

# **THE POLICY EVOLUTION OF THE SOUTH AFRICAN CIVILIAN INTELLIGENCE SERVICES: 1994 TO 2009 AND BEYOND**

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## **ABSTRACT**

This article traces the policy evolution of the South African state's civilian intelligence services from 1994 to 2009, and some of the influences the evolution has had in the post-2009 era. Three significant policy waves, coinciding with major measures to restructure the services, are identified and assessed. Each period has seen the widened definition of security, popular after the end of the Cold War, being used as the basis for policies adopted and implemented. The analysis demonstrates that there has been ostensible policy continuity from one phase to the next. However, political and security realities have given each phase its particular character. Moreover, inadequate regulation of critical policy dimensions and a failure to subject intelligence policy to ongoing review have resulted in tensions over the scope of the intelligence services' powers and the role they should play in a democratic South Africa.

## **1. INTRODUCTION**

In 2009, following the country's fourth national general elections, the South African government embarked on a further restructuring of the civilian intelligence agencies. The creation of the State Security Agency (SSA) in 2009 represented the third major wave of restructuring since 1994. The first wave, one of the earliest outcomes of the political transition in the 1990s, came about in 1995, following the adop-

tion of new legislation in 1994. The legislation paved the way for the creation of the post-*apartheid* civilian intelligence agencies, the National Intelligence Agency (NIA), responsible for domestic intelligence collection and the South African Secret Service (SASS) responsible for foreign intelligence gathering, through an amalgamation of six former statutory and non-statutory intelligence structures.<sup>1)</sup> A further significant development was the creation of a multi-party parliamentary oversight committee, the Joint Standing Committee on Intelligence (JSCI), and provision in law for an Inspector-General for Intelligence.<sup>2)</sup>

The second wave of restructuring, which took place around 2002, followed an assessment that the intelligence challenges at the time had increased in variety and complexity. This restructuring initiative saw the creation of the South African National Academy of Intelligence (SANAI), an Intelligence Services Council on Conditions of Service (ISC), the Communications Security (Pty) Ltd (COMSEC) and an Office for Interception Centres (OIC).<sup>3)</sup> At the time, the minister responsible for the intelligence services argued that these developments would allow for a greater degree of specialisation within the intelligence community. However, her successors were to argue in subsequent years that the unintended consequence of the changes she initiated was to create a top-heavy bureaucracy and unnecessary personnel and infrastructure duplications in the relatively small civilian intelligence community.

In the third and most recent wave of restructuring, the SSA was created by means of a Presidential proclamation in 2009.<sup>4)</sup> This saw the previously autonomous agencies and entities (NIA, SASS, SANAI and COMSEC) placed under the administrative control of a single Director-General. In terms of the proclamation, NIA and SASS were converted from fully-fledged government departments headed by Directors-General (the most senior level in the South African civil service), to government components. These measures were followed in 2011 by the introduction of a *General Intelligence Laws Amendment Bill*, which sought to provide a legislative framework for the restructuring that the Proclamation had set in motion.<sup>5)</sup>

The objective of this article is to explore the extent to which the first two phases of restructuring have been indicative of policy shifts in the sphere of intelligence. The article is divided into three sections. The first section sets out the framework for analysis, which

implicitly applies a policy-stages model of analysis to what has happened in the intelligence services over the period under study. It also entails a brief review of the debates on security policy that followed the ending of the Cold War, and the relevance of these debates for conceptualising the role of intelligence services.

The second section analyses the content and shifts in intelligence policy in the periods outlined above. The focus of this article is on the first two phases, since an analysis of these earlier periods is critical to an informed understanding of current policy developments. The last section of the article briefly highlights the most recent policy developments that have unfolded following the establishment of the SSA, and poses several questions about how security is currently being conceptualised in the policy debates in South Africa.

## **2. A FRAMEWORK FOR ANALYSIS**

### **2.1 The relevance of policy in understanding intelligence**

There is general consensus in the literature that a policy is "a relatively stable, purposive course of action followed by an actor or set of actors in dealing with a problem or matter of concern".<sup>6)</sup> In a democracy, public policies are developed by governments or officials, but may be influenced by a number of social and political actors. Although policy formulation is often a bureaucratic process, happening away from public scrutiny, policy statements as reflected in White Papers, legislation, speeches and the actions of government are usually the product of policy debate in the broader society.

Intelligence policy in the context of this article refers to the purposive use of the intelligence services — which are inevitably intrusive in their methods — for addressing identified security threats and challenges to the state and its people. As intelligence is a controversial area of governance, policy on the role and utilisation of intelligence services is usually a contested affair. This was certainly the case in South Africa during the transition from *apartheid* to democracy in the 1990s, and continues to be so today.

In this article, the policy changes that took place in the civilian intelligence services from 1994 to 2009 are examined taking into ac-

count the policy-stages model. There are many variants of this model, but in essence, it holds that all policies follow a similar progression in their evolution and execution. Policy stages include an initial period of problem identification and agenda-setting, followed by policy formulation and adoption, policy implementation, evaluation and then adjustment.<sup>7)</sup> Policy models are an oversimplification of reality, since policy making and implementation often follow a far more chaotic path than an orderly model suggests. However, they do provide useful tools for understanding complex policy processes, and it is for this reason that the policy stages framework is relevant .

## **2.2 The policy debate on security in the post-Cold War period**

Even before the end of the Cold War, the inadequacies of the traditional concept of security had been acknowledged. Critics of the narrow, militaristic definition of security had argued that a wider definition was needed, to take into account the points of vulnerability, namely environmental, technological, social, economic and political factors that saw not the state, but the individual as the referent object of security. The traditional concept of security was problematic because it failed to acknowledge that the state itself was weak and lacking in legitimacy, and could be a source of insecurity.<sup>8)</sup> It also did not take into account that the state could be so weak as to pale in effectiveness, in comparison with well-organised non-state actors whose access to resources made them significant players in determining security and political agendas.

These concerns continue to influence debates on security. The critical questions remain: who decides on who or what is to be secured, by what means is security to be attained, and what vehicles or mechanisms will ensure that civil liberties are upheld even as threats to security are countered? These questions were central to the policy debates that took place at the time of South Africa's political transition in the 1990s, and continue to be the basis of debate. In South Africa the policy debate today focuses on whether the South African state has remained true to the ideals in terms of which the post-*apartheid* security framework was cast. The reasons for this are understandable: South Africa emerged from a bitter past where some of the intelligence and security agencies were in the forefront of op-

pression against opponents of the *apartheid* regime, and there is a fear of returning to a situation where the agencies interfere in politics.

Thus a *White Paper on Intelligence*, which was considered by Parliament in 1994, spelt out the policy framework within which the new intelligence services would function. It stated that the overall aim of the domestic intelligence agency would be to ensure the security and stability of the State and the safety and well-being of its citizens. The aim of the foreign intelligence service would be "promoting the national security and the interests of the country and its citizens".<sup>9)</sup> These aims can be interpreted as reflecting the dilemma faced by all intelligence services in the immediate aftermath of the Cold War. What they would concern themselves with following the end of the ideological rivalry of the past decades was not immediately clear to them, and many argued that because poverty, famine, environmental degradation, water shortages and the like were turning out to be new sources of conflict and instability, they were legitimate areas of intervention by intelligence services.

Calling for a new approach to security, the *White Paper on Intelligence* aligned itself with government's major policy initiative in addressing such problems. It stated:

Applied to the South African context, the new approach to security holds that the Reconstruction and Development Programme, as an organised and collective effort of our society led by the Government of National Unity, is integral to and forms the core of the country's emerging national security doctrine. The RDP's efforts to meet the basic needs of our people, develop our human resources, build our economy, and to democratise our state and society will be in the final analysis, one of the determinants of genuine peace and lasting security.<sup>10)</sup>

Later, the *Constitution of the Republic of South Africa, 1996*, drafted by the first democratically elected Parliament, echoed a similar sentiment, as it set out the governing principles and terms for the establishment, structuring and conduct of the security services. The Constitution, declared that:

National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and in harmony, to be free from fear and want and to seek a better life.<sup>11)</sup>

These formulations mirror one of the strands of thought in the broader security debate, which argues that intelligence services cannot concern themselves merely with the security of the state. A particular concern however, has been that associated with the broadened concept of security that these founding documents espoused, has been an overly broad interpretation of the scope and role of the intelligence services.<sup>12)</sup> Policy makers in South Africa have rejected this claim, pointing to the expanded source and nature of threats that have come to serve as vexatious sources of insecurity in the post-Cold War world.

What is inescapable is that the nature of intelligence work challenges the guarantees provided for in a democratic society. Fundamentally, intelligence services engage in the business of surveillance, or to put it bluntly, spying, and this has implications for the rights of privacy, association and expression. An argument therefore found in the debate on security, is that 'securitising' issues such as disease, poverty and environmental degradation, carries the risk of applying extraordinary security measures to address problems that really require social and political solutions.<sup>13)</sup>

### **2.3 Pillars of South Africa's intelligence policy after *apartheid***

In assessing intelligence policy in post-*apartheid* South Africa, three elements can be identified. The first is the philosophical underpinnings of the intelligence system, the norms and values that the democratic dispensation requires the services to adhere to. These are to be found in the Constitution and the *White Paper on Intelligence*, but are also expressed from time to time by the services and government in policy documents. The article therefore evaluates whether there have been changes in the philosophical departure points or principles which have been at the centre of intelligence policy over the years.

The second element of the framework relates to the practice of intelligence: what the services actually do and how they interpret their legal mandates. Noteworthy here is that the civilian intelligence services do not have enforcement powers, and are largely reliant on other agencies (such as the police and justice system) for intervention on the basis of the intelligence they supply, for example by arresting and prosecuting suspected criminals. Their contribution lies in

the realm of collecting intelligence and advising government on security threats and risks.

The third element which an evaluation of intelligence policy must concern itself with is the impact of intelligence on society, particularly on the ability of individuals to exercise their constitutional rights. The Constitution is an important point of reference, particularly since it argues that the services must uphold the Constitution, and places certain responsibilities, such as accountability, respect for international humanitarian law, and transparency on the intelligence services.

### **3. LIMITATIONS OF THE RESEARCH**

The secrecy surrounding intelligence operations makes it difficult to assess or quantify their specific role and impact. Some information, however, is available in the public domain. For example, the annual debate in Parliament on the Budget Vote of the Minister responsible for the intelligence services provides insight into the government's security priorities, and how these are seen by various policy actors. The media plays a role in exposing internal dynamics and newsworthy developments such as impropriety in the intelligence services. Several court proceedings and judgments concerning the intelligence services are now on public record and unclassified reports of those in the intelligence system — the Inspector-General, the JSCI and the services themselves — provide further details and insight. This article relies on some of these sources of information to create a picture on which to base its analysis.\*

### **4. THE FIRST POLICY WAVE: 1994 - 2001**

When the first democratic Parliament was inaugurated in 1994, the major policy problem in intelligence was the fragmentation of the new state's intelligence capabilities. Six intelligence organisations — each of which had been subjected to one or other of the political authorities or parties that were part of the earlier negotiations — had to be brought under one roof and redirected to address a new security agenda.

\*In addition, the writer has relied on her own direct experience as a senior manager for over a decade in the civilian intelligence services, as well as conversations with personnel across the ranks whose identities cannot be disclosed. The writer takes responsibility for any possible errors of fact or interpretation in the article.



## 4.1 The policy context

Fortunately, a basis for cooperation had been laid earlier through the establishment of a Transitional Executive Council (TEC) "with a view to promoting the preparation for and transition to a democratic order in South Africa".<sup>14)</sup> In terms of the *Transitional Executive Council Act, 1993*, a Sub-Council on Intelligence with powers of political supervision and oversight over the statutory and non-statutory intelligence structures, was established.<sup>15)</sup> The Sub-Council had to obtain evaluations of the security situation in the country from the intelligence services. This had the effect of causing a level of intelligence sharing, and planted the seeds of cooperation, and a realisation among intelligence structures that the political transition the country was going through meant that they might one day have to work together.

Alongside the practical dimension of sharing intelligence, the seeds of a policy framework were set out when the TEC debated and adopted, as required by the Act, basic principles on intelligence to serve as a possible basis for the creation of a post-*apartheid* national intelligence capacity. It also formulated a binding code of conduct that could serve as a basis for an official code of conduct in the new democratic dispensation.

After the country's first democratic elections in 1994, a Government of National Unity (GNU) with Nelson Mandela as President of the Republic was established. Deputy President FW de Klerk's appointment as chairperson of the strategically important Cabinet Committee on Security and Intelligence (CCSI) meant that at least indirectly, his party could influence policy decisions about a future national intelligence capacity.<sup>16)</sup> One way was to argue for balancing the appointments to the top management structures of the new services. Because there was an administrative vacuum at the time the new services were established, the human resource management and financial systems and regulations of the *apartheid* era National Intelligence Service (NIS) were relied upon to usher the new intelligence services into existence.

Over the first few months of Parliament's existence, the confidence-building interactions that had taken place under the TEC, made it possible for the government to further explore a common future for the still separated intelligence components. The 1995 establishment of a coordinating structure consisting of the heads of



these services, popularly known as 'HOCS' (or Heads of Civilian Services), consolidated the relationship between the different components, and had the blessing of the GNU.<sup>17)</sup> In fact the GNU relied heavily on HOCS to assist it in formulating a new framework to reconstitute the intelligence services under the democratic political dispensation. Discussions focused on the intelligence services' mandate, the structures, the possible amalgamation of the members of the component intelligence structures, and the setting up new administrative systems to control the facilities, resources and the budget of the intelligence services.

## 4.2 Policy responses to key problems under the Mandela administration

As stated earlier, one of the first documents passed by Parliament on intelligence policy was the *White Paper on Intelligence* which proposed a major policy shift concerning the role of intelligence in a democratic South Africa. No longer would the state's intelligence services regard domestic political opposition as the primary threat to its security, as had been the case under *apartheid*.

That government saw a role for a domestic civilian intelligence service even after *apartheid*, is in itself significant. It signalled an assessment that the use of intrusive and special means of collection, for purposes of informing government's response to security problems, might be warranted in certain circumstances.<sup>18)</sup> At the same time, government moved to ensure that the defence force was excluded from conducting domestic intelligence operations. Such domestic involvement had politicised the role of the military under *apartheid*, and one of the agreements that was reflected in legislation for the security services was that the primary role of the military was to defend the sovereignty and territorial integrity of the Republic.<sup>19)</sup> While there was concern that a domestic intelligence service could intrude on civil liberties, and repeat the errors of their *apartheid*-era predecessors, government held firm to the view that such a service was warranted, given the high levels of uncertainty and violence that characterised the still fragile democracy, including ongoing tensions between the ANC and the Inkatha Freedom Party (IFP).<sup>20)</sup>

A second policy response was the establishment of a coordinating structure to facilitate the integration of intelligence gathered

by the various intelligence structures. Under *apartheid* the intelligence services had been wracked by rivalry. The military had had a dominant influence for a significant part of this period, but the police and civilian intelligence services at times had also been dominant influences. A National Security Management System (NSMS) which brought together all the security agencies had existed at the height of *apartheid*, but had become discredited for its overtly political role.<sup>21)</sup> In the new intelligence dispensation a new layer of integration and interpretation of intelligence was introduced. A Coordinator for Intelligence would integrate the inputs from the NIA and SASS with the inputs from the intelligence divisions of the South African Police Service (SAPS) and the South African National Defence Force (SANDF), to produce assessments for government on threats and potential threats to the security of the country and its citizens.<sup>22)</sup> In this way no one arm of the intelligence community would dominate the policy space. Each would have its role circumscribed by its legal mandate, and it would be an integrated assessment that the policy maker would receive, through the Coordinator, to assist the process of decision making.

A third significant policy response in the new intelligence dispensation was the constitutional provision for civilian oversight and control of the security services. This meant that civilian representatives would be able to monitor the intelligence services' activities, spending and adherence to the law. The clumsily named *Committee of Members of Parliament on and Inspector Generals of Intelligence Act, 1994* (Act 39 of 1994) made provision for a multi-party parliamentary oversight committee with powers to receive reports, make recommendations, order investigations and conduct hearings on matters relating to intelligence and national security.<sup>23)</sup> The Act also called for the appointment of an Inspector-General to investigate complaints about the intelligence services.

Finally, there was the all-important problem of who would serve as the officers of the new intelligence services. In line with guarantees given about the fate of those who had served in government positions under *apartheid*, a decision was taken that no members of the security and intelligence structures would lose their positions. After debating for several years what should be the fate of members of the former security structures of the parties involved in the negotiations, four policy options were considered.<sup>24)</sup> 'Amalgamation' was the

policy response chosen for the intelligence services.

These were far-reaching policy responses to the problems which the new government had to address. Reaching consensus on them was the product of difficult negotiations between the political parties that participated in the crafting of a new political dispensation. Significantly, the intelligence structures that would later be amalgamated also had a say in the deliberations; such was the inclusive nature of the process. First through the TEC's substructures and then under the HOCS, a series of meetings between the intelligence components saw them assisting in shaping the policy framework that would govern them.<sup>25)</sup> But little attention was paid to the mechanics of intelligence operations: it was the agencies themselves that would have to decide on how they would deal with the agents and spies who had been their 'assets', what would become of operations that no longer served the purpose of a democratic South Africa and other day to day matters.

### **4.3 A brief evaluation of policy implementation in the 1994-1999 period**

The new intelligence services were formally established with effect from 1 January 1995. This is often cited as a success, given the disparate forces that the amalgamation process brought together. The NIS, the Department of Intelligence and Security (DIS), the Pan African Security Service (PASS), the Transkei Intelligence Service (TIS), the Venda National Intelligence Service (VNIS), and the Bophuthatswana Intelligence and Internal Security Service (BIIS) were effectively dissolved from this date onwards, and their staff absorbed into either NIA or SASS.<sup>26)</sup> In keeping with the reconciliatory character of the GNU, top management positions were allocated to a spread of senior figures from the former intelligence components. This was important for building confidence and trust among the lower ranks.<sup>27)</sup> Joe Nhlanhla, who had largely steered the African National Congress' (ANC) input on intelligence policy during the negotiations, was appointed as Deputy Minister for Intelligence by President Mandela.

Domestically, the restructuring was aligned with the new geopolitical demarcations of post-*apartheid* South Africa. Under the new Constitution the four provincial administrations and the Bantustan authorities were dismantled and replaced by nine provinces. NIA ac-

cordingly was organised to have a Provincial Office in each of the provinces. Under a Chief Directorate for Domestic Collection, Provincial Managers were appointed to lead the task of bringing the amalgamated personnel into these structures. Administratively, NIA and SASS were two separate agencies, and although the two departments shared a headquarters from a point onwards, their respective operational terrains were quite distinct. SASS, whose mandate was to conduct intelligence in relation to external threats, operated abroad and became an important point of intelligence cooperation with the intelligence services of South Africa's allies. Operationally, the paths of the two departments did not cross in the earliest periods though a few years into their existence, the global nature of security threats and the growing significance of 'imported issues' began to suggest that although their legal mandates confined their operations territorially, they would have to compensate for this by greater cooperation.<sup>28)</sup>

The NIA particularly, had its hands full with the still volatile political climate, which in a way, gave credence to the argument that the country needed a domestic intelligence agency. Intra-party political violence in 'hot spots' was monitored, as were the activities of right wing organisations. When violence flared in the transport industry, the NIA was tasked to monitor these developments as well. Apart from this, in keeping with its counterintelligence mandate, the NIA both monitored the activities of foreign spies, and in cooperation with the SAPS, acted to detect and prevent terrorism, counterinsurgency, and other activities prejudicial to the South African state.<sup>29)</sup>

As required by legislation, the heads of NIA, SASS, Defence Intelligence of the SANDF, Crime Intelligence of the SAPS, and in later years, the Director-General of the Department of Foreign Affairs (DFA) met regularly under the Coordinator for Intelligence. Under the direction of the Deputy Minister, NICOC developed the practice of submitting, apart from other assessments, a National Intelligence Estimate (NIE) to Cabinet on an annual basis, combining the inputs of the different agencies. This assisted Cabinet in assessing the security situation and setting security priorities on an annual basis. This in turn assisted in focusing the intelligence services on their priorities for the year ahead.<sup>30)</sup>

In Parliament, the JSCI was launched, with the appointment of members from a cross-section of political parties, as stipulated in legislation. There was an exemplary degree of cooperation among

the serving political parties, this possibly being accounted for by the goodwill engendered by the GNU. The intelligence services were subjected to fairly rigorous oversight under the first Chairperson, Lindiwe Sisulu. One of their main functions was the oversight of the budget allocated to the intelligence services. Interestingly, the Committee was as much concerned about the prudent use of state resources, as about whether the funds allocated by the National Treasury were adequate. The budget allocation for intelligence became a source of tension between the JSCI and Parliament's Finance Committee, which had the responsibility of overseeing the work of the National Treasury in the early years. At one stage, Sisulu commented:

We feel this handicap when we come to this point at which we stand here to defend why the budgets of Services have almost doubled. We believe that the Finance Committee, this is what the media is saying, is baying for our blood, and so too are various members of this House.<sup>31)</sup>

The foundational restructuring of the civilian intelligence coincided with a major policy shift in the role of the intelligence services. Nevertheless, the services were captive to their identities, and their secretive character was likely to surface at some point as a contradiction, given the guaranteed freedoms that intelligence services inevitably have to evaluate whether to breach or not.

## **5. THE SECOND POLICY WAVE: 2002-2008**

The second round of restructuring of the civilian intelligence services took place several years into the term of the country's second President, Thabo Mbeki, and coincided with a policy wave in intelligence which saw an expansion of intelligence structures, and a strengthening of institutional culture. The GNU did not survive as a model of governance, the National Party (NP) leader De Klerk having resigned as early as 1996, and Buthelezi declining an offer to serve a second term as Deputy President. Jacob Zuma was appointed Deputy President of the Republic and held this position until 2005, when he was asked to step down by Mbeki, on grounds that he had been implicated in a controversial arms procurement deal.<sup>32)</sup>



## 5.1 The policy context

Government's broad policy framework remained unchanged in the second term of the ANC administration. Upon Mbeki's appointment as President in 1999, he moved swiftly to strengthen the Presidency, and implemented a greater degree of inter-ministerial coordination through the cluster system of governance. This grouped ministries and government departments with complementary mandates so that they could cooperate on programme areas of common concern.<sup>33)</sup>

Government policy was also shaped by Mbeki's *Renaissance* ambitions for the African continent. In 2002, the Organisation of African Unity (OAU) was disbanded, making way for the formation of the African Union (AU). War, conflict and instability were the immediate challenges faced by this fledgling body. The security agenda of the AU focused on five key tasks, namely the promotion of peace, security and stability; implementing peace-building and post-conflict reconstruction; coordinating and harmonising continental efforts in the prevention and combating of terrorism; developing a common defence policy; and protecting human rights.<sup>34)</sup> As one of the better resourced African states, South Africa found itself in the forefront in facilitating negotiations between conflicted parties, in peacekeeping missions, and in lobbying the economically powerful states of the world to invest in Africa. For this, a good flow of intelligence would be needed.

In this period, one of the most significant developments was the prominence of violent extremism or terrorism. Africa too was affected and extremist groups, some of which styled themselves on groups like al-Qaeda, developed in several centres. Intelligence sharing among services was seen as vital. In addition, political conflict which escalated to heightened levels in several countries — the Democratic Republic of Congo (DRC) and Burundi for example were countries that particularly concerned South African intelligence services over this period — further reinforced the need for coordination.

The general security climate in Africa inspired the formation in 2004 of the Committee of Intelligence and Security Services in Africa (CISSA).<sup>35)</sup> The objectives of this body, comprising as the name suggests of the heads of intelligence and security services of African countries, were aligned with those of the AU.<sup>36)</sup> CISSA would facilitate interaction among African intelligence services and their exchange of



intelligence on all common security threats; provide the Peace and Security Council (PSC) of the AU with intelligence that would help it develop policies and strategies for peace-keeping and conflict prevention, management and resolution, and serve as a 'back channel' of communication between member states during crisis.<sup>37)</sup>

Back home, government struggled with the challenges of service delivery, and closing the gap between rich and poor. In spite of the gains that had been made in the first five years of democracy, impatience at the pace of service delivery resulted in community protests which sometimes turned violent, becoming a frequent feature of life at local level. Rising crime levels, coupled with evidence of corruption at various levels of the public services, resulted in policy makers turning to the intelligence services to assist in understanding these challenges.

## **5.2 Policy responses to key problems under the Mbeki administration**

President Thabo Mbeki served as head of state for two successive terms, each with a different Minister for Intelligence Services. Joe Nhlanhla, who had served as Deputy Minister of Intelligence throughout the Mandela years, was appointed a full Minister in President Mbeki's Cabinet after the country's second general election in 1999. However, his tenure came to an end when he was struck by illness months after his appointment, and Lindiwe Sisulu, at the time the newly-appointed Deputy Minister for Home Affairs, was appointed as Minister for Intelligence Services. At the end of Mbeki's first term of office, Ronnie Kasrils was appointed and held the position of Minister from 2004 till his resignation in 2008. Policy responses that took place in each Minister's term of office are examined below.

### **5.2.1 Minister Sisulu's term of office: 2001-2004**

In her first Intelligence Services' Budget Vote address to Parliament, Sisulu paid tribute to her predecessor, Joe Nhlanhla, for utilising the first six years of the post-*apartheid* period to carve out a new dispensation for the intelligence services, which she described as:

... a dispensation that has a mandate worked out by the Constitu-

tion, a dispensation that united the myriad of services into one, a dispensation that respected human rights and, further, a dispensation that was very distinct from the old services.<sup>38)</sup>

Under Sisulu, the major policy tenets that had shaped the intelligence dispensation remained in place. In her 2002 budget vote address in Parliament, she promised a review of the *White Paper on Intelligence*, in view of global and national developments and to take into account the experiences gained in government.<sup>39)</sup>

She argued, however, that the existing resources and capabilities of the intelligence services were inadequate and that fresh policy initiatives were needed to meet the security threats facing the country. For a start, Sisulu was irked by the careless handling of documents by government officials. She found the level of information security poor, and set about persuading her Cabinet colleagues to provide the resources to address this problem.

During her 2002 Budget Vote debate in Parliament, Sisulu cited some recent experiences to stress the importance of information security:

The recent break-ins at Denel and, horror of horrors, at the offices of the Auditor-General in Pretoria indicate that we need to go out with nothing less than evangelical fervour to preach on the need to upgrade our information security. Because it is part of our responsibility to safeguard our technological and economic advances, every break-in into a state department or parastatal, with its intended theft of software, is a nightmare for us. We give notice, therefore, that we intend to ensure that the minimum information security standard that we make available to Cabinet is made an enforceable regulation for all strategic institutions.<sup>40)</sup>

While Sisulu felt the need to respond with greater strictness to the casual handling of records, the intelligence services were confronted by another imperative — the *Promotion of Access to Information Act, 2000* (Act 2 of 2000). The Act gave expression to a constitutional requirement that legislation be passed to promote the principle of access to information. With few exceptions, all public (and private) bodies — including the intelligence services — were subject to the Act. Although the Minister was granted an exemption from publishing a manual setting out the categories of information held by the intelligence services, anyone could submit a written request for access

to information, with the right to have any such request processed.<sup>41)</sup>

It can therefore be argued that the first major policy problem which Sisulu identified was balancing the need for better information security in government, with the constitutional requirement for access to information. In the absence of a detailed policy framework around what information should be made public and what should be kept secret, she set up a Task Team to review records of the Truth and Reconciliation Commission (TRC) with the objective of seeing which documents should be declassified.<sup>42)</sup> Later, she established a Review Committee on Classification and Declassification.

In addressing the interest in transparency about the intelligence services that the TRC records saga had generated, Sisulu paid careful attention to public relations, and can be credited for producing a number of public brochures and media advertisements which sought to enhance the image of the intelligence services. Sisulu considered this important, because of the negative perceptions and suspicions about intelligence. In fact, she made the following promise:

As a first step in dealing with this problem, I am committing myself, as far as possible, to having an open relationship with the media so that I can mediate on behalf of the services. In this regard I also hope to pick up on a broader debate started by the President. I would like to engage the media in discussions around the concept of national security. I am hoping that through this engagement we would establish a common understanding of what can be disclosed publicly and what, through common interest, we agree cannot be disclosed.<sup>43)</sup>

A second policy challenge identified by Minister Sisulu related to the capacity of the civilian intelligence services to deliver on their mandate, which she assessed to be inadequate at the time she was appointed. Sisulu believed that in dealing with complex threats — cyber-crime, money laundering, weapons smuggling, nuclear proliferation and the like — emanating from sophisticated quarters, a new breed of intelligence officers was required. Part of her vision was to drastically restructure the Intelligence Academy so that it could serve the purpose of training such a corps of officers. This, she said, would involve entering into smart partnerships with a number of academic and technology institutions.<sup>44)</sup>

Another policy measure aimed at making the intelligence ser-

vices an employer of choice. This Sisulu did by reviewing the conditions of service of intelligence officers, with the view to providing incentives for joining the intelligence services. An outcome of this process was an overhaul of the human resources regulations. As intelligence officers are not subject to *South Africa's Labour Relations Act, 1995* (Act 66 of 1995) Sisulu instituted a Staff Council which was meant to serve as a forum where ordinary members could table concerns about issues in the workplace before management. And because members of the intelligence services (with the exception of Directors-General) were not subject to the *Public Service Act, 1994*, she instituted an Intelligence Services Council on Conditions of Service. This structure is best described as having a function similar to that of the Public Service Commission: it had to advise the Minister on what adjustments to make to the conditions of service of the members in the employment of the intelligence services.<sup>45)</sup>

Sisulu recognised the importance of creating a new corporate identity for the intelligence services, and gave attention to the symbols and recognition system that the intelligence services would observe. In her second year, she erected a Wall of Remembrance at the headquarters of the civilian intelligence services.<sup>46)</sup> Each year, on Intelligence Services' Day, those who had died whilst in the service of the intelligence services would have their names inscribed on the Wall. In addition, Sisulu instituted a system of medals for long service and outstanding achievements. The issuing of these medals usually coincided with the Intelligence Services' Day. These symbolic practices were meant to play an important role in shaping the corporate identity of the institution. They were carried on by succeeding Ministers illustrating that they were valued as part of the new heritage of the intelligence services.

The third set of policy measures introduced by Sisulu related to the technical environment. Sisulu regarded the technical infrastructure of the intelligence services as inadequate, particularly in light of the information security challenges the country faced. She was concerned that the expensive and sophisticated signals intelligence capacity was underutilised and its potential as an intelligence gathering tool, not adequately recognised by Cabinet. She therefore lobbied Cabinet to create a stand-alone National Communications Centre (NCC) that would house the signals interceptions facilities of the entire intelligence community. Cabinet, however, had difficulty with

the idea, and worried that it would create controversy to create such an entity with legal status. The idea was shelved.<sup>47)</sup>

Sisulu did win Cabinet support for two other crucial pieces of legislation that had the objective of improving the intelligence community's technical infrastructure and capacity. The first sought to centralise the conduct of lawful interception of communications through the establishment of the OIC. The establishment of the OIC was part of a broader initiative to streamline the regulation of interception. A significant policy difference was that any security agency that needed to conduct lawful interceptions within the country would have to approach the OIC, which fell under the control of the Minister for Intelligence Services, to implement them.

Another measure introduced by Sisulu was to establish common standards of protection for electronic communications within government. Hitherto, government departments acted on their own in procuring technology for electronic communications. As new technologies were procured by government departments, it was becoming clear to the intelligence services that there were disturbing discrepancies in their security controls and features. Sisulu argued that a specialised body was needed to ensure that information was not compromised. Such a body should play the role of auditing the security of existing technologies, especially computer systems, and advising the relevant departments on those security features needed to enhance the protection of the electronically stored or transmitted information.

### **5.2.2 A brief evaluation of policy implementation under Sisulu: 1999-2004**

Sisulu's policy initiatives were given effect through an ambitious legislative programme. Through the *Intelligence Services Act, 2002* (Act 65 of 2002), the original *Intelligence Services Act, 1994* (Act 38 of 1994) was repealed in totality. Apart from the pre-existing agencies, NIA and SASS, whose existence the Act confirmed, SANAI was established. A statutory advisory board on training — the Ministerial Advisory Committee on Training — was also set up. The role of SANAI was to provide career training for the cadets and intelligence officers of the civilian intelligence services. The *Intelligence Services Act, 2002* (Act 65 of 2002) also provided for an Intelligence Services



Council of Conditions of Service (the ISC), a body with the role of advising the Minister on conditions of service for employees of the intelligence services.<sup>48)</sup>

Then, in terms of Section 33 of the *Regulation of Interception of Communications and Provision of Communications Related Information Act, 2002* (Act 70 of 2002), the OIC was established. Subject to judicial warrant, the OIC was to be the only structure with the authority to engage in the legal interception of domestic communications.

Finally, COMSEC was established in terms of the *Electronic Security Communications (Pty) Ltd Act, 2000* (Act 68 of 2002). The Act spelt out the functions of COMSEC as being to protect and secure critical electronic communications against unauthorised access or technical, electronic or any other related threats; to provide, with the concurrence of the National Intelligence Agency, verification services for electronic communication security systems, products and services used by organs of state; and to provide and coordinate research and development with regard to electronic communications security systems, products, services and any other related services.<sup>49)</sup>

Finally, although no legislation was passed on the matter, a National Communications Centre (NCC) was established to consolidate the services' technical collection capacity. Essentially, this involved placing all the assets of the intelligence services under a totally new management, in order to ensure that there was equal access to these intelligence tools by all collecting arms of the intelligence services. Sisulu appointed an Executive Director for the NCC, but it was to remain a structure that only catered to the civilian intelligence services. Whilst it operated somewhat autonomously from the management structure of the NIA under this elevated status, it nevertheless continued to receive its budget allocation through the NIA.

Sisulu faced several challenges in implementing her policy agenda. The post-2002 structures called for the establishment of additional facilities, additional budget and personnel and an expansion of the management layer. This placed pressure on the budget of the services. Sisulu's officials spent a considerable amount of time engaging with the National Treasury to solicit funding for the projects. It was no secret that she considered the officials in the National Treasury, who proposed a scaling down of the intelligence services' budget, ill-informed. She went as far as mobilising for the establish-



ment of a Presidential Intelligence Budget Advisory Committee (PIBAC), a structure which sought to lobby the Deputy President for the allocation of an enlarged budget for the intelligence services.<sup>50)</sup>

As an extension of her vision, Sisulu appointed high-level advisors and staff in her Ministry, including a Presidential Intelligence Support Unit (PISU).<sup>51)</sup> The PISU provided advice to the President especially on conflicts in Africa where the government was involved in facilitating dialogue between the affected parties. It did not have an intelligence gathering capacity of its own and had to rely on SASS to provide it with intelligence. It straddled the divide between intelligence and policy advice and its members, recruited from outside of the intelligence services, were chosen because they were considered talented enough to play this role.

The Ministerial Review Commission on Intelligence established by Ronnie Kasrils several years later, observed that in the period 1994 to 1999, NIA had interpreted its mandate narrowly, concentrating on terrorism, sabotage, subversion and organised crime.<sup>52)</sup> However, in a directive titled "NIA's Mandate and Operational Policy", issued in 2003, an expanded collection brief was proposed. Five distinct areas were named: political intelligence; economic intelligence; organised crime and corruption; border intelligence; and special events, the focus on political and economic intelligence according to the Commission, having been included on the instruction of the President.<sup>53)</sup>

The directive stated that in the case of "political intelligence", which involved understanding "the strengths and weaknesses of political formations, their constitutions and plans, political figures and their roles in governance etc",<sup>54)</sup> 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".<sup>55)</sup>

This interpretation of the law by the NIA was to lead it into problems in subsequent years, and was in part why Kasrils later appointed a Commission to review the operations of the intelligence services under his control. Sisulu's term of office ended when Mbeki's first term as President expired.

### **5.2.3 Minister Kasrils' term of office: 2004-2008**

Ronnie Kasrils was appointed Minister for Intelligence Services in Mbeki's second Cabinet. Echoing his predecessors, Kasrils argued that the changing global environment provided the basis for the changed role of intelligence. Speaking in Parliament shortly after his appointment, he said:

Globalisation can bring benefits: sharing of technology and improvements in telecommunications, ease of travel, greater scope for concerted international action to deal with poverty, natural disasters, disease and environmental changes. But it also opens the way to terrorism organized crime, trafficking in people and drugs, proliferation of weapons of mass destruction technology, money laundering — the new global threats.<sup>56)</sup>

Although Kasrils and Sisulu agreed on the nature of threats to security, there was a first discernible difference in how they tackled their budget constraints. Where Sisulu had constantly been at loggerheads with the National Treasury about the resources needed to finance her vision, Kasrils was happy to accept the limits, and in his first Budget Vote pledged to do more with less. Moreover, he undertook to concentrate the resources of the intelligence services on the core business, that is, the operational work. In 2004, during his first Budget Vote address in Parliament, he declared that the consequence of the expansion that the services had undergone in the preceding years, was that—

... the salary bill increased to well over 57% of the budget with NIA's personnel expenditure topping that. This could not but affect spending patterns to the long term detriment of operational and capital equipment requirements.<sup>57)</sup>

Kasrils identified ten priorities, top of which was the adjustment of the ratio between personnel, capital and operational expenditure in favour of operations. The other nine priorities were as follows: targeted recruitment, training and strategic placement of members; improvement of the operational capacity in the provinces and abroad; improving intelligence sharing and coordination between all sections of the intelligence community; enhancing NICOC's analytical capacity, its national intelligence estimates and the National Early Warning Centre;

developing intelligence cooperation in Africa and with South Africa's international partners focusing especially on conflict prone areas of the continent; strengthening security at ports of entry; fully implementing the Minimum Information Security Standards (MISS) within all government departments; and developing the Intelligence Academy, its syllabus, training commitments and its future; and comprehensive improvements in the services' vetting capacity.<sup>58)</sup>

The above list indicates that there were no fundamental differences in policy between Kasrils and Sisulu. Kasrils remained committed to most of the initiatives that his predecessor had begun, albeit treating the resourcing implications far more cautiously. The corporate symbols and system of recognition were reinforced, and Kasrils went so far as to further develop the system of medals and awards and have them registered with the country's Bureau for Heraldry. A garden of remembrance was developed to deepen the ambience around the Wall of Remembrance, and the practice of honouring deceased intelligence officers on Intelligence Services' Day was dutifully adhered to.

An important policy area that Kasrils attempted to take further than Sisulu had done, was the review of legislation aimed at a system of classification and declassification of information. A drafting team prepared legislation which after Cabinet approval, was submitted to Parliament where it was considered by an *ad-hoc* committee. The *Protection of Information Bill* generated much public interest and went through several revisions. Although the draft legislation was eventually withdrawn for further consideration, reaching the stage of parliamentary discussion was important, since it sought to replace the inadequate Minimum Information Security Standards (MISS) and the *Protection of Information Act, 1982* — a piece of legislation considered inappropriate because it had been drafted under the repressive conditions of *apartheid*.<sup>59)</sup>

### **5.3.5 A brief evaluation of policy implementation under Kasrils: 2004-2008**

In a veiled snub of Sisulu's more generous displays, Kasrils scaled down the staffing complement in his own office, and placed limits on expenditure for new capital projects. He dismantled the PISU, but continued to lend support to intelligence collection efforts in Africa.

Two events signaled to him that intelligence operations might not have been handled as professionally as they should have been: one affecting SASS, the other NIA. In the case of SASS, a middle-ranking intelligence officer was arrested when his intelligence operation, which allegedly involved spying on the ruling party in Zimbabwe, was exposed. Aubrey Welken was held in detention for a year and only released after months of behind the scenes negotiations. The incident was an embarrassment to the South African government which had to assure the government of Zimbabwe that it did not regard its neighbour as a legitimate intelligence collection target.<sup>60)</sup> It also exposed the risks that intelligence services face in the conduct of intelligence operations.

In the other incident, an investigation that the Minister requested the Inspector-General to undertake after a complaint, it was found that unauthorised electronic surveillance of the communications of several prominent political figures, including a senior ANC leader, had taken place. The Director-General and several senior figures had apparently sanctioned and overseen this surveillance. It was widely interpreted that NIA, in undertaking this activity was acting in a partisan fashion, thereby undermining a cardinal principle on which it had been founded: non-partisanship.<sup>61)</sup>

Concerned about a lack of control over the operations of the intelligence services, Kasrils, as mentioned earlier instituted a Ministerial Review Commission, chaired by a former Cabinet Minister, Joe Mathews, to assess the legislation, regulations, operational policies and mandates of the intelligence services, with a view to recommending to him changes that would strengthen adherence to the Constitution by the services. Alongside this initiative, Kasrils instituted a Civic Education Programme for the intelligence officers, and giving it high priority, designated the heads of the services directly accountable for its implementation.<sup>62)</sup>

In their submission to the Commission, the NIA senior management indicated that the political intelligence focus introduced through the 2003 directive had created difficulties for them in understanding their role. But it had only been after the crisis caused by the unauthorised surveillance of political and public figures, that they had altered their terms of reference following discussions with Kasrils. Their focus then moved away from "political intelligence" to a focus on "social stability intelligence". Their aim, in terms of this reformula-

tion was to meet the human security challenges of South Africa as a developmental state by focusing on threats and risks to both political and social stability.<sup>63)</sup>

Kasrils, like Sisulu, projected the intelligence services as accessible and ready to account to the public. A website for the Ministry was launched during his time, and was regularly updated with his speeches and comments. By the time of his Budget Vote speech in Parliament in 2007, Kasrils was confident that his programme was well into its successful implementation. Recalling the first of his ten priorities highlighted in 2004 — ensuring that sufficient funds were allocated to the core business through adjustments to personnel, operational and capital expenditure ratios — he reported that significant strides had been made:

Our primary concern was that in 2004, the National Intelligence Agency (NIA) and all the spending centres, apart from the South African Secret Service (SASS) had a salary bill of over 70%, which was rising towards consuming the entire annual budget allocation at the expense of operations and capital investment. Urgent intervention was required and I am delighted to report that in 2006 this figure was decreased to 62%, with expenditure on our all important budget consequently able to rise from 24% to 28% and capital investment from 2% to 10%.<sup>64)</sup>

Regarding his pledge to enhance NICOC's analytical skills, national intelligence estimates and the National Early Warning Centre, Kasrils reported that concerted efforts had been made to foster relationships with civil society experts, that an association had been formed bringing together analysts from across the services to share best practice, and that specialists had been headhunted. These initiatives had contributed to an improvement in the NIE and a growth in the range and number of intelligence products or briefings.

Concerning his pledge to implement the MISS within all government departments, Kasrils reported that with more departments appointing security managers who were then trained and supported by NIA, there had been a marked improvement in implementation. The intelligence services had continued to play a valuable role in support of a number of interdepartmental committees established to ensure a more coordinated approach to border security, in pursuance of the pledge to strengthen security at the borders and ports of entry.<sup>65)</sup>



To demonstrate how far the intelligence services had gone in implementing the pledge to make comprehensive improvements to their vetting capacity, Kasrils said:

Vetting investigation turnaround times have improved, where a top secret security clearance now takes 49 days to complete compared to 60. A confidential clearance takes 14 days instead of 30. This has led to an overall growth in the number of clearances issued annually, which have nearly doubled since 2004. Most noteworthy has been Cabinet's endorsement of our new vetting strategy that will build capacity within all government departments.<sup>66)</sup>

Whilst cautioning against the indiscriminate use of the 'terror' label, and acknowledging that terrorism could only be dealt with effectively by addressing its root causes, Kasrils cautioned that the matter was important, especially as South Africa prepared to host the 2010 FIFA World Cup:

We also remain alert to averting the possibility of a terrorist attack or the use of our territory by subversive elements from whatever quarter. While we are neither a primary target nor a safe haven, we cannot afford to be complacent, as no country is immune from this threat. We do not condone the indiscriminate use of violence against civilians, whether by state or non-state terror. Nor can we be accused of being 'soft' on terror, as our record on the containment of such activities demonstrates.<sup>67)</sup>

As with Sisulu, who was passionate about enhancing the symbols and establishing a new heritage for the intelligence services, Kasrils used his platform as Minister to advance a particular cause. This was the Palestine question, and where it was possible he used every opportunity to engage on this matter. He was actively involved in the campaign for the Palestinian people's quest for self-determination and the recognition of their right to a sovereign state, along the lines of the 1967 proposed borders. This was reflective of government's stance at the time. Over a number of years, South Africans had been engaging with the two sides to the conflict, sharing the experience of the South African transition, in the hope that it would inspire a resolution of the Palestinian conflict. By no means his only preoccupation though, Kasrils also focused the intelligence services on the govern-



ment's efforts to bring about peace in the Great Lakes Region, Sudan, Somalia and other areas of conflict.<sup>68)</sup>

## **6. INTELLIGENCE POLICY IN 2009 AND BEYOND**

What the above analysis shows is that in South Africa, there has been no fundamental change in intelligence policy over the years. Under the Mandela administration, a new Constitution enshrined democratic values and enjoined the intelligence services to respect the rights of individuals, to subject themselves to civilian oversight, and to observe humanitarian international law. Under the stewardship of Nhlanhla as Deputy Minister and later Minister, the major achievement of this first policy wave was to successfully integrate the six entities and create a functioning organisation. As with Nhlanhla, the next two Ministers, Sisulu and Kasrils worked hard to have the intelligence services recognised and acknowledged as indispensable tools of government. To achieve this, they aligned their policy initiatives with the main policy tenets of the Mbeki government, setting up systems to build skills, relations with other services, and modernising the infrastructure. Both strongly supported South Africa's foreign policy agenda and put peace and stability at the centre of their plans for the services.

Where Sisulu's policy thrust was to expand the intelligence capacity to address the ever growing list of security threats, Kasrils, realising his resource constraints, had to choose which element between personnel, operations and capital expenditure, to prioritise. Both grappled with the principles that should underline a regulatory framework that would balance the intelligence services' need to work secretly with the need to promote transparency. But both Ministers probably did not pay sufficient attention to ensuring the operational controls in place in the services, leading to the crisis that erupted in 2005, leading to the forced resignation of the Director-General.

The obvious question that arises about a dispensation that was meant to have been marked by its transparency and accountability, but under which violations by the intelligence services took place, is whether oversight had failed. Arguably, the checks and balances provided for in the Constitution, and in the intelligence dispensation are

to be valued. In the words of Laurie Nathan, one of the Commissioners appointed by Kasrils, reflecting later on the scandal involving NIA:

... a senior ANC member complained to the minister that he was being harassed by the country's spies, the minister referred the complaint to the independent office of the inspector-general of intelligence; the inspector-general found that NIA officials had acted illegally; the JSCI criticized the inspector-general's report; the minister defended the report in parliament...<sup>69)</sup>

The matter had been a test for the intelligence framework and on the face of it, the institutions fared admirably. In addition, the courts were drawn into the saga by the affected parties and the media was able to report freely on it all. All of the above factors suggested a reasonably robust oversight framework.<sup>70)</sup>

## **6.1 Intelligence policy under the Zuma administration: 2009 and beyond**

How to characterise policy developments in intelligence under the administration of President Zuma is the subject of considerable debate. Some commentators say the creation of the SSA reflects a growing securitisation of the South African state, and that the security of the state has displaced that of the individual, undermining the core principles that the intelligence services are meant to be based on.<sup>71)</sup>

### ***6.1.2 Interpretations of the restructuring process***

The Minister for State Security, Siyabonga Cwele has argued that the restructuring is a response to the disproportionate allocation of resources to the corporate services, and intended to ensure that the organs of intelligence focused on their core business.<sup>72)</sup> He dismisses the claims that the centralisation of the resources of the civilian intelligence community is a precursor to an era of greater authoritarianism. On the face of their public statements, there are no fundamental differences in the departure point of Cwele and his predecessors in their respective policy initiatives. In introducing his Budget Vote to Parliament in 2009, Cwele described the security threats in similar

terms to his predecessors:

These threats originate from both the domestic and foreign arena; they stem from state and non-state actors; and they are interconnected, wide-ranging and know no borders. These threats encompass poverty, underdevelopment, environmental degradation, food insecurity and increased competition for scarce natural resources, pandemics and diseases and human and natural disasters. They include intra- and interstate conflicts; terrorism; nuclear, chemical and biological weapons proliferation; espionage; subversion; sabotage; transnational syndicated crime and corruption; smuggling and human trafficking; and critical infrastructure and systems failure.<sup>73)</sup>

He went on to argue:

These threats, if realised, pose a danger to the survival of our constitutional order; the integrity of our state; the growth of our economy; and the well-being and livelihoods of our people.<sup>74)</sup>

Cwele's priorities have also been similar to those of his predecessors. On information security, he has expressed concern about the forging of identity and other official documents, the penetration of information communications technology systems to perpetrate fraud, the break-ins at a number of our strategic entities, and what he describes as "the selected and distorted leakage of state information to destabilise and sow divisions".<sup>75)</sup>

On the integrity of the state's information, he indicated shortly after his appointment that he intended to resubmit the draft *Protection of Information Bill* to Parliament. As had been the intention in the earlier version submitted by Kasrils, following Sisulu's groundwork with the Ministerial Commission on Classification and Declassification, the Bill was intended to guide the process of classification and declassification of state information and criminalise the activities of those engaged in espionage and 'information peddling'.<sup>76)</sup>

Like Sisulu and Kasrils before him, Cwele promised the full implementation of all elements of the services' vetting strategy, and to expand the vetting field units in prioritised state institutions to broaden the programme's reach.<sup>77)</sup> He undertook to drive with greater vigor the control and security of South Africa's borders and ports of entry. This too had been a concern of his predecessors. Citing on-

going corrupt practices by officials who were collaborating with transnational crime syndicates and people-smuggling syndicates, Cwele announced in Parliament that the government security cluster had charged the intelligence services with the responsibility of co-ordinating the development of a framework for the establishment of a new border management agency.<sup>78)</sup> On the external front, Cwele recognised the role of the services over the years in "bolstering government's facilitation, conflict resolution, peace-making and post-conflict initiatives" and pledged to strengthen partnerships with the intelligence and security services of the Southern African Development Community (SADC), and to support the efforts of CISSA in the efforts to provide intelligence to the AU.<sup>79)</sup>

### **6.1.3 Pitfalls in the current policy approach**

In spite of the similarities, Minister Cwele's policy initiatives have been regarded with suspicion in the public domain, where claims abound that they represent a departure from the founding principles of the intelligence dispensation.<sup>80)</sup> The broader political context in which current developments are playing out appear to have contributed to these perceptions. In the first instance, most of these policy initiatives are overshadowed by the focus on the draft *Protection of Information Bill*, which has drawn wide criticism. Criticism of the Bill has come from a wide range of quarters, in civil society. Critics' focus on the Bill has not been the legislation's aim of providing a framework for classification and declassification, but the absence of a public interest defence clause, the penalties proposed for contravention of the legislation, and the perception that 'national security' is defined too broadly.<sup>81)</sup>

A second reason why the current initiatives are regarded with suspicion arises from the climate of mistrust that follows a series of scandals surrounding the intelligence services over the past few years. There is widespread suspicion that the intelligence services are easily available as pawns in political power games. That the recommendations of Kasrils' Ministerial Review Commission have never been considered by Cabinet, Parliament or the intelligence services suggests that the findings of the Commission have themselves fallen foul of such policies.

And yet, a failure of all three Ministers after the Mandela period

was their inability to make good on their public undertakings to review the *White Paper on Intelligence* and to develop a national security strategy. As a result, significant policy problems which beg debate and consensus, have not been addressed over the years. These include a debate on appropriate and effective controls over intelligence in the domestic political space; on supervision and oversight of covert and intrusive intelligence both domestically and abroad; and how to protect the services from political abuse. The Minister has given several assurances that he attends to address the issues but this has yet to see more engagement to make good on this promise.<sup>82)</sup>

## 7. CONCLUSION

On the face of it the major restructuring initiatives in the intelligence services have not coincided with major policy shifts after the initial policy overhaul in 1994; rather, there have been shifts in emphasis and interpretation of policy. All administrations since 1994 have made similar assessments of the global and domestic political environment, and publicly committed themselves to accountability, respect for the rule of law and promoting and defending the Constitution of the Republic. Under President Mandela, with Joe Nhlanhla as Minister, emphasis was on establishing the legitimacy of the new intelligence services, integrating the former operatives into the two new structures, and getting used to oversight. Minister Sisulu, under President Mbeki, emphasised expansion and sophistication of South Africa's intelligence structures to address the growing complexities facing the country. However, under her, and later Kasrils, the tensions between secrecy and democracy came sharply to the fore, and policy initiatives had to address these concerns. The meaning of accountability was also thrown into sharp relief when it became clear that the intelligence services even in the new constitutional dispensation could abuse their powers for factional interests in domestic politics. These unresolved tensions have deepened under the Zuma administration, giving rise to the suspicion with which the *Protection of State Information Bill, 2011*, and recent legislative amendments to rationalise the intelligence services, are regarded. The ignored Ministerial Review Commission on Intelligence highlights critical issues which should be addressed should the *White Paper on Intelligence* be reviewed and if the country's national security strategy is formally overhauled.

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14. RSA, *Transitional Executive Council Act, 1993* (Act 151 of 1993).



15. *Ibid*, Section 20.
16. Henderson, R, *op cit*, p 474
17. O'Brien, K A, *op cit*, p 192 points out that HOCS's organisational predecessor had been the Joint Coordinating Intelligence Committee (JCIC) under the TEC's Sub-Council on Intelligence.
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20. O'Brien, K A, *op cit*, p 188.
21. *Ibid*, p.192; and *National Strategic Intelligence Act, 1994* (Act 39 of 1994).
22. RSA, *National Strategic Intelligence Act, 1994* (Act 39 of 1994).
23. The Act went through several name changes and is now more appropriately titled the *Intelligence Services Oversight Act, 1994* (Act 40 of 1994).
24. These are listed and described in O'Brien, K A, *op cit*, pp 195-196 as absorption, amalgamation, marginalisation and integration.
25. O'Brien, *op cit*, p 192.
26. *Ibid*.
27. Sizakele Sigxashe of the ANC's Intelligence Division was appointed the first Director-General of NIA, whilst Mike Louw of NIA was appointed first Director-General of SASS.
28. The concept was borrowed by NIA from the Canadian Security Intelligence Service (CSIS), which as a domestic agency faced similar challenges of security threats emanating from abroad, and impacting on security conditions in Canada.
29. O'Brien, K A, *op cit*, p 198.
30. *Ibid*, p 204.
31. RSA, *Hansard*. 1996. Lindiwe Sisulu speaking during Minister Joe Nhlanhla's Intelligence Budget Vote Debate.
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  44. RSA, *Hansard*. Minister Lindiwe Sisulu (MP), Intelligence Services Budget Vote address in the National Assembly, 14 June 2001.
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  46. See Opening Statement by Minister Lindiwe Sisulu on the occasion of the Wall of Remembrance on 29 November 2002, at the South African Intelligence Services' headquarters, Rietvlei, Pretoria.
  47. No public statement could be found of this debate in Cabinet, probably because the idea was never adopted.
  48. The civilian intelligence services were deemed at the time of their establishment to be excluded from the provisions of the *Public Service Act, 1994*. Through HOCS, the intelligence structures had made a case for their exemption on the grounds that the openness of the broader Public Service would compromise intelligence officers. The ISC was established to perform similar functions of policy research, and benchmarking, in order to advise the Minister on common conditions of service norms and standards to be applied across the intelligence services.
  49. RSA, *Electronic Communications Security (Pty) Ltd Act, 2002* (Act 68

- of 2002).
50. No public record could be found of this structure set up by Sisulu. Even though headed by the Deputy President, it had only formal status and found it difficult to intervene in changing the prescribed process set out by the National Treasury under Minister Trevor Manuel.
  51. Mentioned in *Hansard*. Minister Lindiwe Sisulu (MP), Intelligence Services Budget Vote Address in the National Assembly, 14 June 2001.
  52. Ministerial Review Commission on Intelligence. 2008. *Intelligence in a Constitutional democracy: Final Report to the Minister for Intelligence Services, the Honourable Mr Ronnie Kasrils, MP*, p 128
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