

OVERVIEW OF THE SOUTH AFRICAN INTELLIGENCE DISPENSATION

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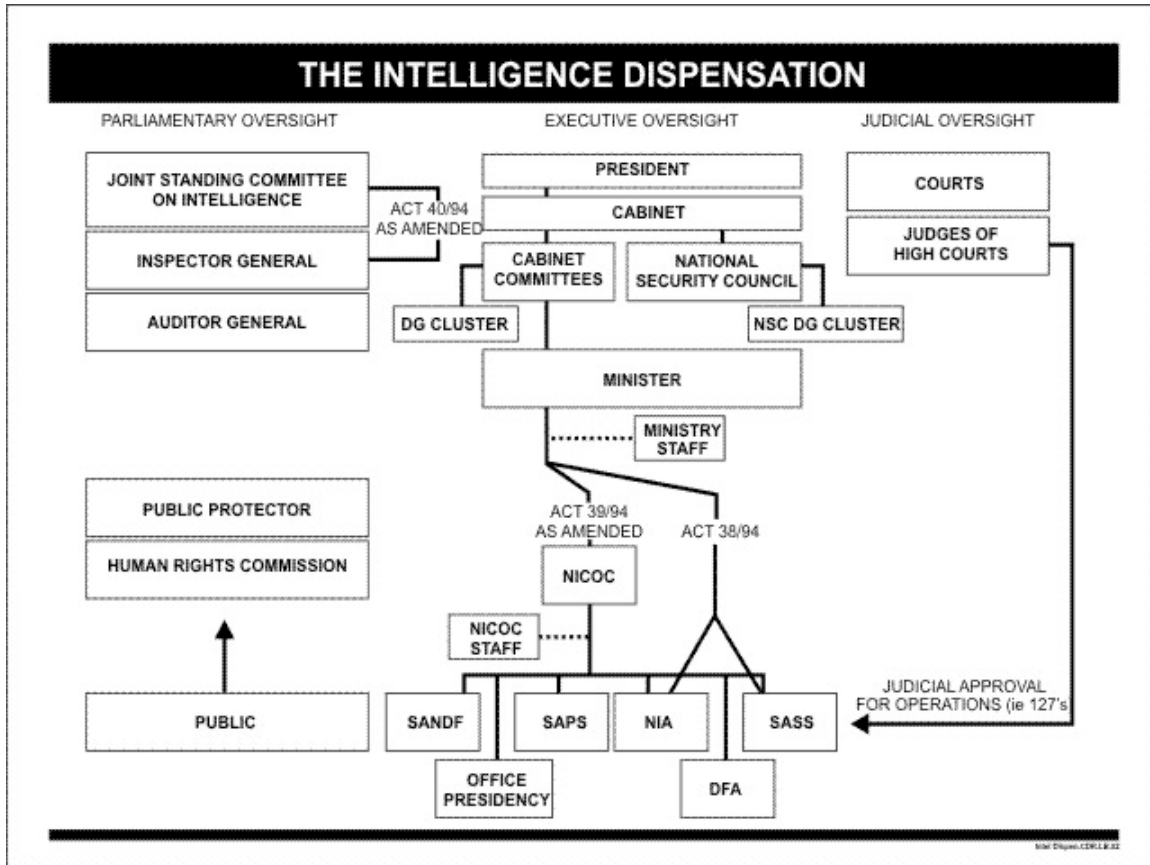
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The advent of democratic rule in South Africa in 1994 resulted in comprehensive and fundamental reforms to the state security architecture. The intelligence structures underwent significant transformation in terms of organisational arrangement, function and democratic controls. The African National Congress (ANC) policy guidelines adopted by the organisation before the end of apartheid in 1992 outlined the approach to security and intelligence in a democratic state. The policy guidelines emphasise that the focus of transformation was on the creation of legitimate security institutions based largely on the fact that ‘the apartheid regime (has) relied on its formidable police, defence and intelligence structures to maintain the system of apartheid and minority rule and to suppress popular resistance to that system...The South African security institutions themselves developed a racist, closed, secretive, undemocratic structure, lacking legitimacy in the eyes of the people. The process of democratisation under way in our country will not be complete without addressing this problem”.

Interestingly the 1992 document provides that the very nature of security needs to be challenged in order for security policy to be based on threats to peace, territorial integrity and personal security; it was recognised that security has political, economic, social and environmental dimensions. This broad definition of security encapsulated in the 1992 policy guidelines is resonated in all post-1994 security related legislation and policy. One of the key challenges in the post-1994 intelligence environment has been to interpret and translate a broad definition of security into intelligence functions.

The 1992 policy guidelines also provide detail regarding the role of intelligence in a democratic South Africa based on respect for human rights, the rule of law, accountability and non-partisanship. These principles were echoed in the White Paper on Intelligence produced by the transitional government in 1994. The White Paper provided the policy framework for the development of the current intelligence structures, which include domestic and foreign intelligence (the National Intelligence Agency and the South African Secret Service), military

intelligence and crime intelligence as well as a mechanism for coordination (the National Intelligence Coordinating Committee) and mechanisms for control and oversight. The diagram below provides an outline of the current intelligence structures:



Source: <http://www.nia.gov.za>

- Minister – Minister for Intelligence Services
- NICOC – National Intelligence Coordinating Committee
- SANDEF – South African National Defence Force
- SAPS – South African Police Service
- NIA – National Intelligence Agency
- SASS – South African Secret Service
- DFA – Department of Foreign Affairs

The 1994 White Paper on Intelligence is the definitive and guiding policy document on the structure, nature and functions of the democratic South African intelligence community. Importantly, the White Paper recognises that the reform of the intelligence dispensation would entail both comprehensive structural

transformation as well as fundamental changes in the nature of intelligence. According to the White Paper, reshaping and transforming intelligence in South Africa 'should start with clarifying the philosophy, and redefining the mission, focus and priorities of intelligence in order to establish a new culture of intelligence'. This new culture of intelligence in the post-1994 dispensation was based on a broad definition of security and national interest, instilling a system of checks and balances and respect for human rights.

The White Paper defines intelligence as 'the product resulting from the collection, evaluation, analysis, integration and interpretation of all available information, supportive of the policy and decision making processes pertaining to the national goals of stability, security and development'. What we can see from this definition of intelligence is a focusing of the priorities of the intelligence community on the greater national agenda of stability, security and development. Interestingly, this is also one of the areas of great debate and contestation. Should the national intelligence structures award attention and priority to issues pertaining to security only (narrowly defined security) or is there a role for the intelligence community to play in achieving the laudable goals of development and stability?

As the primary policy document establishing the role and functions of the intelligence sector, the White Paper is an enunciation of the government position on the role that intelligence should play. It is clear in this regard that the functions of the intelligence community are not limited to issues, which could manifest as traditional threats to the security of the state and the Constitutional order. Intelligence is defined as being focused on issues pertaining to the national goals of security, stability and development.

The purposes of intelligence in democratic South Africa are outlined in the White Paper as:

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

Mission of the South African intelligence community

In the South African context the mission of the intelligence community is to provide evaluated information with the following responsibilities in mind:

- The safeguarding of the Constitution
- The upholding of the individual rights enunciated on the chapter on Fundamental Rights (the Bill of Rights) contained in the Constitution
- The promotion of the interrelated elements of security, stability, cooperation and development, both within South Africa and in relation to Southern Africa
- The achievement of national prosperity whilst making an active contribution to global peace and other globally defined priorities for the well-being of humankind

Importantly in the reform of the South African intelligence community, a clear distinction on the roles and mandates of the various intelligence agencies was attempted. The civilian branches were assigned primary functions of strategic intelligence and the role and function of police and defence intelligence was clearly determined as tactical or operational intelligence within specified fields of activity. Various mechanisms for oversight and control were established such as the Joint Standing Committee on Intelligence (JSCI) and the Inspector General.

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

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

- To hold hearings and subpoena witnesses on matters relating to intelligence and national security, including administration and financial expenditure

The principle of making intelligence accountable to parliament is a high point in the democratic evolution of South Africa. In practice, however, its effective implementation is dependent on the vigilance of the parliamentarians concerned. It can be added that the attitude of the Minister towards the parliamentary mandate and his/ her response to the need to be accountable also impacts heavily on the effectiveness of legislative oversight.

Established in terms of the Intelligence Services Oversight Act 40 of 1994, the Inspector General (IG) is appointed by the President after nomination by the JSCI and approved by Parliament. The IG is accountable to the JSCI and in relation to the civilian intelligence agencies, has the following functions:

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

Current trends, issues and concerns

There are several current issues within the South African intelligence community that can be highlighted. Firstly, as a result of abuses of position that occurred within the National Intelligence Agency in 2006, a Ministerial Review Commission on Intelligence was established to investigate, amongst other items, mechanisms of control and controls on the use of intrusive methods of investigation. The report of the Commission was released in September 2008 and it makes several important recommendations. Whether or not these recommendations will be implemented remains to be seen as the political context has changed dramatically.

Secondly, there has been much debate about a protection of information bill to reform the current information security regime. The current act on the

classification and declassification of information dates back to the previous regime and is not in agreement with the constitutional framework of rights.

Thirdly, the interaction of the South African intelligence community with regional actors and bodies and the development of a collaborative intelligence paradigm are developing on the continent, with South Africa at the foreground.

Fourthly, there have been concerns about the proliferation of the private intelligence actors, which are a source of concern for the state services.

Finally, one of the key concerns is whether or not the domestic intelligence service, NIA, can be partisan and not become involved in domestic political activity.