exceeding fourteen years,” espionage is punishable by death.

Besides the ESO and ISO, Uganda also has the Chieftain of Military Intelligence (CMI), regarded as the most powerful intelligence agency in the country. Because of its exclusion from the Security Organizations Act (it is run by the military), it has been accused of suppressing opponents of the Museveni government. Political opponents of the government have complained of harassment and surveillance by CMI agents, particularly during critical political moments such as periods leading to constitutional changes and multi-party and third-term referenda. The CMI has admitted that it intercepts communication and eavesdrops. Security analysts are concerned that the heads of intelligence agencies do not have job security and that the CMI is not subject to the Security Organization Act.

Tanzania

The Tanzania Intelligence Security Service Act of 1996 established the Tanzania Intelligence Security Service (TISS) to replace informal intelligence gathering by the police. In the past, the Tanzania police had an intelligence wing that was subject to political manipulation by the ruling elite. Perceptions were that the prolonged rule of the *Chama Cha Mapinduzi* (CCM) had contributed greatly

to the complacency of an intelligence service that had become an instrument of the ruling party.

The TISS brief, prescribed in Part II, Section 5 of the TISS Act, is to:

- a) obtain, correlate, and evaluate intelligence relevant to security, and to communicate any such intelligence to the Minister and to persons whom, and in the manner which, the Director-General considers it to be in the interests of security;
- (b) advise Ministers, where the Director-General is satisfied that it is necessary to do so, in respect of matters relevant to security, so far as those matters relate to departments or portfolios of which they are in charge;
- (c) cooperate as far as practicable and necessary with such other organs of state and public authorities within or outside Tanzania as are capable of assisting the Service in the performance of its functions; and
- (d) inform the President, and any other person or authority which the Minister may so direct, of any new area of potential espionage, sabotage, terrorism or subversion in respect of which the Director-General has considered it necessary to institute surveillance.”

TISS is barred from enforcing “measures for security” or instituting “surveillance of any person or category of persons by reason only of his or their involvement in lawful protest, or dissent in respect of any matter affecting the Constitution, the laws or the Government of Tanzania.” The specific duties of TISS, according to Part IV, Section 14 of the Act, are: “to collect, by investigation or otherwise, to the extent that it is strictly necessary, and analyze and retain information and intelligence respecting activities that may on reasonable grounds be suspected of constituting a threat to the security of the United Republic or any part of it.” TISS headed by a Director-General appointed by the president for two 5-year terms; its agents operate under a code of conduct. TISS is also allowed to cooperate with other intelligence services. Such collaboration has occurred since the 1998 al-Qaeda bombings of US Embassies in Nairobi and Dar-es-salaam with TISS’s cooperation with the Kenya’s NSIS and the US CIA to combat terrorist activities in the region.

Rwanda

The Rwanda genocide of 1994 was a turning point in the history of intelligence of the country. Prior to the genocide, the Hutu regime's intelligence was geared towards oppression of the opposition. However, when the Rwandan Patriotic Front (RPF) came to power, intelligence (and other security groups that had played partisan roles in the elimination of the Tutsis and moderate Hutus) fled with the *Interahamwe* militia and Rwandan Armed Forces (*Forces Armées Rwandaises* - FAR) soldiers to refugee camps in other countries in the region and overseas. The change of regime necessitated reform of all security apparatus and refocus of intelligence to suit the interests of the incoming RPF regime. A new intelligence agency, the National Intelligence Service (NIS), was instituted by presidential decree and charged with checking the insurgency threat by Ex-FAR/*Interahamwe* and Hutu refugees, especially from the DRC. The NIS consists of a Secretary General answerable to the President, Directors General for Immigration, External Intelligence, Internal Intelligence and the Chief Liaison Office (CLO). The CLO reports to the president. Due to the refugee threat facing the country, Immigration Services are strategically placed under intelligence. The External Intelligence Division has two directorates, one in charge of expenditure and the other of foreign stations. Foreign stations are maintained in South Africa, Kenya, Tanzania, Uganda, DRC, Belgium, Burundi and the US for various strategic and economic reasons, such as the tracking of the perpetrators of the 1994 genocide. Internal intelligence consists of four directorates: Analysis, Collection, Dispatch and e-Knowledge.

The DRC

When the DRC became independent in 1960, Congo-Kinshasa's *Sûreté Nationale*, a small, special-purpose police and investigative unit, provided state security protection. In 1969, the *Sûreté Nationale* became the National Documentation Center (*Centre Nationale de Documentation* - CND). During the early 1970s, it was reorganized into internal and external sections. However, in order to assert his personal control over the intelligence apparatus, Mobutu subsequently decreed several more reorganizations. In the early 1980s, the service gained the new title of National Documentation Agency (*Agence*

Nationale de Documentation - AND). The national security service was renamed the National Service for Intelligence and Protection (*Service National d'Intelligence et de Protection* - SNIP) in August 1990.

In the past, SNIP had separate branches for internal and external intelligence functions, with the internal role receiving a substantially higher priority. It was Zaire's (DRC's) primary intelligence service and, as such, provided liaison with foreign services. SNIP communicated directly with the President. Its agents were not subject to local or regional administrative authority. Indeed, other arms of state power, such as the military and police forces, are prime targets for surveillance.

In addition to gathering intelligence and conducting surveillance, SNIP exercised almost unchecked powers of arrest, imprisonment, and interrogation. It used these powers to intimidate individuals or groups posing real or imagined challenges to the regime's authority. In the 1980s and 1990s, it played an important role repressing political activists. SNIP also had foreign agents operating in Europe to infiltrate anti-Mobutu exile groups. There is a widespread belief that SNIP engaged in extensive looting and plundering in the 1990s. As with the other elements of the internal security apparatus, SNIP abuses were widespread and personal aggrandizement a primary motivator.

The intelligence service was heavily politicized in a similar manner. Its assessments were not thought to be highly reliable, but it was an effective, if ruthless, intimidator of potential opposition groups. As well as performing the usual military intelligence roles, the intelligence arm of the Zairian Armed Forces (*Forces Armées Zaïroises* - FAZ), the Military Intelligence and Security Service (*Service d'Action et de Renseignements Militaire* - SARM), was tasked with internal surveillance and intelligence gathering among the general population as well as among members of the armed forces themselves. President Mobutu also relied on various personally-established networks to provide him with alternative intelligence and assessments that he compared with the information he received from official services.

The current structure consists of the National Intelligence Agency (*Agence nationale de renseignements* - ANR), overseen by the President's national security advisor and responsible for internal and external security; the military intelligence service of the Ministry of Defence; the directorate general of migrations, responsible for border control; the Republican Guards (*Garde Républicaine* - GR), which reports directly to the President; and the Armed Forces of the DRC (FARDC), which is part of the Ministry of Defense and generally responsible for external and a limited amount of internal security.¹

Burundi

Burundi intelligence paints a sad picture of intelligence agencies in the region. After more than a decade of civil war, Burundi's the largest rebel group, the National Council for the Defense of Democracy-Forces for the Defense of Democracy (CNDD-FDD) won elections in 2005 and took power under the leadership of a new national president, Pierre Nkurunziza. In March 2006, the Burundi government passed a law establishing the *Service National de Renseignement* (SNR) out of the former *Documentation Nationale*. The head of the SNR reports directly to the President; there is no independent oversight of intelligence activities. The SNR has often engaged in activities it claims to be necessary to counter threats from the National Liberation Forces (*Forces Nationales pour la Liberation* - FNL), the last armed rebel groups opposed to the government.

It is apparent that since the new government took office, the intelligence service has been given a *carte blanche* to use any means necessary, including killing and torture, to achieve its goals. The SNR Act (Section 8) allows agents to take all "legal measures necessary to accomplish their mission" of protecting state security." According to Article 13 of the Act, SNR can also investigate legal cases and submit "them to the prosecutor for prosecution". SNR is also empowered to investigate crimes, submit evidence to prosecutors, make arrests and carry out the warrants of the prosecutor (Articles 142-47). However, SNR agents are not answerable to the Commissioner General of Police or the Minister of Interior, but to the President and the general administrator. This weak control

structure of the SNR has contributed greatly to egregious human rights violations and crimes committed by intelligence agents. Allegations of torture and ill-treatment by intelligence agents have been documented; the Burundi government has been under pressure to bring to justice SNR employees at all levels of the chain of command who are responsible for serious rights abuses. The Human Rights Watch accuses SNR of extrajudicial executions, torture and arbitrary detention of suspected opposition supporters.² It also accuses SNR of maintaining detention facilities to hold and torture suspects.

The flaws in the Burundi intelligence service can be traced to the Arusha Accords that require power sharing between the signatories to maintain ethnic balance. While the national police and military cannot have more than 50 percent of their members drawn from one ethnic group, the SNR is exempted on the grounds that it needs “to preserve the secrecy of its operations.”³ The SNR presents an example of the need to have well-written laws governing intelligence services and for parliamentary oversight of intelligence. SNR powers need to be clearly defined by law and its activities closely supervised to ensure compliance with the law.

Kenya and Tanzania seem to be the only GLR countries whose intelligence communities are not substantially militarised. While in the past, Tanzania used the police for intelligence, since the beginning of SSR it has been following a model similar to Kenya’s. The systems of Uganda, Rwanda, Burundi and DRC are still predominantly military and subject to with little democratic oversight. This militarisation might be understandable for Burundi and DRC, whose governments and democracies are relatively infant, and perhaps even for Rwanda, after its horrific situation in the 1990s. However, reforms in Uganda have been conscientiously, perhaps deliberately, slow.

The shortcomings of GLR intelligence systems

A brief analysis of the prevailing conditions in the GLR reveals that intelligence systems of the region are inadequate to the task of addressing the region’s problems. In particular, they have not assisted in the critical tasks of conflict

prevention, management and resolution. Shortcomings include politicisation of intelligence, lack of capacity, absence of clear legislation, lack of permanency of security agencies, minimal integration with other security organs, lack of political will and inadequate funding. Other shortcomings at the regional level include lack of cooperation among states, civil conflicts, proliferation of small arms and light weapons into the hands of non-state actors and over-concentration on political intelligence at the expense of other forms of intelligence, such as crime and economics.

A number of existing agreements and organizations at the regional level provide platforms where issues pertaining regional security threats and cooperation can be ironed out without recourse to adversarial means. These include the Tripartite Agreement on Regional Security in the Great Lakes, the International Conference for the Great Lakes Region and the East African Community.

The politicisation of intelligence

There is a tendency in most GLR intelligence organizations to collect and analyse information and provide intelligence estimates to complement prevailing orthodoxies and predetermined policies of the ruling elite. This fits into the 'top-down' model of the relationship between intelligence producers and decision making consumers. Such politicisation of intelligence stems directly from the appointment of heads of the agencies who in many instances must be trustworthy to the political hierarchy, regime-friendly, pro-establishment and/or friends of the heads of state. Appointments to such an office are viewed as a reward/favor or payback from the establishment and leads to production of favorable intelligence customised to please the consumer. In some instances, in order not to be ignored and marginalised, there is a temptation for intelligence officials to produce assessments that conform to the policy preferences of their political masters. Top-down politicisation is more common in autocratic regimes such as those of Mobutu and Habyrimana.

In Mobutu's case, intelligence was customised in such a way that it shielded the head of state from the realities of the disintegrating state. While rebellion

fomented in the east of the country, the leadership, unable to hold the centre, was concentrating on diplomatic efforts in hopes of reaching an amicable solution. In Rwanda, Habyrimana, who in the last days of his rule was more or less a hostage of Hutu extremist machinations, continued to procrastinate on the issue of constitutional rights and citizenship of Tutsi exiles despite the invasion of APR in the north and militarisation of Hutu civilians.

Politicisation of the intelligence process can also come in the form of bureaucratic politics relative to apportionment of greater resources between ministries and departments. It can also include jostling for political influence by persons who need to distort intelligence for their own interests. Despite their establishing elaborate intelligence organization, most leaders in the region still rely on informal networks of cronies, ruling party activists, politicians and family connections for advice on political issues. These types of networks usually rival the official intelligence services that are often reduced to crosschecking and confirming opinions of the leaders, just as the informal networks counter-check official intelligence.

Lack of capacity

Lack of capacity in GLR intelligence organizations is manifested in problems of time and space that pose inescapable limitations on decisions of all kinds. Lack of analysis, coupled with inaccurate and irrelevant information fed into decision-making, has been one of the most difficult challenges. The intelligence services also lack qualified personnel with the capacities to analyse the gathered information and produce timely reports that can assist the decision making process. Another major limitation is the problem of organisation, given the fact that the GLR security environment is fluid and constantly creates new security threats. Moreover, because the region's conflicts are dynamic and have multiple causes and actors, intelligence services are faced with major organisational challenges. In order to assist policy makers to address these conflicts, these services must have the appropriate capacity to collect and analyze information, including prudent identification of targets and emerging threats.

Lack of or poor legislation

The general absence of strong legal frameworks establishing intelligence systems and outlining their specific mandate is a major handicap. As a result, intelligence in some countries operates under vague systems and legislation or under the defence umbrella, which is prone to manipulation by political leadership. Lack of or poor legislation can foster abuse of human rights with impunity in an effort to protect the ruling elite's corruption in security procurement, siphoning of public funds and non-transparent expenditures. It can also aid and abet the restriction of funding for intelligence collection and research and emphasis on military hardware acquisition, as witnessed during the Idi Amin, Obote and Museveni regimes in Uganda. Generally, what security legislation that exists does not guarantee protection of sources; no country in the region has enacted the necessary legislation to ensure the protection of sources and whistle blowers. There is also lack of tenure security for intelligence chiefs, which can lead to manipulation of the services for political and personal gain.

Lack of permanency

An intelligence system is a depository of the country's national security data collected over time. This can only be achieved through the study of trends in order to establish threats and vulnerability. Due to frequent regime changes in the past thirty years, GLR intelligence systems, save for Kenya and Tanzania, lack permanency. Regime collapses have been accompanied by destruction of records, including intelligence, and continual staff turnover. In the DRC, Mobutu's domination was marked by continuous changes in intelligence personnel to ensure they delivered the right outcomes. In Rwanda and Burundi, the radical nature of regime change mirrors the Tutsi/Hutu divide and is reflected in their respective intelligence agencies.

Over-concentration on political Intelligence

Intelligence agencies have continued to play into the hands of the political elite by concentrating on political intelligence at the expense of economic, diplomatic and security threats. Issues such as economic integration, regional

conflict resolution and trans-border crime take a back seat while the agencies concentrate on politics in order to remain relevant to the executive. Kenya's intelligence during the Kenyatta and Moi regimes tended to concentrate on political intelligence in order to suppress opposition in the country, despite opportunities for Kenya to become a regional leader and economic powerhouse. This still remains the case in most intelligence agencies in the GLR and has provided an opportunity for external services to step in⁴.

Lack of integration with other security organs

Horizontal integration with other security organs in the countries is frequently lacking; intelligence is usually perceived as elitist, with privileged access to the executive⁵. There is also the perception that intelligence looks down upon other security organs, regarding them as insignificant *vis-à-vis* national security. Due to lack of common platforms, direct information sharing is not fostered; intelligence is only produced for those at the top of the executive hierarchy, who tend to use it selectively. In particular, The DRC since Mobutu has experienced the creation of a badly coordinated host of intelligence and security agencies.

For example, the DRC has a national police force and an immigration service, both operating under the Ministry of Interior. The National Intelligence Agency (ANR) and the Special Presidential Security Guard (GSSP) report directly to the President. The Congolese Armed Forces (FARDC) and the military's intelligence service report to the President. The ANR is responsible for internal and external security; the FARDC is responsible for external security, but also has domestic security responsibilities. Civilian authorities do not maintain effective control of the security forces; there are frequent instances in which elements of the security forces act independently of government authority. Different individuals of the same security service effectively have different chains of command and often respond to orders from different individuals, including former commanders and political leaders whom they had followed before the Government was established.

Lack of regional information sharing

GLR conflict is both inter- and intra-state. Ethnicities transcend boundaries in situations that encourage the entry of non-state actors into cross-border activities such as arms trafficking, drugs and smuggling. Information sharing is vital in order to develop regional early warning systems that can forestall events and cope with major security issues such as the Rwanda genocide.

Lack of political goodwill

Because politicians still view intelligence as a tool of power that can be manipulated to serve their interests, opponents and critics of the establishment perceive intelligence as a pro-establishment instrument of oppression. As a result of this politicisation, GLR intelligence organizations lack political goodwill. In addition, the lack of a culture of early warning systems for state and policy processes among the political class creates a dilemma for intelligence agencies. With its monopoly on policy implementation, the political class continues to short-change intelligence by demanding customised, rather than well-analysed, politically-neutral intelligence.

Inadequate funding

Intelligence is an expensive affair. Unlike other government institutions that produce quantifiable products, intelligence agencies' outputs are not easy to measure and dependent on numerous factors. For intelligence services to perform, they require adequate funding to train personnel to adapt to changing global dynamics, purchase technical equipment, operate networks of informers and liaison with foreign intelligence. Inadequate funding has continued to place GLR intelligence at a disadvantage *vis-à-vis* other security organs, especially the military. Intelligence in most GLR countries is placed under a parent ministry where it has to compete for attention with other departments. In the context of scarce resources, intelligence may be low on the order of priorities.

Recommendations

For intelligence agencies to remain relevant and effective in promoting regional peace and stability in the Great Lakes, the following issues need to be considered:

Democratic control

Democratic control would enhance the effectiveness and propriety of GLR intelligence services. Since intelligence is ‘an inescapably political activity’ and oversight is also inherently political (Gill and Phythian, 2006:179), such control could be exercised through a legislative committee on intelligence. However, legislatures must learn to perform this function without staging political spectacles to promote or undermine the ruling regime or leadership. Despite their dismal record of human rights abuse, GLR intelligence services cannot be abolished. Instead, they must be controlled in the interests of democracy to ensure that they do not engage in illegal activities. This democratic oversight would reduce the likelihood of intelligence services being used for political purposes. It would also ensure that they abide by constitutional, national and international law and are not used for illegal purposes or to undermine human security.

Legislation

There is a need to regulate intelligence to minimise harm to the people it is supposed to serve. This can be accomplished through legislation that establishes a foundation upon which all the structures, regulations and mandates of the intelligence services are developed. Basic intelligence statutes need to clearly specify threats to national security, what the agency needs to address and what resources it needs to fulfill that role. In addition, the following issues need to be codified: how is the Director appointed and to whom is he/she responsible? How can intelligence staff be protected from improper political manipulation and do they have any special powers?

Oversight of these issues is critical in order to monitor intelligences services performance and enhance the principle of good governance through

transparency and accountability. But in order for them to be monitored, it has to be clear exactly what is being monitored. Clarity of legislation is the key to this.

Regional information sharing

Many contemporary security threats are transnational. Recent increase in the drugs and arms trade and general smuggling require transnational approaches. Given that it is a region where characterized by many cross-border ethnicities and issues, GLR cross-border collection, processing and sharing of information can help contain threats to regional peace.

Capacity

Given the history of intelligence agencies in the region, there is comprehensive lack of sufficient capacity to carry out new roles. It is safe to say that many intelligence services employees are poorly trained, poorly paid and undisciplined. There is a need for capacity development professionalism and technical competence and training in building relationships with other regional agencies. This capacity building should be linked to funding aimed at recruiting and retaining good quality staff and purchasing required technical equipment.

Intelligence services must not only have adequate resources to gather and analyse information, they must also respect and protect the rule of law and the rights of those from whom information is sought. This involves proportional application of powers, protection of rights, authorisation of transgressions of rights and the establishment of rules to determine what information can be gathered, retained or disseminated (Gill and Phythian, 2006). Any exemption from freedom of information for the public and parliamentarians also needs to be severely restricted and controlled in relation to a clear national security mandate. Legal exemptions must also be backed up by clear and established procedures. Internal procedures guiding operations of the intelligence services must be aligned to legislative directives, such as authorizing operations that could be audited for effectiveness and legality.

Conclusion

In order for the GLR to effectively address security threats, governments must have timely and accurate intelligence, a multilateral capacity, strong inter-service relationships based on trust and clear checks and balances to guard against the abuse of intelligence. If the GLR is to make any headway in the development of a mechanism that can anticipate, prevent, manage and resolve conflicts, regional governments must put legislative frameworks in place to:

- a. Protect intelligence services in the respective countries from undue abuse and misuse;
- b. Make intelligence services more accountable for their actions and activities;
- c. Enable intelligence services to venture into strategic and sustainable programs in the interest of the region;
- d. Make intelligence services accessible and open to public audit of their performance; and
- e. Allow intelligence services to enter into partnerships with other services within the region and beyond in the interest of the regional peace and security.

Given the historical legacy of control left by the colonial intelligence philosophy, GLR intelligence services have travelled a long way. The best agencies have been able to adapt to their new mandates, hire good quality staff and operate within a clear legislative framework that includes guidelines on the acceptability of operational approaches to gathering, analysing and disseminating information. However, the poor record of intelligence agencies in the region as a whole, the legacy of ethnic and political capture by political elites and the proliferation of agencies designed to support particular politicians in some countries, there is still a long road to intelligence reform across most of the region.

Footnotes

- ¹ The Ministry of Foreign Affairs was allotted 6.4 billions shillings or 1.25%.
- ² See Human Rights Watch, 'We Flee When We See Them': Abuses with Impunity at the National Intelligence Service in Burundi, Human Rights Watch Report, Vol. 18 No. 9(A), October 2006.
- ³ See Protocol III, Art. 14 of the Arusha Peace and Reconciliation Agreement for Burundi. Available at: http://www.usip.org/library/pa/burundi/pa_burundi-08282000_pr3ch2.html.
- ⁴ To be fair, African intelligence agencies are not the only agencies to have manipulated intelligence for political purposes. See Intelligence and analysis on Iraq: Issues for the intelligence community. Langley, VA, Central Intelligence Agency, 29 July 2004. Available at http://www.gwu.edu/~nsarchiv/news/20051013/kerr_report.pdf
- ⁵ Intelligence staff also tend to have better remuneration rewards relative to other security agencies, which adds to resentment.

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Exploring the Domestic Intelligence Mandate: The Case of South Africa

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Abstract

This chapter examines the mandate of the domestic intelligence agency in South Africa. It shows that the mandate not only provides the formal basis for determining the agency's focus and priorities, but also has a crucial bearing on its orientation and effectiveness and on the risk that it will interfere in the political process and infringe constitutional rights. There are two major problems with the domestic mandate in South Africa: it is much too broad and ill-defined, and it encompasses a political intelligence function that is inappropriate in a democracy. Ironically, these problems are due in part to the mandate being based on the progressive concepts of holistic security and human security.

In 2005/6 South Africa experienced a political crisis when an investigation undertaken by the Inspector-General of Intelligence found that the National Intelligence Agency (NIA) had conducted illegal surveillance of a senior member of the African National Congress (ANC) and unlawfully intercepted the communication of ruling party and opposition politicians.² President Mbeki dismissed the NIA chief, and the Minister of Intelligence, Ronnie Kasrils, fired two other senior officials. The intelligence services have undergone

substantial transformation since the birth of South Africa's democracy in 1994, but this process is clearly incomplete.³

In the wake of the crisis, Kasrils established the Ministerial Review Commission on Intelligence, declaring that it was necessary "to use this lamentable episode at NIA to undertake fundamental reforms aimed at preventing such abuses in the future. To do so, we need to review legislation and strengthen regulations, operational procedures and control measures".⁴ Between 2006 and 2008, the Commission had extensive discussions with the leadership of the intelligence services, conducted comparative research and scrutinised operational directives and other restricted documents.⁵ The release of the Commission's report in late 2008 entailed an unprecedented disclosure of secret information, enabling an informed public discussion on intelligence policies and practices.⁶

Drawing on the review and findings of the Commission, this chapter explores the domestic intelligence mandate. The first three sections outline NIA's legal mandate, the relevant provisions of the 1994 White Paper on Intelligence; and NIA's operational directive on its mandate. The chapter then discusses two major problems with the mandate, namely that it is much too broad and ill-defined and that NIA's political intelligence function is wholly inappropriate in a democracy. The final section before concluding presents the recommendations of NIA and the Commission on reformulating the Agency's mandate.

The mandate is arguably the most important feature of an intelligence organisation because it provides the formal basis for determining the organisation's focus, priorities, planning, targeting, operations and allocation of resources. As illustrated in this chapter, the mandate also has a crucial bearing on the organisation's orientation and effectiveness and on the risk that it will interfere in the political process, infringe constitutional rights and subvert democracy. In assessing NIA's experience in this regard, it is striking and ironic that many of the problems that have arisen are a consequence of the intelligence mandate being based on the progressive concepts of holistic security and human

security. The problems have been so serious that both NIA and the Commission concluded that the mandate should be revised to focus more narrowly on serious criminal offences such as terrorism, sabotage, espionage, corruption and organised crime.

NIA's legal mandate

The intelligence function

The National Strategic Intelligence Act of 1994 specifies NIA's functions, the first of which is 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.⁷ The Agency must supply this intelligence to the National Intelligence Co-ordinating Committee (NICOC), which advises Cabinet.⁸ The Act defines 'domestic intelligence' to mean "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".⁹

Two initial observations can be made about these provisions. First, the mandate is extremely broad. NIA is expected to focus on threats and potential threats to the security of the Republic and its people and on internal activities, factors and developments that are detrimental to national stability. It is also expected to focus on threats and potential threats to the constitutional order and the safety and well-being of the people of South Africa. This would give rise to an expansive agenda in any country. In South Africa, which is characterised by intense political competition, sporadic violence, chronic poverty and underdevelopment in many sectors, a vast array of issues could be included under the mandate.

Second, a number of the key concepts in the legislation are imprecise and ambiguous. The terms 'security of the Republic and its people', 'national stability' and 'threats to the constitutional order' are not defined and their meaning depends on one's theoretical and political perspective. Consequently,

NIA's legal mandate can be interpreted in substantially different ways. The mandate has in fact been reinterpreted three times since 1994 but this process has occurred exclusively within the state and has not been subject to public and parliamentary debate.

Counter-intelligence functions

The National Strategic Intelligence Act provides that NIA shall fulfil national counter-intelligence responsibilities and for this purpose shall conduct and co-ordinate counter-intelligence and 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;
- where necessary, supply intelligence relating to any such threat to the police for the purpose of investigating an offence;
- supply intelligence relating to any such threat to the Department of Home Affairs for the purpose of fulfilling any immigration function; and
- supply intelligence relating to national strategic intelligence to NICOC.¹⁰

'Counter-intelligence' is defined to mean "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 installations or resources of the Republic".¹¹

Counter-intelligence thus entails four functions, two of which are clear and regulated: to protect intelligence and classified information from disclosure,¹² and to conduct security screening operations.¹³ The other two functions – to impede and neutralise the effectiveness of foreign or hostile intelligence operations, and to counter subversion, treason, sabotage and terrorism – are unclear and unregulated. What is meant by 'impede', 'neutralise' and 'counter'? Which countermeasures are legitimate and which are not? NIA's submission

to the Commission noted with concern that the legislation does not provide clear guidelines on countermeasures.¹⁴ In fact, the Act does not contain any guidelines at all. This problem is compounded by the absence of ministerial regulations and directives on the matter, creating the danger that intelligence officers might infringe constitutional rights without proper oversight and without sufficient cause.

Departmental intelligence

The National Strategic Intelligence Act provides that NIA must gather departmental intelligence at the request of any interested department of State and, without delay, evaluate and transmit such intelligence to the department concerned and to NICOC.¹⁵ The Act defines ‘departmental intelligence’ to mean “intelligence about any threat or potential threat to the national security and stability of the Republic that falls within the functions of a department of State, and includes intelligence needed by such department in order to neutralise such a threat”.¹⁶

This function is poorly specified. The legislation does not indicate who in a department is entitled to request NIA to provide departmental intelligence and does not indicate who in NIA is authorised to meet such requests. It does not compel NIA to inform the Minister of Intelligence that a request has been made and does not explain what is meant by ‘neutralise’ a threat. For many years it was possible for a provincial Premier to ask a provincial head of NIA to supply him or her with intelligence regarding political stability in the province, and there was no requirement that the Minister be informed thereof. NIA has since tightened the arrangements in its internal policies but the matter is not governed by ministerial regulations. The absence of regulations and the gaps in the law pose a risk of political mischief and abuse of intelligence.

The White Paper on Intelligence

The White Paper on Intelligence of 1994 presents a progressive philosophy on security, intelligence and intelligence transformation in the post-apartheid era. It has two major themes, the first of which is the necessity for compliance

with the rule of law and other democratic norms. The second theme revolves around a holistic approach to security. The White Paper rejects the militaristic and state-centric approach, prevalent in many countries during the Cold War, which emphasised military threats, internal law and order, and the security, independence and territorial integrity of the state. Instead, the White Paper endorses a human security model that defines security as having political, economic, social, technological and environmental dimensions and as relating to “freedom from the vulnerability of modern society”.¹⁷

The main weakness of the White Paper is that it does not translate the new philosophy into meaningful policies and concrete measures. This weakness is evident in the brief treatment of the intelligence mandate. NIA’s mission is described as follows: “To conduct security intelligence within the borders of the Republic of South Africa in order to protect the Constitution. The overall aim shall be to ensure the security and stability of the State and the safety and well-being of its citizens”.¹⁸ This definition surely requires explanation and elaboration. What does ‘protect the Constitution’ actually mean? This is an abstract notion, capable of different interpretations, whose political and operational implications ought to be spelt out. What criteria will be used to determine threats to the ‘stability’ of the state? What does NIA’s mission to ‘ensure security’ entail? Is ‘security’ to be understood here as having political, economic, social, technological and environmental dimensions? How could NIA possibly cover all this ground?

The White Paper adds that the mission of the intelligence community is to provide evaluated information with the following responsibilities in mind:

- safeguarding the Constitution;
- upholding individual rights;
- promoting the inter-related elements of security, stability, co-operation and development;
- achieving national prosperity while contributing to global peace and other global priorities;
- promoting South Africa’s ability to face foreign threats; and
- enhancing the country’s international competitiveness.¹⁹

As if this were not demanding enough, the White Paper states that one of the purposes of intelligence is “to assist good governance through providing honest critical intelligence that highlights the weaknesses and errors of government”.²⁰

It was noted previously that the National Strategic Intelligence Act does not circumscribe NIA’s use of countermeasures. The White Paper, however, contains two important constraints in this regard:

Measures designed to deliberately interfere with the normal political processes in other countries and with the internal workings of parties and organisations engaged in lawful activity within South Africa must be expressly forbidden.²¹

No intelligence or security service/organisation shall be allowed to carry out any operations or activities that are intended to undermine, promote or influence any South African political party or organisation at the expense of another by means of any acts (e.g. ‘active measures’ or ‘covert action’) or by means of disinformation.²²

It is also relevant that the Constitution prohibits political bias by the security services. It insists that neither the security services nor any of their members may, in the performance of their functions, prejudice a political party interest that is legitimate in terms of the Constitution or further, in a partisan manner, any interest of a political party.²³ The Intelligence Services Act of 2002 states that the heads of the intelligence organisations must take steps to ensure adherence to this constitutional injunction.²⁴ The White Paper constraints referred to above should be incorporated in a similar fashion into law.

NIA’s policy on its mandate

In the period 1994 to 1999 NIA interpreted its mandate narrowly, concentrating on terrorism, sabotage, subversion and organised crime. Following the appointment of a new Minister of Intelligence in 1999, its focus was expanded to reflect the wide scope of the White Paper and the National Strategic Intelligence Act. The new interpretation, formalised in a classified operational

directive, entailed a staggeringly broad approach to security that encompassed political, social, economic and environmental issues and was not limited to threats but also included the identification of opportunities. The directive construed the mandate so expansively that “the Agency must inform decision-makers about every aspect of human endeavour upon which good order and the prospects for a prosperous future depend”.²⁵

Under the heading “Broad Areas of Interest and Focus”, the directive presented five categories: political intelligence, economic intelligence, organised crime and corruption, border intelligence and special events. The focus on political and economic intelligence was included at the instruction of Cabinet and the President. The section on political intelligence began by noting that in order to fulfil its mandate effectively, NIA must have a clear picture of political processes and dynamics in the country. This “calls amongst others for an understanding of the strengths and weaknesses of political formations, their constitutions and plans, political figures and their roles in governance, etc”. The development of this political understanding did not require the use of intrusive or covert methods. Intrusive methods “shall only be applied where there is demonstrable reason to believe that criminal or unconstitutional acts are about to be committed or have already been committed”.

The focal areas under the heading “Political Intelligence” covered the following:

- Transformation and related issues within government. This included tensions that arose from the drive for representivity or from the lack thereof and might result in deliberate subversion or sabotage within government departments.
- Competition between and within political parties that might negatively affect the delivery of crucial services and result in security risks.
- Factors, issues and developments subverting the process of governance.
- The impact of political policy decisions and processes on national security and stability. The purpose of monitoring political decisions and processes was to advise political clients on the effectiveness of their

decisions and indicate possible alternative ways of dealing with conflict situations.

- Imported issues, which included issues that could cause South Africa diplomatic embarrassment, foreign groups settling their disputes in South Africa and the use of South Africa as a base from which to destabilise other countries.
- Activities such as terrorism, subversion and sabotage that were directly related to the destabilisation or overthrow of the constitutional order.

The directive stated that NIA's focus on economic intelligence covered the following sub-categories:

- Macro economic issues, including domestic economic trends, threats to economic development, economic opportunities, strategic industries and parastatals, the impact of macro-economic policies and trade agreements and relations.
- Socio-economic issues that impacted on security and stability at national, provincial and local levels. These issues included access to services and resources, poverty levels, the impact of HIV/AIDS and employment trends.
- Technological issues, including strategic technologies, policy issues, technological opportunities, chemical, biological and defence industries and patents and copyright.
- Environmental issues, including plunder of natural resources, environmental destruction and environmental issues that could have economic implications for emerging sectors of the economy such as tourism and the fishing industry.

The category of organised crime and corruption included major crimes that impact on national security and stability, transnational criminal structures and activities and corruption of political authorities or government officials that perverted public administration, impaired good governance or deprived the

citizenry of their needs. The category ‘border intelligence’ covered criminal and unconstitutional activities that were perpetrated at or through the country’s points of entry and exit.

NIA informed the Commission that its political intelligence focus had caused some difficulty in ascertaining and pinpointing its exact mandate. After intensive discussion with Minister Kasrils in the wake of the intelligence crisis of 2005/6, the Agency had decided to “move away from political intelligence *per se*” and “rephrase its ‘political focus’ to Social Stability Intelligence as part of the incorporation of South Africa as a developmental state into the intelligence mandate debate”.²⁶ The aim was to meet the human security challenges of South Africa as a developmental state by focusing on two components, namely threats and risks to political stability and threats and risks to social stability.²⁷ In the view of the Commission, this sweeping reformulation would do nothing to ease the difficulty of ascertaining NIA’s mandate with any precision.

The problems with a broad mandate

A domestic intelligence mandate that covers all dimensions of security leads inevitably to problems of overreach, duplication and lack of focus. NIA’s thematic scope is so wide that it embraces the focus of virtually every state department. This is patently impractical and unnecessary. Intelligence officers cannot conceivably acquire a professional level of expertise in all facets of governance. They can consult the relevant experts, but they will not themselves have comparable proficiency; consequently, there is no reason to believe they can add anything of value.

By way of example, poverty, unemployment, HIV/Aids and other diseases are among the most serious threats to human security in South Africa. These issues are the subject of extensive research and analysis by many governmental and non-governmental bodies. NIA is not able to supplement or even match their depth of knowledge. Nor should it be required to alert decision-makers to the importance and severity of these threats. The responsibility for identifying

and addressing socio-economic threats to security lies with the Executive and with all government departments according to their respective mandates.

NIA's expertise and the intrusive powers bestowed on it by law are geared principally to gathering *secret* information about domestic security threats. More specifically, the organisation is designed and equipped to anticipate, detect and analyse major threats that are clandestine and entail criminality. Since this function is not undertaken by other government departments, it makes no sense for NIA to duplicate their work at the expense of pursuing its own most vital responsibility. Instead, as argued further below, it should concentrate on serious crimes. It would still have to analyse political and social dynamics, but the purpose would be to anticipate and detect the planning and execution of serious offences.

In its submission to the Commission, NIA raised several concerns about its mandate, which it considered ambiguous and vague. The absence of a clear definition of 'threats to the Republic' and 'threats to national security' gave rise to incoherent interpretations and created difficulties in prioritising and targeting. A further problem was that Executive tasking of NIA across the broad spectrum of human security and political issues could impact on the neutrality of the Agency and generate tension between NIA and the Executive. The risk of tension increased if NIA were unable to satisfy the intelligence requirements of its Executive clients because of its limited resources and capacity.²⁸

In July 2008 Minister Kasrils delivered a speech in which he cautioned against an overly broad intelligence mandate:

A national security policy informed by a human security perspective cannot mean that the intelligence services should be involved in every aspect of public life. Other government departments, academics and research institutes are best placed to provide expert advice on, for example, the impact of service delivery issues on the general well-being

of people. It can be argued that to expect the intelligence services to expend resources on those issues is not only inefficient, but also may lead to the perception that the intelligence services are unduly intrusive. Indeed, this was seen during the local service delivery protests and provincial border dispute issues of recent years, where a general complaint about the ubiquitousness of NIA members was raised by trade unionists, political parties, community organizations and the media alike.²⁹

Kasrils went on to say that the experience of the delivery protests and the violent eruptions against foreigners in South Africa in 2008 had led to an internal review of NIA's mandate. The protests and violence had their roots in the "socio-economic contradictions [that] are located in the very structure of our present social system, and require government's policy interventions".³⁰ It was necessary for the intelligence services to monitor developments on the ground, but their focus, according to Kasrils, should be on the 'trigger points' where localised outbursts of violence might occur, rather than on the overall socio-economic climate in the country.

The dangers of political intelligence

There are three major problems with NIA's political intelligence mandate. First, the perceived role of the intelligence community as general policy advisers to the Executive is misconceived. As noted above, the White Paper on Intelligence maintains that one of the purposes of intelligence is to assist good governance by highlighting the errors and weaknesses of government. Along similar lines, NIA's directive on its mandate states that it must monitor the impact of political policy decisions and processes in order to advise government on the effectiveness of its decisions and indicate alternative ways of dealing with conflict situations.

The Commission argued that if NIA played this role in earnest, it would become a shadow and shadowy watchdog of government business. In addition to Parliament, the Constitution establishes a number of complaints bodies with

oversight responsibilities in relation to the state. NIA is not among these bodies. In terms of the Constitution, it is one of the security services. There is no constitutional or legal basis for it to operate as an elite policy organisation advising government on its mistakes and weaknesses. NIA agreed with this perspective, telling the Commission that it should not have to monitor and report on the performance of the state and its delivery programmes, since this could lead to perceptions that social, development and economic issues had been securitised.³¹

Second, NIA's political intelligence function entails an unacceptable focus on political parties and organisations, whose members' constitutional rights to dignity, to freedom of association and expression and to campaign for a party or cause are undermined if they are under scrutiny by the domestic intelligence service. NIA itself argued that it is problematic for it to monitor the impact of political rivalry on national security and stability as monitoring might be abused or interpreted as efforts by a political party apparatus to deal with political opponents in an undemocratic manner. Such abuse and perceptions, NIA contended, would compromise the Agency's credibility.³² NIA concluded that it should limit its focus within the political arena to suspected unconstitutional activities by political parties or their members, subject to the constitutional obligation that the security services do not behave in a partisan manner.³³

The Commission agreed that NIA should limit its focus, but expressed concern about the notion of 'unconstitutional activities', which appear to be different from 'illegal activities' and could thus cover lawful actions. This concern also arises in relation to the National Strategic Intelligence Act, which mandates NIA to gather intelligence on "threats or potential threats to the constitutional order of the Republic"³⁴ and defines 'subversion' as "any activity intended to destroy or undermine the constitutionally-established system of government in South Africa".³⁵ What exactly does all of this mean? When NIA observes that it seeks to detect activities that "do or could result in violent conflict, criminality or the undermining of the constitutional order,"³⁶ it seems clear that undermining the constitutional order is somehow different from violence and criminality and might therefore encompass legal activities.

In a democracy it is profoundly undesirable for an intelligence service to make judgements on whether lawful activities are unconstitutional or amount to threats to the Constitution. Opposition to the ruling party, the government and individual members of the Executive is natural and legitimate in a free and open society. It is a dire misconception for such opposition to be regarded as ‘subversive’ or a ‘national security threat’, thereby necessitating and justifying investigation by intelligence organisations.

This problem could be avoided by stipulating that subversion and other national security threats must have a violent or otherwise criminal character. This is the case with the Canadian Security Intelligence Service Act of 1985, which defines security threats to include, among other things, “activities directed towards undermining by *covert unlawful* acts, or directed toward or intended ultimately to lead to the destruction or overthrow by *violence* of, the constitutionally established system of government in Canada” (emphasis added).³⁷ Moreover, the definition of ‘security threats’ in the Canadian legislation expressly excludes “lawful advocacy, protest or dissent”, unless such activity is undertaken in conjunction with one of the designated security threats.³⁸

The Australian intelligence legislation provides the following formulation in this regard:

This Act shall not limit the right of persons to engage in lawful advocacy, protest or dissent and the exercise of that right shall not, by itself, be regarded as prejudicial to security, and the functions of the [Australian Security Intelligence] Organisation shall be construed accordingly.³⁹

The perils associated with NIA’s political intelligence function are not hypothetical. In his report on the intelligence crisis of 2005/6, the Inspector-General of Intelligence noted that NIA’s illegal interception of the communication of parliamentarians and other politicians had its roots in a political intelligence project whose objective was to assess the impact of the

presidential succession debate on the stability of the country.⁴⁰ The Inspector-General emphasised the significant risks attendant on political intelligence, namely “the risk of undermining constitutionally-protected party political freedoms and of descending into the abyss of abuse of state resources and compromise of intelligence mandate integrity”.⁴¹ He concluded that “in a young democracy such as ours”, the question is whether political intelligence should be practiced at all.⁴²

The third major problem is that political intelligence can be abused by intelligence officers and members of the Executive in a manner that politicises intelligence, confers an unfair advantage on some politicians and subverts the democratic process. There are numerous ways in which this can happen:

- Intelligence officers might fashion political information and analysis to favour one party, faction or politician and prejudice others. This can happen if the officers want to enhance their influence or if they have an allegiance to certain politicians.
- An Executive client of the intelligence agency might request and/or use political intelligence with the aim of gaining an edge over an opposition party or an opponent within the same party.
- If the Executive is concerned about political instability, it is more likely to request the intelligence agency to monitor and investigate its opponents than monitor and investigate its own behaviour.
- Political intelligence reports might cover a number of political parties and factions, but the reports are not made available to all of them. This is not illegal, but in the competitive world of politics it might be distinctly beneficial to the recipients of the reports.
- In order to prepare comprehensive and accurate political intelligence reports, intelligence officers might be tempted to use intrusive methods when there are no legitimate grounds for doing so.
- Intelligence officers and their Executive clients might leak political intelligence to the media in order to spread misinformation and cast suspicion over political opponents.

- A political intelligence focus ineluctably draws the intelligence service into the arena of party politics and creates or heightens the risks of interference in the political process, politicising the service and damaging its credibility.

The Commission concluded that NIA should abandon its political intelligence function. Regardless of whether South Africa's democracy is young or old, it is not appropriate in a democracy for an intelligence service to monitor and report on transformation within government departments, on competition between and within political parties and on the impact of policy decisions and processes. Nor is it appropriate for an intelligence service to violate the rights of persons who are acting lawfully. Members of political organisations who perpetrate serious crimes should of course be monitored but this is a crime intelligence function rather than a political intelligence function.

Changing the mandate

NIA's recommendations⁴³

In light of the many problems associated with a broad interpretation of its mandate, NIA would like the national security policy of government to provide a less ambiguous definition of security threats and adopt a more narrow and traditional approach to the mandate. According to NIA, this would be in alignment with international practice, as in the case of MI5 in Britain and the Canadian Security Intelligence Service. More specifically, the mandate should be redefined to stipulate that the Agency must concentrate primarily on the following:

- countering terrorism, sabotage, subversion and proliferation of weapons of mass destruction as the principal threats to national security;
- implementing the full spectrum of counter-intelligence measures, including personnel and information security within government departments and state institutions;

- focusing on organised crime and corruption, where NIA's responsibilities are to compile evaluated strategic and tactical information, conduct countermeasures and provide crime intelligence to the police for investigative purposes; and
- gathering economic intelligence with the aim of providing intelligence that would support government's economic initiatives and policies.

NIA told the Commission that this more classical approach to its mandate would still require non-intrusive environmental scanning in order to contextualise the root causes of terrorism, subversion, sabotage and organised crime and identify in a timely manner the indications that these security problems were developing. NIA would have to prioritise the fields and levels of environmental monitoring on the basis of a careful analysis and estimation of the security risks and the potential or opportunities for anti-constitutional actions.

NIA also called for clear guidelines, principles, authorisation and criteria in relation to the use of countermeasures. It set out its position as follows:

Intrusive and clandestine collection techniques must be conducted in a legal and ethical manner and must be weighed against possible damage to constitutional rights, basic democratic principles as well as diplomatic and international relations. The need to protect national security must be balanced by respect for individual rights and freedom.⁴⁴

Commission's recommendations

The Commission agreed with NIA's central recommendation that it should have a narrow mandate that focuses on terrorism, sabotage, subversion, espionage, proliferation, organised crime and corruption. In addition, the mandate should cover large-scale violence and drug trafficking. These various threats have common features: they are illegal, organised secretly, entail some kind of conspiracy and can inflict extensive damage on the state, society, the economy and/or individuals. They therefore warrant the attention of the domestic intelligence agency, which has legal powers and technical capabilities that enable it to detect secret conspiracies.

The Commission supported the retention of ‘border intelligence’ as part of NIA’s mandate. South Africa’s borders are porous, border posts are sometimes areas of concentrated cross-national criminal activity, harbours and airports are complex systems and there is the possibility of corruption among customs officials. It consequently makes sense for NIA to retain its specialised understanding and monitoring of borders and border posts.

The Commission did not endorse NIA’s recommendation that it should retain its economic intelligence function in support of government’s economic policies and initiatives. As argued above, there is no need for an intelligence organisation to duplicate the work and expertise of other government departments and non-governmental specialists on the economy. If NIA were to have an economic focus, it should be limited to crimes that have an economic or financial character or that have a severe impact on the economy.⁴⁵

The preceding proposals should be effected through amendments to the National Strategic Intelligence Act. Instead of using imprecise terms like threats to ‘national stability’, the ‘constitutional order’ and the ‘well-being of the people’, the Act should define NIA’s mandate concretely and specifically with reference to terrorism, sabotage, espionage and the other security threats referred to above. The term ‘subversion’ should be redefined to cover activities that are intended to destroy or undermine the constitutional system of government by criminal means. The term ‘unconstitutional activity’ should either be dropped or redefined to indicate illegal conduct. The legislation should also state that security threats exclude lawful advocacy, protest and dissent.

In relation to the designated security threats, NIA should have the following functions:

- to predict, detect and analyse the threats;
- to gather intelligence on the plans, methods and motivation of persons and groups responsible for the threats;
- to discern patterns, trends and causes in relation to the threats; to forewarn and advise the Executive about the threats;

- to provide strategic intelligence to NICOC; and
- to contribute to law enforcement and preventive action by providing intelligence to the police, the Department of Home Affairs and other government departments.

In order to fulfil these functions, it will be necessary for NIA to continue to undertake non-intrusive monitoring of the political and socio-economic environment.

It will be evident from this list of functions that NIA's mandate, despite focusing on serious crimes, would be entirely different from the mandate of the police. Whereas the emphasis of the police is on law enforcement and criminal investigation for the purpose of prosecution, the emphasis of the domestic intelligence agency would be on analysis, prediction, prevention, forewarning and advising the Executive.

It will be necessary to establish priorities within some of the designated threat categories, such as organised crime and corruption. As is currently the practice, on an annual basis Cabinet should determine the National Intelligence Priorities (NIP) based on the national intelligence estimate conducted by NICOC. The Commission proposed that Cabinet should present the NIP to Parliament. This would deepen Executive accountability and democratic decision-making on a component of national policy that affects profoundly the security of citizens. National security would not be undermined through such disclosure, since the NIP refers to categories of threat without mentioning the names of individuals and organisations.

With respect to NIA's counter-intelligence responsibilities, the Commission recommended that the National Strategic Intelligence Act should define more precisely the functions of countering threats and impeding and neutralising the effectiveness of foreign or hostile intelligence operations. It should prohibit the intelligence services from disseminating false or misleading information to the public and from interfering with and using countermeasures against

lawful political and social activities in South Africa and other countries. The legislation should also ban the use of intrusive methods where there are no reasonable grounds to believe that the targeted person has committed or is about to commit an unlawful act, and resort to intrusive measures should be subject to prior judicial authorisation.⁴⁶

The Commission made the following proposals on departmental intelligence:

- the provision of departmental intelligence should be subject to the approval of the Minister of Intelligence;
- a request for NIA to provide departmental intelligence must be made by the responsible Minister in the case of a national department and by the Premier in the case of a provincial administration or department;
- the request must be made to the Minister of Intelligence; and
- departmental intelligence should be provided only to the extent that it is necessary for the department to take action in accordance with its mandate.

Finally, the Commission observed that there was an acute absence of ministerial regulations and directives. This was most problematic with respect to politically-sensitive activities like intrusive operations, countermeasures and the identification of targets for investigation. Policies and rules on these matters that ought to have been determined by the Executive had instead been determined by the heads of the intelligence services. In consultation with the parliamentary intelligence oversight committee, the Minister of Intelligence should introduce regulations governing all aspects of the mandates of the services and should publish the regulations in the *Government Gazette*.⁴⁷

Conclusion

Conferring on the domestic intelligence agency a political intelligence function might appear at first sight to make sense in a new democracy that does not yet have a culture of non-violent contestation of power. In 2006 a task team of senior South African intelligence officers advised the Minister of Intelligence that NIA should retain this function on the grounds that “in a young democracy

such as our own, where our new society is built over the racial, class, ethnic and ideological fault-lines of our difficult past”, many of the potential domestic threats to national security will emanate from the political terrain and “the line between legitimate political activity and illegal or unconstitutional political activity is still somewhat shaky”.⁴⁸ Nevertheless, the political intelligence focus has been so problematic that NIA now wants to abandon it. It has led to interference in legitimate politics, illegal infringements of constitutional rights, the politicisation of the Agency and damage to its credibility.

Similarly, in a developing country such as South Africa, an intelligence mandate that embraces the concepts of human security and holistic security might seem to be clearly preferable to a narrow preoccupation with traditional security threats like terrorism, sabotage and espionage. But here, too, the apparently sensible approach has had a host of unintended consequences. NIA’s overly-broad mandate has given rise to great difficulty in determining priorities, maintaining a consistent focus and ensuring effective use of resources. It has resulted in a duplication of work being done by other government departments, possibly at the expense of NIA concentrating on the outbreak of violence and commission of serious crimes.

The lessons for other new democracies lie less in the details of South Africa’s experience than in two general points. First, the experience highlights the significance of the mandate as the platform that shapes the priorities, operations, orientation and effectiveness of the intelligence agency. The wording of the legal mandate is of great import. It may be tempting to couch this mandate in abstract and elastic notions of security that allow for freedom of action and for flexibility over time, but this gives the intelligence services too little direction and too much discretion. It is in the interests of the services, the government and the security of the country that the mandate states precisely what it is that intelligence officers are expected to focus on, predict and do.

The second general lesson is that the intelligence mandate should be subject to extensive parliamentary and public discussion. The mandate clearly has a

major impact not only on the intelligence community, but also on the utilisation of public funds, the integrity of the democratic process, the freedom of political parties and the security and rights of citizens, either enhancing or undermining their liberty and safety. In a democratic society deliberations on these matters should not be confined to confidential meetings and secret documents. They should be debated openly in order to strengthen accountability, prevent abuse of power and protect basic rights.

Footnotes

- ¹ The author is a research associate at the University of Cape Town and the London School of Economics, and served on the Ministerial Review Commission on Intelligence in South Africa from 2006 to 2008. He gratefully acknowledges a research grant from the Global Facilitation Network for Security Sector Reform (GFN-SSR).
- ² Office of the Inspector-General of Intelligence, '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, available at www.intelligence.gov.za/OversightControl/IG%20Exec%20Summary%2023%20Mar%2006.doc.
- ³ On intelligence transformation in post-apartheid South Africa, see Kenneth R. Dombroski, 'Reforming Intelligence: South Africa after Apartheid', *Journal of Democracy*, vol. 17, no. 3, 2006, pp. 43-57; and Kevin O'Brien, 'Controlling the Hydra: A Historical Analysis of South African Intelligence Accountability', in Hans Born, Lock K. Johnson and Ian Leigh (eds.), *Who's Watching the Spies? Establishing Intelligence Service Accountability*, Washington DC: Potomac Books, 2005, pp.199-222.
- ⁴ Minister Ronnie Kasrils, 'Launch of Ministerial Review Commission on Intelligence by the Minister for Intelligence Services', Cape Town, 1 November 2006.
- ⁵ The Commission comprised Joe Matthews, a former Deputy Minister of Safety and Security, who chaired the body; Dr Frene Ginwala, the Speaker of South Africa's first democratic Parliament; and the author.
- ⁶ Ministerial Review Commission on Intelligence, 'Intelligence in a Democracy: Final Report of the Ministerial Review Commission on Intelligence to the Minister for Intelligence Services, the Honourable Mr Ronnie Kasrils, MP', 10 September 2008, available at www.crisisstates.com/download/others/ReviewComm.Sept08.pdf
- ⁷ Section 2(1)(a) of the National Strategic Intelligence Act No. 39 of 1994.
- ⁸ *Ibid*, section 2(1)(a)(ii).
- ⁹ *Ibid*, section 1.
- ¹⁰ *Ibid*, section 2(1)(b).
- ¹¹ *Ibid*, section 1.

- ¹² This matter is covered by the Protection of Information Act No. 84 of 1982 and by the Minimum Information Security Standards approved by Cabinet in 1998. In 2008 the Minister of Intelligence tabled new legislation on protection of information but the Bill was rejected by the parliamentary committee that reviewed it.
- ¹³ Security screening is covered in section 2A of the National Strategic Intelligence Act.
- ¹⁴ Ministerial Review Commission, 'Final Report', pg. 144.
- ¹⁵ Section 2 (1)(c) of the National Strategic Intelligence Act.
- ¹⁶ *Ibid*, section 1.
- ¹⁷ Republic of South Africa, White Paper on Intelligence, 1994, pg. 3. The document can be viewed at www.intelligence.gov.za/Legislation/white_paper_on_intelligence.htm. The intellectual origins of the White Paper's approach to security included Africa Leadership Forum, *The Kampala Document: Towards a Conference on Security, Stability, Development and Co-operation in Africa*, Ogun State (Nigeria): Africa Leadership Forum, 1991; Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, New York: Harvester Wheatsheaf, 1991; and Ken Booth (ed.), *New Thinking about Strategy and International Security*, London: Harper Collins, 1991.
- ¹⁸ White Paper on Intelligence, pg. 6.
- ¹⁹ *Ibid*, pg. 3.
- ²⁰ *Ibid*.
- ²¹ *Ibid*, pg. 9.
- ²² *Ibid*, pg. 14.
- ²³ Section 199(7) of the Constitution of the Republic of South Africa, 1996.
- ²⁴ Section 4(b) of the Intelligence Services Act No. 65 of 2002.
- ²⁵ The quotes in this section are from NIA's operational directive on its mandate and appear in Ministerial Review Commission, 'Final Report', pp. 128-132.
- ²⁶ NIA's submission to the Commission, quoted in Ministerial Review Commission, 'Final Report', pg. 132.
- ²⁷ *Ibid*.
- ²⁸ *Ibid*, pp. 147-148.
- ²⁹ Minister Ronnie Kasrils, 'To Spy or Not to Spy? Intelligence and Democracy in South Africa', Institute for Security Studies Public Dialogue Series, Pretoria, 3 July 2008, pp. 10-12, available at www.intelligence.gov.za/Speeches/2008/ISSSpeech03July2008.doc.
- ³⁰ *Ibid*.
- ³¹ Ministerial Review Commission, 'Final Report', pg. 148.
- ³² *Ibid*.
- ³³ *Ibid*.
- ³⁴ Sections 1 and 2(1)(a) of the National Strategic Intelligence Act.
- ³⁵ Section 1 of the National Strategic Intelligence Act.
- ³⁶ NIA's submission to the Commission, quoted in Ministerial Review Commission, 'Final Report', pg. 132.
- ³⁷ Section 2 of the Canadian Security Intelligence Service Act of 1985, available at <http://laws.justice.gc.ca/en/C-23/index.html>.
- ³⁸ *Ibid*.
- ³⁹ Section 17A of the Australian Security Intelligence Organisation Act No. 113 of 1979.
- ⁴⁰ Office of the Inspector-General of Intelligence, 'Executive Summary', pp. 15-16.
- ⁴¹ *Ibid*, pg. 18.

⁴² Ibid.

⁴³ NIA's recommendations to the Commission are covered in Ministerial Review Commission, 'Final Report', pp. 148-150.

⁴⁴ Quoted in Ministerial Review Commission, 'Final Report', pg. 144.

⁴⁵ At a meeting in October 2007, NIA informed the Commission that it had abandoned its economic intelligence function. The targeted focus in this area was now on economic crimes, such as the financing of terrorism.

⁴⁶ The Commission mounted a detailed critique and made extensive recommendations on the use of intrusive measures by the intelligence services. See Ministerial Review Commission, 'Final Report', chapters 7 and 8.

⁴⁷ Most of the ministerial regulations on intelligence that were in force at the time of writing (February 2009) were secret documents.

⁴⁸ Quoted in Ministerial Review Commission, 'Final Report', pg. 139.

Concluding Remarks

Sandy Africa and Johnny Kwadjo

This book was occasioned by the dearth of analysis and general lack of information about African intelligence services. Despite growing opinion in policy, practitioner and academic circles that intelligence should be added to the African security sector transformation agenda, analysis of intelligence has lagged behind that of other African security institutions.

Intelligence services in Africa, like those the world over, gather intelligence secretly, making the possibility of abuse of power a reality. Intelligence services often use extraordinary and intrusive measures in their work. The colonial intelligence legacy of gathering intelligence to ensure colonial domination was extended in the post-colonial period to intelligence services practicing what amounted to regime security.

In many countries, ordinary people are often at a loss as to how to assess whether their rights are being trampled by state intelligence services. But they are beginning to raise many and varied questions. People – both the merely curious and the more serious – want to know:

- What is the role of African intelligence services in different country and regional contexts?

- What are their mandates and are these legally defined?
- What methods of intelligence gathering do they use, and what norms drive them?
- To whom are they accountable and is there adequate oversight over their operations?
- Are the services effective and are they adding value in the context of the scarce resources available to governments?

It is significant that the approach in the analyses presented in the book, has been essentially a historical one, as this appears to be the most effective way to lay the foundation for a continuing deliberation on the changing dynamics of intelligence reform in Africa. From the experiences recounted in this volume, it appears that intelligence reform in Africa has proceeded invariably alongside the broader political evolutions of the various states involved. Thus, common and overlapping narratives of the role of intelligence in pre-colonial times, during the colonial period and beyond, appear so regularly as to suggest general indicators of the challenges that were to follow under conditions of African independence.

The changing dynamics of African intelligence services

The papers in this book point to similarities in the political contexts in which African intelligence services have emerged, including common patterns of colonization and the impact on traditional societies. Boinett paints a deeply insightful picture of the evolution of Kenya's intelligence systems from pre-colonial to modern times. All pre-colonial African communities, he writes, had some form of secret service or intelligence system which enabled them to learn the strengths and weaknesses of their neighbours; even strangers pretending to have lost their way were used for the task of getting information. He describes how traditional structures were co-opted by British into their colonial intelligence system. Agaba also describes how tribal or ethnic affiliation of recruits into Uganda's first elite intelligence structures, was used in the consolidation of power. The net result is that the people of Uganda have had to endure decades of insecurity at the hands of successive governments.

Agaba claims that the intelligence services under Obote went as far as deposing the king of the oppositional Buganda, in order to consolidate his power base. The intelligence services were instrumental in this act.

The origins of the intelligence systems of each of the four former British colonial countries analysed in this book lie in the security branch structures of the colonial police, which were blunt instruments of social control and coercion that had little to do with providing for the security needs of the indigenous populations. All four country studies show how the post-colonial or post-liberation periods, saw the intelligence services at the centre of political power and influence. Quantson has imaginatively coined the phrase “captive Presidents” to describe this phenomenon.¹ The intelligence services can access and provide for their client heads of states, information vital for consolidating their power bases. They are therefore able to extract for themselves extraordinary powers in their duties, and influence in the political life of the country. In the beginning, the nationalist fervour with which the intelligence services perform their tasks may be associated with nationalism and patriotism. In some cases, the services have genuinely been used to promote the nation-building goals of newly-formed states. Kwadjo for example, outlines how post-independent Ghana inherited the Security Branch from the British colonial system, but quickly saw its limitations as a tool for promoting a pan-Africanist agenda. One of the strategies adopted by Nkrumah, Ghana’s first president, therefore, was to establish an elite intelligence organization in the Office of the President to gather intelligence abroad.

But Kwadjo also provides a darker account of the role of intelligence actors and the explicitly political roles that they played in military coups that characterised an era of instability in Ghana. The first military coup – staged in 1966 – highlighted the weaknesses of the country’s intelligence and security sector. The coup organisers were, in fact, senior police officers. In the counter-coup of 1967, the weaknesses of the Special Branch were exposed as they were unable to anticipate the coup. The military rulers realised that they could only be protected by an effective intelligence capacity within the military itself.

Thus, the Military Intelligence Unit established in late 1967 had the express function of regime protection. In fact, Kwadjo states, as a consequence of its continuing location at the apex of political power over time, intelligence for regime protection became the central intelligence activity in Ghana. The era of the 1960s and 1970s in Ghana saw a vicious cycle of coups and counter-coups and of people relying on intelligence in their quest to hold and maintain power. One of the strongest legacies of the post-colonial period in Ghana and many other African countries is the disreputable association of most African intelligence services with regime protection.

Africa points out the highly influential role of the intelligence services in South Africa's negotiated settlement in the 1990s is also noteworthy. From the 1980s, the apartheid intelligence services began to advise the white minority government that it would be in its interests to negotiate a political settlement with the banned liberation movements. The National Intelligence Service even facilitated secret talks with the exiled African National Congress, years before the historic unbanning of organizations that had been opposed to the apartheid government.² And the intelligence components had sufficient muscle to begin redefining the rules by which intelligence would be practiced under a democratic government. This level of influence enjoyed by the intelligence services has not been unique to the South African intelligence services. All four of our country studies suggest that the intelligence services of post-independence African states have occupied a privileged space, with their extraordinary powers of surveillance and intrusion. It is in this context that we must understand Nathan's words of caution against intelligence powers that are too wide-ranging. Nathan reflects on how the intelligence mandate of South Africa's domestic intelligence agency, with the benefit of hindsight, may be too broad for effective control, governance and oversight of the institutions. The issue of the mandates of intelligence services invites scrutiny and review in the context of the security challenges facing intelligence systems whilst at the same time responding to pressures for greater transparency, accountability and improved performance.

The evolution of state structures has been a significant element of the changing political dynamics under which intelligence services function. In our four countries, electoral democracies have had an uneasy existence with strong nationalist agendas, often finding expression in a dominant party tendency, in turn giving rise to often violent political contestation. Intelligence services have therefore been highly contested assets in situations where control of the state has been such a highly sought prize by various interest groups: at times the military or police; at times political parties and at times, individuals.

The papers in this book have shown that not only have the security and political conditions changed, so too have environmental norms. As conflicts have threatened global and regional security, the international community, through intergovernmental organizations, has realized that it is in its best interests to provide enhanced regulation. The United Nations has had to organize itself so as to better engage regions to intervene in conflict and to restore or introduce sustainable peace and promote development. Likewise, the African Union had had to set policy frameworks in place for the resolution of conflicts, and for consequent processes such as the demobilization, disarmament and reintegration of armed combatants in conflict. The Committee of Security and Intelligence Services of Africa (CISSA) has undertaken to support the existence of a continental early warning system to anticipate and diffuse civil conflicts. Naturally, the intelligence services of the continent see themselves as being at the centre of such an initiative.³

This is a welcome development, but must surely invite consideration of the most effective measures to be used in developing such a capability, the resources needed, and the standards of professionalisation of all intelligence services.

Alongside the regional initiatives of the kind described above, governance concerns around intelligence have arisen in several countries over the past decade. In his review of the intelligence services of Ghana, Kwadjo observes that by 2006, the change in temperament about the role of intelligence was markedly different from that characterising the early post-colonial period in

that country. The measured political understanding of the role of intelligence signaled a consolidation of the reform process; in fact, it was a historical moment when the hitherto secretive budget was approved for the first time in Ghana's Parliament. It was also significant that this development took place in the context of the rare African political phenomenon of smooth and peaceful transfer of political power from one democratically-elected government to another headed by the former opposition party.

Africa argues that the positive features of the new intelligence dispensation are not in dispute – these include a system of parliamentary oversight, greater transparency about the funding of the services, and more obviously the fact that they no longer are driven by an agenda associated with white survival – but in the context of a relatively young democracy, there is already a mixed record of performance, of accountability and of non-partisanship as a number of recent scandals have shown.

Parallel to the political maturations that have taken hold, the intelligence services of all four countries over the past decade have gravitated towards organizational structures staffed by civilians. Their functions tend to be of a strategic intelligence gathering kind, as well as counter-intelligence tasks such as security vetting of government officials. As civilian intelligence organizations, free to recruit independently of the police and the military, they have been able to draw on a new crop of intelligence professionals. Not surprisingly, conditions of political ownership, particularly where the executive is held to account by the legislature, coupled with strong and principled leadership that understands the need for greater accountability, inside the intelligence services, can be a decisive combination in stimulating reform.

On the one hand, this volume contains stories of hope: the accounts given of the changes in South Africa; Ghana, Uganda and Kenya all point to overall positive developments over the past decade: These include: defining the functions and mandates, and organizational strictures of the intelligence services in discrete legislation; (most decidedly in the cases of South Africa, Ghana

and Kenya) , thereby increasing their legitimacy; providing for some degree of parliamentary oversight;- and reducing the opportunity for arbitrary and unaccountable conduct. Ghana today debates the intelligence budget in Parliament, as does South Africa. At the same time, there are imperfections evident in these cases; the article by Nathan highlights how even is a model with as many positive features as South Africa's ; contains critical flaws; which further reform processes should address.

The article on the Great Lakes region highlights challenges generally faced by the intelligence services in that region. Among them are: the politicization of intelligence; lack of capacity and inadequate resources; inadequate or even total absence of appropriate legislation to regulate the intelligence services; and poor coordination with other security institutions. Yet there is no doubt that Africa requires effective intelligence capacity; to address the many threats to peace, security and development facing the continent.

Taking the research process forward.

It would be remiss not to acknowledge the important research and policy development in relation to intelligence that has preceded this book. The Global Facilitation Network for Security Sector Reform has made earlier contributions, and its collaboration with the ASSN in this project is therefore unsurprising.⁴ Several institutions on the African continent now have intelligence reform focuses. An example is the Security Sector Governance Programme of the Institute for Security Studies.⁵ The Geneva Centre for the Democratic Control of the Armed Forces (DCAF), has produced several leading articles and publications on governance of the intelligence sector.⁶ And as conceptions of the security sector become more holistic (to include for example customs, border security, prisons, the justice sector and intelligence services on the side of the state), so the room for debating revised norms of good governance in intelligence expands.

This first attempt by the Intelligence Working Group of the African Security Sector Network (ASSN) to distribute these analyses of the evolution of intelligence in Africa is intended to help address concerns that:

'Intelligence reforms, given the sensitivity and secrecy surrounding this activity, have not been a common feature of SSR programmes. However, this does not mean that reform is not occurring, but rather that there is a huge information gap about how reforms are conducted in this particular area. Despite this, it is acknowledged that normative frameworks for the governance of intelligence are not receiving sufficient attention, at least in the African context. Intelligence is also central to the agenda of SSR because reform of intelligence services is necessary ...to make them more relevant to the development needs of African societies. In addition, the integration of the intelligence services into the overall national security systems will enable them to contribute better to the efforts to combat international terrorism, transnational crimes, money laundering, drug trafficking and arms smuggling.' (Recommendations of the African Security Sector Network (ASSN) workshop held from 9 – 11 October 2008)

Tracking intelligence governance and reform and position these issues into SSR debates in Africa should engage the interests of critical stakeholders, including security services and their representative bodies, the African Union, national governments and the broad spectrum of civil society actors who have an interest in, or concerns about, the role of the intelligence services in Africa.

Several critical areas in need of investigation were identified by ASSN during its October 2007 workshop and in subsequent discussions. Some are addressed in this volume; the ASSN will continue to address the research issues through further publications, through seminars and other platforms, always seeking to broaden public participation in the debate. Some of the research areas are:

- *The mandates and legal status of intelligence services in Africa.* There is a need to continue to document and critique the legal status, role and

mandates, powers and structures of the intelligence services in Africa. The study of the intelligence services of post-colonial Anglophone countries undertaken in this volume has highlighted certain similarities, but also underlined the unique features of different contexts. . Now the ASSN needs to better understand the legal basis of intelligence services in Lusophone, Francophone and in Arabic-African states, and in any others with particular historical legal legacies. This work should be undertaken carefully and systematically; researchers with a particular understanding of these contexts should be involved.

- *Understanding the regional dynamics and regional interactions of African intelligence services.* The analysis of intelligence services in the Great Lakes Region marks a good beginning to improving our knowledge about the regional intelligence perspective, one that should be extended through further analysis, empirical research and participatory interaction with security and intelligence actors in that region. Such an exercise can only be usefully replicated in other regions: an analysis of the drivers for intelligence cooperation – or competition - in the Southern African Development Community (SADC) region or the Economic Community of West African States (ECOWAS) or the Horn of Africa, or any other region, would make for fascinating and instructive studies and provide a basis for comparative analysis of the challenges facing intelligence services in different African regions.
- *African intelligence services and their Pan-African and international obligations.* - There is little acknowledgment or agreement by intelligence services the world over on the parameters of international law within which they operate/should operate and how such frameworks can assist in ensuring that they operate at regional and national levels and within the parameters of international human rights and humanitarian law. Given that the intelligence services of Africa often operate in volatile conflict and post-conflict conditions, the rights of subjects are often at stake and the need to set standards of good conduct and practice often urgently required. This research could stimulate debate on appropriate behaviours and norms to be followed by intelligence services.
- *Secrecy and transparency and prospects for improved oversight in Africa* Some African intelligence services have begun to move tentatively

towards improved oversight of their structures. There is need to document the conditions under which this is happening, and reflects on the debates that shape these initiatives. These examples could serve as a resource for other countries exploring reform and improved accountability of the intelligence services. A range of normative concerns could be sub-texts of such a research agenda: these include the appropriate balance of secrecy and transparency, intelligence and the rule of law, intelligence and the rights of citizens, and the role of the public in shaping intelligence policy and priorities.

*** *Role of intelligence***

The basic and perennial question of the role of intelligence is another area of research that deserves continuing attention. Research on this issue has tended to be dominated by analysts in the developed world; their research preoccupations do not necessarily reflect the main interests and concerns of the developing world. The role of African intelligence services in peace keeping, conflict resolution, combating poverty and in reconstruction and development is probably being considered by intelligence services across the continent. Research into this field could assess international practice, explore the unique challenges facing African intelligence services in addressing these issues and provide policy options for consideration. Because sources of information have proliferated, the role of private intelligence and security providers should also be debated, along with how best their activities (which often include the use of intrusive measures of collection), should be regulated.

In relation to all of the above areas identified by the ASSN, issues of appropriate methodology, access to the information which can usefully inform research, and even the safety of researchers and analysts, should be honestly debated. A reckless approach by those wishing to engage in the debate will be counterproductive and a culture where there is mutual respect and responsibility by both the intelligence services and analysts must be fostered over time. Here the role of different institutions of society – Parliament, the Executive, the Judiciary, independent oversight bodies, the media and non-governmental bodies will be important and all should have a voice in this engagement.

In an ideal world, this intelligence research programme should be coupled with an outreach programme that will popularise and promote an understanding of the role of intelligence in a democracy and key features of good conduct for all stakeholders in relation to the intelligence services. Targets for such an outreach programmes would be Parliaments and civil societies, regional formations and the African Union and its affiliate structures. The ASSN has already had the opportunity to engage with the Committee of Intelligence and Security Services of Africa (CISSA), around the question of a Pan-African security agenda, and through this publication hopes to provide a further bridge for dialogue.

The ASSN will continue to pursue this agenda of research and advocacy for the reform and transformation of the intelligence services. Intelligence is now an indelible part of the concerns of the ASSN and it is hoped that this volume will be the first of many.

Conclusion

In the introductory chapter, we asked which characterization best fitted African intelligence services: the power behind the throne; a bureaucratic player in competition with other influential actors, or institutions having to adapt to a rapidly changing information marketplace, and facing great odds in doing so? All of these characteristics have been displayed at differing times and in varying degrees by many African intelligence, particularly those we have subjected to critique in this book. But on the whole, it does seem that intelligence services are significant players in Africa, a reality they probably are well of. Whether they hold their governments captive or whether they play an appropriate role in providing intelligence so that security threats can be addressed is a matter in the hands of citizens, who must begin to take responsibility for the intelligence services their countries have.

Footnotes

- ¹ Quantson, K. (2004) *Bogus Informants...Nation Wreckers*. Accra: Napasvil Ventures.
- ² An informative account is provided in Rosenthal, R. (1998) *Mission Impossible: a piece of the South African story*. Cape Town, Johannesburg: David Philip Publishers.
- ³ “Africa at large: security concerns up a notch as spies hold crucial talks“ in *afrika.no*. Africa News Update (the Norwegian Council for Africa), <http://www.afrika.no>
- ⁴ See for example, Ferguson, C. & Isima, J.O (eds) 2004. *Providing security for people: enhancing security through police, justice and intelligence reform in Africa*. Shrivenham: Global Facilitation Network for Security Sector Reform.
- ⁵ In 2007, the Institute for Security Studies (ISS) was undertook a public seminar series on intelligence, with the backing of the South African intelligence Ministry.
- ⁶ See for example Caparini, M (2002). *Challenges of control and oversight on intelligence services in a democracy*. Geneva: DCAF; Aguero, F. (2005). “The new ‘double challenge’” simultaneously crafting democratic control and efficacy concerning military, police and intelligence”. Working paper no. 161. Geneva: DCAF; and “Intelligence pversight – a practitioner’s view” Working Paper. Geneva: DCAF.
- ⁷ This was one of the recommendations contained in the report arising out of an African Security Sector Network on the state of security sector reform (SSR) in Africa, in Addis Ababa, Ethiopia from 9 – 11 October 2007. The workshop was addressed by the Secretariat of the African Union’s Peace and Security Commission. It took place at the headquarters of the African Union, and laid the basis for the cooperation that has since developed between the AU and the ASSN, around developing the AU’s policy position on aspects of SSR.

Biographies

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David Pulkol is founder and current chairman of the executive board of Africa Leadership Institute, an independent Public Policy Think Tank based in Eastern Africa. A former minister under different portfolios in the government of Uganda, Mr. Pulkol, also twice, served as head of Uganda's foreign intelligence body; the External Security Organization (ESO). Pulkol also served as Deputy Regional Director of UNICEF (Eastern and Southern African Regional Office) from March 1999 to March 2001.

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Sandy Africa, (PhD, Witwatersrand) serves on the Advisory Group of the GFN-SSR. She is an Associate Professor in Political Sciences at the University of Pretoria in South Africa. Africa served for twelve years in the post-apartheid intelligence services, including a seven year appointment as head of the Intelligence Academy. Her research interests include challenges of post-conflict security sector transformation, and policy option for security sector reform. Through the African Security Sector Network (ASSN), she has also been extensively involved in advocacy work and capacity-building with security actors, parliaments and government officials in countries pursuing the reform of their security systems.

Johnny Kwadjo works with The African Security Dialogue and Research (ASDR) in Accra, Ghana. He was the lead official who oversaw the implementation of Ghana's seminal Security and Intelligence Agencies Act (1996) within the country's Intelligence Agencies. Formerly, he was Ghana's Deputy National Security Co-ordinator (1997-2001), Head of Mission and Ambassador of Ghana to the Republic of Togo (1986-1997) and Director of the West Africa Desk of the Ghana Foreign Ministry's Research Department (1984-1986).

Brigadier (rtd) Wilson Boinett is the Executive Director of Regional and International Security Consulting (RISC) Ltd. Prior to his intelligence career, he served for over twenty years in the Kenyan Armed Forces, including as Chief of Military Intelligence (1993). From 1999 to January 2006 he served as the Director-General of the National Security Intelligence Service of Kenya (NSIS), Kenya. His life-long career includes deployments to several peace-keeping missions: in 1979 he was the Officer Commanding of the Kenya contingent to the Rhodesia/Zimbabwe peace (election) process; in 1981 he was the Military Advisor to the Organisation of African Unity(OAU) special envoy to the peace process in Chad, and from 1993-1994, he headed Kenya's contingent to the UN Joint Verification Team to Mozambique.



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This collection of papers highlights aspects of the transformations undergone by intelligence services in several African countries - South Africa; Ghana; Kenya and Uganda. In addition, the vexed themes of the role of intelligence services in the context of complex regional dynamics (the Great Lakes Region in this case), and the mandate of domestic intelligence services, are explored. Most of the contributors have had a special relationship with intelligence services in Africa. This book therefore contains insights that those wishing to understand the changing dynamics of intelligence services in Africa, and the prospects for reform or transformation in this sector of security governance, would benefit from.

An electronic copy of this book can be obtained from the Global Facilitation Network for Security Sector Reform (GFN-SSR) at www.ssrnetwork.net/publications/gfn_ssr_publications.php