

Financial Oversight of the Civilian Intelligence Services in South Africa

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Abstract

The article assesses the state of oversight of the budget and expenditure of the South African civilian intelligence services (now called the State Security Agency). The roles of various structures, including the National Treasury, the Executive, the Joint Standing Committee on Intelligence (JSCI) and the Auditor-General, during the period 1995 to 2014, are examined. The article argues that whilst the system of financial oversight has strengths, there are systemic weaknesses which have resulted in uneven levels of financial accountability over the years. The article therefore proposes that measures to strengthen the system of oversight are needed to improve financial accountability. These include reforming the relevant legislation and providing more robust powers to the oversight actors.

1. Introduction

In a world of increasingly complex and contested understandings of national security, the ability of states to anticipate security challenges with the necessary discretion and caution required in a democracy is important. Intelligence services play a central role in such efforts, but do not enjoy *carte blanche*. To ensure that they are effective, are usually accorded extensive and often intrusive powers of investigation. In a constitutional democracy, this may result in trade-offs being made between individual liberties and national security imperatives. Like other state institutions, intelligence services cannot function without public funds. Assessing whether they utilise these funds in a responsible and accountable manner is usually difficult, because access to the relevant information is often limited on the grounds of national security (Africa 2006). In most countries, classified budget details are withheld not only from members of the public but also from members of Parliament, thereby limiting the role of legislatures to play an effective oversight role. However, with the heightened potential for abuse of funds allocated, oversight of intelligence budgets proved in some countries to be an important safeguard of these resources, which ultimately come from the

public purse (Wills 2012).

The 2019 release of a Review Panel Report on the State Security Agency (SSA) underlined the need for an overhaul of the intelligence services (RSA, The Presidency 2019). The nine-member panel made up of civilian experts in law, politics, security, human rights and the media, found that that the SSA had deviated from the original mandate of the post-apartheid intelligence services. A statement released by the Presidency noted that a “key finding of the panel is that there has been political malpurposing and factionalisation of the intelligence community over the past decade or more that has resulted in an almost complete disregard for the Constitution, policy, legislation and other prescripts” (RSA, The Presidency 2019).

The aim of this qualitative study is to assess a single dimension of the oversight architecture of the civilian intelligence services, namely the financial oversight system. The article discusses the roles of the National Treasury, the Ministry for State Security (or Ministry for Intelligence Services as it was previously called), the Joint Standing Committee on Intelligence (JSCI) of parliament and the constitutionally independent Office of the Auditor-General. It is argued that the intelligence services were meant to be subject to the constitutional and legislative framework of the state’s overall public finance management and oversight framework. At the same time there were provisions in the legislation governing the intelligence services that qualified this control framework. The article focuses on the period 1995 to 2014, a period coinciding with the first four administrations of a democratic South Africa. The article highlights some of the challenges and contestations around financial accountability that have arisen in the efforts to balance the countervailing imperatives of secrecy and accountability in South Africa’s young democracy. It is hoped that the paper will contribute to a further discussion on how to strengthen the financial accountability mechanisms of the security sector, particular those of the secret intelligence agencies.

In discussing the South African ‘intelligence services’, this article limits itself to the *civilian* intelligence services of the state, thereby excluding discussion on the intelligence budgets and expenditure of the South African Police (SAP) and the South African National Defence Force (SANDF). Where the article makes reference to civilian intelligence services in the plural, this is only a reflection of the fact that the long-standing predecessors to the State Security Agency (SSA), which came into existence by way of a Presidential Proclamation in 2009, were several institutions: the National Intelligence Agency (NIA) and the South African Secret Service (SASS), which were established by law in 1994, and the South African National Academy of Intelligence (SANAI) and the Electronic Communications Security (Pty) Ltd (now known simply as COMSEC), which

were established by law in 2002. These components were all subsumed under the banner of a single agency, the SSA, in 2009, shortly after Jacob Zuma became President of South Africa (RSA 2009a).

2. The legal framework for financial oversight of the intelligence services

During the political transition of the 1990s, a major public policy challenge was how to make the ‘security services’ of the South African state as a whole (the Constitution defines these as the defence force, police services and intelligence services) more transparent and accountable to legitimate civilian authorities, and how to prevent them from abusing their powers, as had happened during the apartheid period (Africa 1992; Breytenbach 1992; Hough 1992; Nhlanhla 1992; Southall 1992). Several studies have documented the processes and analysed the challenges of building the intelligence ethos and professionalism envisaged by the Constitution and described in the White Paper on Intelligence (Shaw 1995; McCarthy 1996; Khanyile 1997; Netshitenzhe 2005; Dlomo 2006; Jansen van Rensburg 2006; Hutton 2009; Faizel 2009; Nathan 2010). Much of the literature has had a normative orientation, focusing on ‘what ought to be’, as an alternative to the status quo. Some commonly shared values in these analyses have been the need to subject intelligence services to the rule of law, to inculcate in them a respect for human rights, to hold them accountable through appropriate instruments, lawmakers, and the executive, and to strike an appropriate balance between secrecy and transparency.

A framework for the oversight of budget of the civilian intelligence services in South Africa has been in place since 1995; however, its implementation has been uneven; in addition, there are systemic weaknesses that hinder detection and correction of the maladministration. On a positive note, the oversight framework includes provisions in the South African Constitution for the following:

- The right of access to information, contained in Chapter 2 (*Bill of Rights*);
- The provision for multiparty oversight of the security services stipulated in Chapter 11 (*Security Services*);
- The establishment of a robust financial management framework as outlined in Chapter 13 (*Finance*); and
- The creation of an independent audit authority to report on the accounts, financial statements and financial management of state institutions as set out in Chapter 9 (*State Institutions supporting Constitutional democracy*) (RSA 1996).

The roles, responsibilities and powers of the major actors involved in the post-apartheid intelligence dispensation were spelt out in three principal acts passed by

Parliament in 1994. These were the Intelligence Services Act (Act 38 of 1994), the National Strategic Intelligence Act (Act 39 of 1994) and the Intelligence Services Oversight Act (Act 40 of 1994). With a battery of constitutional and legislative provisions in place, a substantial degree of transparency around the intelligence services' budget could rightfully have been expected. However, reports emanating both from structures such as the Auditor-General and the JSCI, and from media reports, suggest that there were inadequate controls over the budget.

In a robust system of public financial management, the budget process entails four stages: drafting of the budget by the executive; approval by the legislature; execution or implementation by the bureaucracy or state agencies; and audit and evaluation ideally by authorities who act independently and objectively (CABRI and AfDB 2008). Using this comprehensive definition, the system of intelligence oversight in South Africa has not yielded proper accountability for financial resources allocated to the civilian intelligence services. The next sections of the article discuss this claim and the implications thereof.

Financial oversight of the intelligence services is framed, in the first instance, by the Constitution of the Republic of South Africa (Act 108 of 1996) and a strong public financial management framework. Among other requirements, Chapter 13 (which deals with Finance) states that “national, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sector” (RSA 1996, s215(1)). The legislative mechanism through which this goal is achieved is the Public Finance Management Act, or PFMA (Act 1 of 1999).

The PFMA stipulates that the political head of a department (Cabinet Minister or a provincial MEC) is responsible for political matters and outcomes of that department, whilst the head official (Director-General of a national department or provincial head of a department) is responsible for outputs and implementation, and is accountable to Parliament or the provincial legislature for the management of that budget's implementation. As stated in section 4.6 of the explanatory memorandum on the PFMA, four key responsibilities are vested in head officials:

- a) the operation of basic financial management systems, including internal controls in departments and any entities they control;
- b) to ensure that departments do not overspend their budgets;
- c) to report on a monthly and annual basis, including the submission of annual financial statements two months after the end of a financial year; and
- d) to publish annual reports in a prescribed format which will introduce

performance reporting” (RSA 1999).

Negligent head officials can face strict disciplinary sanctions, including dismissal. Public Service regulations, which include performance-based evaluation of head officials, reinforce the approach taken in the PFMA. The intelligence services of South Africa are exempt from none of the requirements of the PFMA, which require their accounting officers, who are appointed in terms of the Public Service Act (Proclamation 103 of 1994), to account fully for the funds allocated to them, according to the policy directions and plans for expenditure set out by the Minister.

In addition, financial statements of the intelligence services are audited annually by the office of the Auditor-General, an independent (Chapter 9) constitutional body that reports to Parliament. Regarding the auditing of the intelligence services, the Auditor-General Act (Act 12 of 1995) states that:

“The Auditor-General shall report on accounts established by:

- a) The Security Services Special Account Act, 1969 (Act 81 of 1969);
- b) The Defence Special Account Act, 1974 (Act 6 of 1974);
- c) The Secret Services Act, 1978 (Act 56 of 1978),

with due regard to the special nature of the accounts and shall limit such reports to the extent which he or she, after consultation with the President, the Minister of Finance and the responsible Minister, may determine: Provided that the reporting on any unauthorised expenditure or irregularity shall not be so limited except in the disclosure of facts which will be to the detriment of the national interest” (RSA 1995, s6).

In brief, the above-mentioned are the accounts through which funds are allocated by the National Treasury in the cases of (a) the civilian intelligence services, (b) the Defence Intelligence structures and (c) the SAPS Crime Intelligence and other state departments which are involved in similarly ‘confidential’ work. What is particularly striking about these acts is that they date back to the height of the apartheid era. Unlike the PFMA of 1999, which sought to introduce greater transparency in public service accounting, these three pieces of legislation effectively retained the cloak of financial secrecy under which the work of the apartheid intelligence services had been carried out.

However, there has been an amelioration of the secretive conditions. Section 77 of the PFMA stipulates that an audit committee consisting of at least three (external) persons must also be established and meet at least twice a year (RSA 1999). In the case of the intelligence services, the Minister for Intelligence Services opted to establish a single committee, in line with the provision in the PFMA that a single committee be established for two or more departments or

institutions (Ministerial Review Commission on Intelligence 2008).

Moreover, the Intelligence Services Oversight Act (Act 40 of 1994) empowers the Joint Standing Committee on Intelligence (JSCI) to obtain and consider audit reports on the civilian intelligence services, and to consider the financial statements of the services (s3, Act 40 of 1994). The practice that has developed is that Auditor-General reports on the financial statements of the intelligence services are submitted to Parliament via the JSCI. However, the financial statements themselves are not submitted, nor are they published for the benefit of the public, in sharp contrast to the practices of other government departments whose full financial statements are attached to the Auditor-General reports issued annually. This is for “strategic and security reasons” as stated in the 1997 report of the Auditor-General (Auditor-General 1997). In early debates with the Auditor-General, the intelligence services had in fact argued that the JSCI should not publish the Auditor-General’s report at all, but this was dismissed by the Auditor-General as a violation of its constitutional and legislative obligations. The compromise position agreed on was that the Auditor-General reports would not be published independently, but as an addendum to the annual public reports of the JSCI.¹

Since the start of the post-1994 intelligence dispensation, the Auditor-General has raised concerns about financial oversight. In their 1996/1997 report on the financial statements of the civilian intelligence services, the Auditor-General observed that many of the problems of financial management within the intelligence services were legacy issues from the apartheid period. These included poor control measures over the payment of human sources or agents; the civilian intelligence services’ failure to compile an assets register; a lack of financial controls in the amalgamation of the TBVC states’ security machinery into the national police service and the intelligence agencies; the lack of an appointment of an Inspector-General; and fruitless expenditure (Auditor-General 1997).

The same concerns were repeated in the 1997/1998 report of the Auditor-General. Although the report indicated slow progress in attending to some of the concerns raised, it acknowledged that the relationship between the Auditor-General and the intelligence services was “dynamic” and that there was an emerging sense of accountability on the part of the services (Auditor-General 1998). The concerns about financial management were not confined to the intelligence services. Many departments attracted negative audit reports in the early post-apartheid years, at once an indication of the legacy that they were adopting and of the lack of managerial experience on the part of many of those newly elected into office. By the time of the report on the SSA’s annual financial statements for the year ended 31 March 2012, the Auditor-General was scathing in its criticism of the SSA’s financial management. Not only was the

documentation provided inadequate, but the report raised the following litany of problems:

“I did not obtain all the information and explanations considered necessary to satisfy myself as to the completeness and accuracy of the balances disclosed for accounts receivable, accounts payable, irregular and fruitless expenditure and contingent liabilities. There were no satisfactory alternative procedures that I could perform to obtain reasonable assurance that accounts receivable, accounts payable, irregular and fruitless expenditure, contingent liabilities, operating expenditure and payables were recorded. Consequently, I was unable to determine whether any adjustments to these accounts were necessary” (Auditor-General 2012).

This suggests that financial controls had nosedived by then. A more recent area of reporting for the Auditor-General has been performance reporting. In a nutshell, this means that the Auditor-General reviews not only the financial statements, but also whether the goals set out in the strategic plans have been achieved by depart and entities subject to such audits. In its 2011/2012 report, the Auditor-General found that 51% of the targets set down by the SSA could not be measured. The three programmes where this trend was prevalent were Collection (Programme 1), Analysis (Programme 2) and Counterintelligence (Programme 3), areas which constitute the core business of the SSA.

The reports of the Auditor-General over the years have also pointed out deviations from Treasury procurement requirements, failure by SSA members to perform remunerative work outside the agency with the necessary authority, and failure of members to disclose private or business interests in contracts awarded to government institutions. The Auditor-General also reported on the status of several investigations which have resulted in criminal charges being laid or considered against offending members of the services. This includes an investigation into a Covert Support Unit of the NIA as a result of which senior members, including a Deputy Director-General for Operations, were suspended (Auditor-General 2012).

To make matters worse, the reports of the Auditor-General have been delayed in recent years as a result of the JSCI's failure to publish its own reports. In March 2014, only a month before the national general elections, two annual JSCI reports were released and with them the Auditor-General reports for the years ending 31 March 2012 and 31 March 2011, as the JSCI had finally been informed (presumably by the SSA) that the reports did not contain information that could compromise national security (Burgess 2014). The fact that the release of the Auditor-General's report, a constitutional requirement, was delayed for over two years was a systemic weakness resulting from the agreement between the JSCI and the Auditor-General to publish the latter's reports under the auspices of the

JSCI. The JSCI's flaws thereby rub off on the Auditor-General, a situation which undermines the independence and the reputation of this institution, and compromises its levels of public accountability.

3. An uneven record of Parliamentary oversight

Unlike other departments whose work and budgets are monitored by parliamentary committees, the proceedings of which are generally open to the public and the media, the filter through which the South African public receives the Auditor-General reports on the intelligence services is the Joint Standing Committee on Intelligence (JSCI). Members of this committee are drawn from Parliament's National Assembly and the National Council of Provinces. In order to serve on the Committee, members, who are nominated by their political parties, must meet the criteria to receive a Top-Secret security clearance from the intelligence services. Meetings of the committee are never open to the public or the media. The Intelligence Services Oversight Act (Act 40 of 1994, as amended in 2002) sets out the functions of the JSCI, which are extensive. Firstly, it must initiate or consider and make recommendations on all proposed legislation relating to the intelligence services, as well as any other intelligence and intelligence-related activities. It must review and make recommendations on regulations pertaining to the intelligence services and structures (the latter referring to Defence Intelligence and Crime Intelligence).

Specifically, in relation to the intelligence budget, the JSCI must consider and report on the appropriation of revenue or moneys for the functions of the intelligence services, and receive a report on the budget from each relevant minister on his or her intelligence budget (this covers Defence and Police). Following each financial year, it must obtain from the Auditor-General an audit report on the intelligence services compiled in terms of the Auditor-General Act (Act 12 of 1995) (now the Public Audit Act 25 of 2004), and after considering the report and relevant financial statements, report to Parliament on these. The JSCI can in fact deliberate upon, hold hearings, subpoena witnesses and make recommendations on any aspect relating to intelligence and national security, including administration and financial expenditure.

The Act provides that the JSCI should have access to intelligence, information and documents in the possession or under the control of the services if such access is necessary for the performance of its functions. However, the restrictions on access to information are onerous: the intelligence services are not obliged to disclose to the JSCI:

“ (i) the name or identity of any person or body engaged in

intelligence or counter-intelligence activities; (ii) any intelligence, information or document in a form which could reveal the identity of any source of such intelligence, information or document if that intelligence, information or document was provided to such service under an express or implied assurance of confidentiality; (iii) any intelligence or counter-intelligence method employed by a service if such disclosure could reveal or lead to the revelation of the name or identity of any person or body engaged in intelligence or counter-intelligence activities or the identity of the source of any intelligence, information or document” (RSA,1995 s5).

Moreover, information has to be handled in accordance with the written security guidelines of the services themselves, or any other agreed conditions determined between the intelligence services and the chairperson of the Committee. As a result of all these restrictions, the public generally only receives feedback from the JSCI during the Minister’s budget vote, or when a crisis or scandal involving intelligence has developed and it has been exposed through the media.

Developing the budget is largely an executive prerogative, and the JSCI ordinarily enters the picture, engaging with the intelligence budget, at the point when the process has been all but finalised. The JSCI duly receives briefings on the budget allocated to the intelligence services. Typically, this happens as the budget vote of the Minister is approaching; and enables them to debate aspects to raise during the Minister’s budget vote. There has not been an occasion when the JSCI has rejected the budget of the intelligence services, though disquiet has been growing among opposition party members in recent years about the lack of budget transparency. A former member of the JSCI, Dirk Stubbe remarked in his response to the Minister’s budget vote that it was unacceptable that the budget of the intelligence services should be subject to almost no meaningful parliamentary scrutiny (Stubbe 2014). The source of the problem may well lie in a relatively innocent clause in the Intelligence Services Act, or ISA (Act 38 of 1994) and the General Intelligence Laws Amendment Act (Act 11 of 2013) that has subsequently replaced it. Section 3(a) of the ISA states that:

“The Director-General shall, as far as is reasonably practicable, take steps to ensure that

- a) national security intelligence, intelligence collection methods, sources of information and the identity of members of the Agency or the Service, as the case may be, are protected from unauthorised disclosure” (RSA 1994b).

This clause provides grounds for the classifying of much information held by the services, and their withholding from public scrutiny. In addition to the existence of a Secret Services Account and a parliamentary process that does not allow for public interaction with the debate on what the requested or allocated funds are

meant for, a circle of secrecy is drawn around the budget. Yet, as Steytler (2004) reminds us,

“Secrecy – the limitation on the right of access to information should be justified in terms of the limitation clause of the Bill of Rights. The point of departure is that the state bears the burden of persuasion regarding the justifiability of secrecy. It must advance reasons and evidence why non-disclosure of information is justifiable. The test to be applied is that secrecy must be ‘reasonable and justifiable in an open and democratic country based on human dignity, equality and freedom’”.

These provisions are upheld in the Promotion of Access to Information Act (Act 2 of 2000), with which all public and private bodies are expected to comply. The frustrations expressed by the Auditor-General in the 2012 report, along with the litany of problems identified in the audit report, suggest that the system of oversight has broken down. Given the problems that seem to be continuously repeating themselves, it may well be time to consider more robust powers for the JSCI and other oversight bodies, and to provide for greater transparency and accountability over what the intelligence services are engaged in.

4. Executive oversight: addressing the right issues?

In assessing whether the Executive exercises appropriate levels of oversight of the intelligence budget, we must look ultimately at whether their actions result in greater accountability and financial prudence on the part of the intelligence services. In South Africa, the annual budget presented by the Minister of Finance is the culmination of a policy planning process led by the Cabinet and informed by an overall macroeconomic framework. Each year, the Medium-Term Guidelines set out the critical dates for the budget process, and the intelligence services are required to align their planning with these dates. Departments usually receive Medium Term Expenditure Framework (MTEF) guidelines and MTEF database templates in mid-July, and over the following months make several submissions to the Treasury on their reprioritised expenditure estimates (National Treasury 2011). Through the Medium-Term Expenditure Committee (MTEC), the National Treasury coordinates this process for the whole of government, and by the end of September this process ends, to be followed by the Treasury Committee. At some stage in the process, there is both an Appropriation Adjustment process, and a final adjustment of estimates. Allocation letters are sent to departments by November, and on the basis of this they must make their inputs into the Estimates of National Expenditure (ENE) chapters, which serve as the rationale for the Appropriation Bill that Parliament is expected to pass each

year. Like all other national departments, the intelligence services have had to argue the case for their budget allocations.

Every year, the Minister of Finance tables a single Appropriation Bill for Parliament to approve. Funds earmarked for the civilian intelligence services are captured as a sub-item of the budget allocation to the National Treasury, even though the Minister of Finance is not the minister responsible for the intelligence services. In the 2014/15 Appropriation Bill, R4 366 250 000 is allocated to the Treasury for its 10th Programme, Financial Intelligence and State Security. This programme has two aims:

“To combat financial crime, including money laundering and terror financing activities (and) Gather intelligence for the purpose of national security, defence and combatting crime”. Of the allocation to this programme, the State Security proportion is reflected under the heading Secret Services Account, and is broken up into two cryptic lines: R3 902 000 000 for operations and R265 544 000 for capital expenditure (RSA 2014).

The submersion of the intelligence services’ budget in the budget of the Treasury results in only broad details being made public. Presumably, this is on the grounds that to disclose more information could compromise national security. It also has to do with the fact that unlike the funds disbursed to other government departments, money is channelled from the National Revenue Fund to the Secret Services Account. This was established through the Secret Services Account Act (Act 56 of 1978), which makes money available for secret services considered to be in the national interest. This is a practice that has been carried over from the apartheid period, when the intelligence budget was hidden in the budget of the Department of State Expenditure (now the National Treasury). In the 2007 Report of the Ministerial Review Commission on Intelligence, the observation was made that this was an obsolete practice from the apartheid era, which should be scrapped (Ministerial Review Commission on Intelligence 2008).

Since 1995, intelligence ministers have been at pains to show their identification with broader national fiscal concerns. In his address to the Senate on the reading of the State Expenditure Budget on 12 May 1996, Deputy Minister for Intelligence, Joe Nhlanhla prefaced his budget request with support for the government’s financial planning approach that included an overall reduction of the budget deficit; reprioritising government expenditure to meet the needs of the new South Africa; providing a stable and competitive environment for growth and development; avoiding permanent increases in the overall tax burden; managing state department budgets downward; improving financial accountability; and right-sizing the public sector through measures such as

rationalisation (Nhlanhla 1996).

Under-spending in the first year of the new intelligence services, however, did not make it easy to justify the resources being requested. Nhlanhla attempted to explain this state of affairs as being the result of the political transition, when much of what had entered into the budget was based on assumption. The fact that little was known about what the intelligence services actually did made any efforts to secure support for a greater budget allocation quite difficult. Even the report of a commission established in 1996 aimed at reviewing the ‘transformation’ of the civilian intelligence services, the so-called Pikoli Commission, was not released to the public. The findings were briefly mentioned in the JSCI Report for 1997–1998 and served as the basis for Ministerial Directives that were subsequently issued by the Minister of Justice and Intelligence Services (JSCI 1998). But they made very little difference to the funding that the intelligence services attracted. The allocation for 1995 was R818 million and by 2000 had only grown to R840 million – a mere R22 million increase (Kasrils 2004). Taking the rate of inflation into account, the intelligence budget was practically static for the first five years of the existence of the civilian intelligence services.

Nhlanhla’s successor complained that a function as important as intelligence was so poorly funded. Upon her appointment as Minister for Intelligence Services in 2000, Lindiwe Sisulu embarked on an extensive review of the services’ capabilities. To secure the necessary resources to finance her reforms, she argued for a special dispensation to process the intelligence budget. The Presidential Intelligence Budget Advisory Committee (PIBAC), a sub-committee of Cabinet led by the then Deputy President Jacob Zuma, was consequently established to give consideration to the budgetary needs of the civilian intelligence services (Africa 2012).

As a result of this intervention, the intelligence budget grew dramatically under Sisulu. Minister Kasrils (who succeeded her in the Intelligence Services portfolio) acknowledged that this was due to an ambitious expansion plan under Sisulu:

“The dramatic increase from 2001 onwards was necessitated by our growing presence abroad; new construction projects; capital equipment for our National Communications Centre’s expanding role; the transfer of the Academy to Mafeking; establishment of the ISC and Office of the Inspector General; growth of the Ministry and increases in the overall staff compliment of all the Services”.

(Kasrils).

But the PIBAC process was terminated by Kasrils, who seemed to accept the MTEC process led by the Treasury as adequate to determine the intelligence services’ budget and agreed with the allocation earmarked by the Treasury for the

services. The figure allocated in the 2004 budget year was R1 978 647 000. This, he said during his Budget Vote that year, was 0, 53% of the total government budget, or 0, 14% of GDP. It also represented a R316 million increase over the previous year's allocation (Kasrils 2004).

Kasrils pointed out that the budget for the intelligence services had more than doubled over the previous four years, growing by 115%. However, the spending patterns of the services had become distorted over the years in favour of personnel and capital expenditure, and their capacity to conduct their operational work had been seriously compromised. Kasrils pledged to achieve a healthier balance between personnel, capital, and operational expenditure, and introduced several cost-cutting measures. In spite of his efforts to take charge of the budget, Kasrils was taken by surprise by claims that the NIA was engaged in illegal domestic surveillance in 2005, as he was by the embarrassing capture and detention of a senior intelligence officer of the South African Secret Service (SASS) by the Zimbabwean authorities, following espionage allegations (Africa 2009). Following the 2005 NIA debacle, the Director-General and several top management figures were fired. The systems in place did not give the Minister a high enough level of control over the intelligence services to detect such incidents. The incidents did lead to the Minister tightening control over covert operations, both domestically and abroad, but this in turn raised questions about how the Minister should engage with the operational work of the intelligence services, including control over expenditure.

Kasrils was succeeded by Minister Siyabonga Cwele, who, together with the Ministers of State Security, Police, Defence, Home Affairs and Justice and Correctional Services, was tasked by President Zuma to review the structures of the civilian intelligence community. In a 2009 statement, the Government Communication and Information System (GCIS) explained the decision to restructure the intelligence services as arising from the need to better coordinate the structures that had developed over the years. He pointed out:

“We are concerned that a large share of the budget allocated to the intelligence services was being spent on corporate affairs rather than on operations which is the core business of any intelligence service... We are restructuring the intelligence services so as to refocus on intelligence priorities, improve controls over intelligence priorities and the budget, eliminate duplication and mobilize all of our resources (funds and personnel) to core business” (GCIS 2009).

To what extent the President's tasking was based on a strongly felt collective view within the executive was not clear. The creation of a State Security Agency was certainly not preceded by public debate, and the decision was operationalised by a presidential proclamation, drawing sharp criticism for the haste and lack of

consultation that it entailed. The JSCI and the Auditor-General were taken by surprise by this development, as were members of the top management of the intelligence services, most of whom were replaced in the restructuring process that followed.

It is worth noting that the restructuring of the civilian intelligence services was not accompanied by an overall review of the intelligence dispensation. The proposed strengthening of the intelligence agencies was not accompanied by a parallel strengthening of the oversight architecture. The perception has in fact developed that the JSCI has been ineffectual in recent years, at a time when accusations of poor governance of the SSA needs to be independently addressed. The fact that the JSCI has been so tardy about producing the statutorily required annual reports only fuels this perception (Merten 2015).

5. Building (or rebuilding) oversight of the intelligence budget

Wills (2012) has argued for “disclosing as much budgetary information as possible” on the grounds that it respects the public’s right to know how its money is being spent. In its final report, the Ministerial Review Commission on Intelligence in a Constitutional Democracy remarked that “the overall legislative framework governing the funds, financial controls and financial oversight of the intelligence services is comprehensive and sound” (Ministerial Review Commission on Intelligence 2008). However, it stated that whilst the PFMA and the Public Audit Act were modern state-of-the art pieces of legislation, the Security Services Special Account Act of 1969 and the Secret Services Act of 1978 were ‘anachronistic relics of the murky business of covert security funding in the apartheid era’ (Ministerial Review Commission on Intelligence 2008).

Having to report to the JSCI and the Auditor-General meant that there was at least some oversight taking place. Under these conditions the JSCI had received reports of investigations into theft, fraud and misconduct, and over the years these have seen the light of day through the Annual Reports of the JSCI. It is all very well that oversight mechanisms result in financial mismanagement being revealed, but the point of oversight is also to exact higher standards of governance.

In spite of restrictions placed on it, the Auditor-General to an extent was effective in exposing financial mismanagement. However, the first line of defence against maladministration should be preventive and for that, internal controls should be strengthened. In their 2008 report, the Ministerial Review Commission established by Kasrils had observed the inadequacy of internal controls over operations, and had suggested that agency directives were required:

“The directives should specify the process for targeting in light of Cabinet’s intelligence priorities; the criteria and procedures for authorising intrusive operations; the level of authority required to approve these operations; the level and system of supervision of operations; the procedures for dealing with incidental information; the details required for record-keeping; and the mechanisms for monitoring compliance and dealing with non-compliance” (Ministerial Review Commission on Intelligence 2008)

Given that reports of the Auditor-General point consistently to the lack of executive supervision and control over covert units, attending to this weak spot should be prioritised. There is a groundswell of public opinion that government must take responsibility for the failures of the intelligence services. The responsible Minister has the duty to institute urgent measures to address the management failures.

A serious discussion is also needed on whether the JSCI is playing an effective role in oversight of the budget. Members of the committee should display interest in and insight into intelligence work in order to ask the right questions. With the issue of the adequacy of funding for the intelligence services having been over taken by scandals that point to shortcomings in oversight of the budget’s utilisation, there is no reason why the Executive and Parliament should not be looking at a more stringent and transparent legislative and regulatory regime for the approval, funding, conducting and oversight of covert operations.

There was also room for improved coordination. At a Strategic Planning meeting of the JSCI in July 2011, to which the Auditor-General and the Office of the Inspector-General were invited, the Auditor-General’s office raised concerns about a possible overlap between their mandate and that of the Inspector-General (JSCI 2012). It is not difficult to see why this claim would have arisen. The Intelligence Services Oversight Act (Act 40 of 1994 makes provision for the appointment of an Inspector-General or Inspectors-General with the responsibilities to handle complaints, monitor compliance by the services with their own policies, and review the activities of the services. The Inspector-General is also required to annually submit a certificate to the JSCI for each of the intelligence structures on their state of organisation. In the 2011 meeting it was agreed that the matter of the overlaps would be the subject of a separate meeting of the structures concerned (JSCI 2012).

The actual intelligence products – the reports and assessments of various threats that are produced by the services – are not seen by some critical role-players who nevertheless influence the intelligence budget. These include the Minister of Finance, the National Treasury, the National Assembly, and in particular the JSCI. Secrecy in this context seems to work against the intelligence

services' cause. Therefore, resolving the problem of how to make intelligence services' budgetary requests more credible and compelling cannot avoid a strategy of promoting greater transparency (at least in respect of these parties) about the work of the services and their benefits to the country, as well as a more effective methodology in the costing of the estimates of intelligence expenditure.

A lower tolerance for abuses of power has had a ripple effect across the globe, and political and public commentary in South Africa shows that the country's citizens are concerned about these universal issues. It is for this reason that a critical review of whether there are adequate controls and a system of sound oversight is advanced.

In the wake of the 9/11 terrorist attacks in the USA, there was renewed focus on the budget process. The 9/11 Commission proposed that the Intelligence Community declassify their budget. It also proposed giving the full appropriation function to the intelligence oversight committees, arguing that this would improve Congress's oversight of the intelligence community (Rosinback and Peritz 2009). The implication of this is that Congress would need to be briefed on secret intelligence programmes by the intelligence community, something strongly opposed by those who argue that such transparency would weaken intelligence capabilities. In the case of the USA, Congress has significant 'power of the purse', and the annual intelligence authorisation bill allows Congress to reallocate funds and establish programmes that it deems necessary. For example, the bill allows Congress to "define intelligence activities, create laws prohibiting certain activities and press controversial policy issues" (Rosenbach and Peritz 2009). In contrast, South Africa's JSCI is relatively weak, performing more of a review function than playing a proactive role in shaping the budget. This has much to do with the nature of the electoral system in the two countries, but it does pose the question of whether parliamentary oversight in South Africa is designed in the most effective way.

6. Conclusion

The remedial actions proposed by the more recent Review Panel on the SSA (RSA, The Presidency 2019) are a step in the right direction. Apart from recommending short-term measures such as conducting investigations and imposing sanctions on those who have breached financial and other controls, the Panel has recommended that South Africa benchmark its controls for the conducting of intrusive intelligence operations with those of other jurisdictions. Also promising is that the Panel has recommended finding a method for the 'unfettered' auditing of the Agency's finances. Most importantly, the Panel has recommended that the Ministry initiate a process, together with the ministries of

Finance, Defence and Police, to explore the options and consequences of repealing the Security Services Special Account Act (Act 81 of 1969) and the Secret Services Account Act (Act 56 of 1978). The legislative repeal process, if implemented, is likely to take some time. A parliamentary committee that pays more attention to its tasks of oversight, and an executive authority with the political will to implement the recommendations of the Review Panel, whilst important, are unlikely unless there is constant public engagement around issues such as the right to information, the right to privacy, and limitations on the powers of the security services. Research on the armed forces, the police and the intelligence services is another area of engagement, and it is in this framework that this article, which really only scratches the surface of this issue, has been written.

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